independence institute

Protecting the People's Voice:

Identifying the Obstacles to Colorado's Initiative and Referendum Process

Sequel to: IP-8-1996

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1. Context of the Initiative Process

A. Introduction

Initiative and Referendum (I&R) is important to representative democracy as a check and balance, a means of augmenting government accountability. The Initiative is essential for dealing with issues that legislators cannot or will not address. Such issues typically include conflict-of-interest issues (such as proposed limits on legislators' powers) and third-rail issues (those that offend powerful interest groups).

This issue paper is a sequel to the Issue Paper, "Are Coloradans Fit to Make Their Own Laws?"[1] published in 1996 by the Independence Institute. It has been widely read and referenced. It was offered in testimony when Texas considered I&R, was republished by the Initiative and Referendum Institute, has been linked to and posted by numerous Web sites, and was even translated into Russian.[2]

Public interest in and support for the Initiative process remains high. But politicians see the process as infringing on their monopoly power to legislate. Some politicians pretend to support I&R to win election, but quickly forget their campaign promises and oaths to uphold the Constitution.

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As with all rights, the right to petition is a fundamental right that is not granted by politicians or by governments. As a matter of fact, in delegating authority to legislate to the legislature, the sovereign citizens of Colorado limited their delegation by reserving "to themselves the power to propose laws and amendments."[3] Thus, the initiative is more than a fundamental right; it is a reserved power. The legislature has no authority to interfere with, throttle or adversely regulate the process other than reasonable regulation to insure its fair and non-fraudulent exercise.

B. Sovereignty: From Theory to Practice

"Governments are instituted among men deriving their just powers from the consent of the governed."[4] The Founders implemented ideas hypothesized by John Locke. The notion of sovereignty was exercised in 1778 when Massachusetts became the first American entity to ratify its new constitution via popular vote.[5] New Hampshire (1792), Connecticut (1818), Maine (1818), New York (1820), and Rhode Island (1824) ratified new state constitutions by popular votes.

Former President James Madison, primary author of the U.S. Constitution, participated in the 1830 Virginia Constitutional Convention. He became part of the people's power movement insisting on popular vote ratification. Within the next four years Alabama, Mississippi, Georgia, and North Carolina similarly reinforced the citizen sovereignty notion via ratification votes of new constitutions.[6] As continental expansion continued, Congress required after 1857 that all newly admitted states must ratify their respective state constitutions by popular votes.[7]

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Consistency dictates that constitutional changes must be made by the same method. That is, an amendment to a state constitution must also be approved by a popular vote. In the 50 states, only the Delaware Constitution permits its state legislature to make constitutional modifications without a ratifying popular vote.[8] Because a constitution defines the structure of government, by necessity it defines governmental limits. The notion of limits illustrates the conflict legislators have with objectively deciding such limits. Sovereign citizens can introduce objectivity to the decision process.

C. Legislative Referendum

With the "legislative referendum," elected representatives draft a proposal which is placed before the sovereign citizens for their consideration.

The process recognizes that the people are sovereign, that the government is the servant, and that the constitution is the contract between the people as individuals and the people as a whole. Every exercise of the legislative referendum (in Colorado more commonly called a "referred measure" or "referendum") reinforces the idea that all political power flows from the sovereign citizens. The legislative referendum may be exercised either constitutionally or statutorily.

D. Citizen Referendum

With special interests controlling legislative output, it became clear in the 1890s that more citizen involvement was needed. Not only could legislators not be trusted to bring important issues to the people, there needed to be a means of challenging ill-conceived legislative actions. The "Citizen Referendum" came in two forms. The "Citizen Initiative" was invented to address legislative omissions, while the "Referendum Petition" was invented to address legislative commissions (acts that overreach).

South Dakota was the first state to adopt I&R in 1898. Oregon was the first state to exercise the initiative in 1904. I&R breathed new life into the women's suffrage movement when Oregon petitions allowed suffrage to be voted on in 1906 and 1908, with passage finally coming in 1910. By 1914 I&R brought women's right to vote to the ballot in Oklahoma, California, Arizona, Kansas, Montana, Nevada, Ohio, Nebraska, and Missouri. The activity helped motivate legislators to release suffrage Legislative Referenda in New York, Michigan, Oklahoma, and South Dakota in 1917 and 1918.[9] Without I&R women would have had to wait longer for the right to vote. When the 19th Amendment (woman suffrage) passed in 1919, the movement to expand I&R lost momentum.

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E. Colorado's Greatest Reformer

John Shafroth,[10] elected Governor in 1908, had made a campaign promise to bring I&R to Colorado. The legislature refused to place a Legislative Referendum for I&R on the 1910 ballot. Contrary to the wishes of the political establishment, including his party, Shafroth called a special session of the General Assembly in August prior to the November 1910 election. The legislature was reluctant, but Shafroth refused to allow adjournment without action. On the November ballot, I&R passed 76% to 24%. Colorado politicians have never gotten over it. They frequently act improperly to subvert petitions.

2. Insubordinate Legislators

A. History of Hostility

I&R, a specific form of the right to petition, is protected under the First Amendment[11] (in addition to freedom of speech, religion, and press) of the U.S. Constitution. Legislators may make rules that facilitate the process and protect against fraud. Legislators may not create rules that hinder or restrict the process. Colorado often crosses the line and has been embarrassed nationally more than any other state over legislative interference with petitions. In *Meyer v. Grant*[12] the U.S. Supreme Court ruled unanimously against the state of Colorado. The state had placed limitations on how petition organizers might reimburse activists. Language contrary to this Court ruling remains in Colorado Revised Statutes, as a display of the legislature's contempt. In 1999 the U.S. Supreme Court again ruled against Colorado in *Buckley v. ACLF*.[13] The ACLF case struck down circulator limitations, reporting requirements and badge requirements.

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B. Referendum Petition

The Referendum Petition is the means by which citizens may challenge a law approved by the legislature. However, because of legislative abuses,

very few Coloradans know the meaning of the term Referendum Petition. The last Referendum Petition to appear on a Colorado ballot was in 1932. Referendum Petitions are rare even in states (such as California and Oregon) that do not subvert the petition process. Assuming Coloradans could exercise the Referendum Petition and its uses were in proportion to that of Oregon, the most active initiative state, Colorado citizens would vote on about three Referendum Petitions per decade.

A Referendum Petition ballot question would be of the form "Shall House Bill 2006-5555 become law?" It is the citizens' way to rein in legislation that goes too far. The Referendum Petition is a check on the legislative process.

C. Source of Safety Clause

As with the Initiative Petition, the Referendum Petition is a "reserved power." The Referendum Petition is defined as "The second power hereby reserved is the referendum."[14] Unfortunately, the reservation of power is contradicted by the health and safety constitutional language which continues "except as to laws *necessary for the immediate preservation of the public peace, health, or safety*."[15] The phrase in italics is the Constitutional loophole that has resulted in Safety Clause abuse.

The Safety Clause, also called the emergency clause, is the last clause attached to many legislative bills. Its language is "The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety."

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D. Extent of Abuse

SAFETY CLAUSE HISTORY			
YEAR	**TOTAL BILLS**	**BILLS PASSED**	**NO SAFETY CLAUSE**
2005	602	402	94
2004	726	436	124
2003	448	460	112
2002	714	407	98
2001	652	377	121
2000	725	427	276
1999	624	369	175
1998	620	353	188
1997	598	338	111
1996	609	346	63
1995	597	308	23
Total	6915	4223	1385

Colorado saw 12 Referendum Petitions prior to 1932. In 1932 the legislature imposed a discriminatory tax increase on oleomargarine to protect the dairy industry from competition. Outraged citizens ran a Referendum Petition, striking down the tax increase 38% to 62%. To avoid future embarrassment, legislators began attaching the safety clause to virtually every bill. Between 1933 and 1995, at least 18,000 bills carried the Safety Clause.[16]

In 1993 State Representative Penn Pfiffner asked that his bills not include a Safety Clause. Because legislative staff did not know how to draft a bill without a Safety Clause, Legislative Legal Services had to research how to do it. In 1995 reformers called public attention to the abuse, resulting in fewer Safety Clause uses. In January 1997 legislative leadership issued a directive that state staff "should no longer assume that members want a safety clause."[17] This means the Safety Clause is no longer automatically added to every bill without the

order of the legislative sponsor. The result has been some lessening of the abuse.

Certainly there are some legitimate applications of the Safety Clause, but a true threat to health and safety would have little need for a Safety Clause. Citizens would be alarmed to learn that the vast majority of new laws are approved under the guise of addressing an immediate threat to public health and safety.

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It is worth noting that this abuse is an individual abuse, not a collective abuse. That is, each legislator has a vote and can exercise his individual conscience. Thus, with multiple votes by 100 legislators for any bill to become law, Safety Clause abuse represents millions of actions against the Colorado Constitution and the people's reserved power to petition. Yet the reality remains; just a few legislators with strength of character and principled leadership could put an end to Safety Clause abuse by withholding their votes. A rule change requiring a separate vote to attach a Safety Clause to any bill would not be out of order. Both political parties have moments where they claim to be the party of the people. Either could force the necessary rule change.

Selected examples of the thousands of Safety Clause declarations used in the last decade appear in Appendix D.

E. Effective Date

The prospect of a Referendum Petition can delay the date that new laws take effect by up to 90 days after adjournment of the legislature (early May until early August). A new law with a Safety Clause can become effective whenever the legislator chooses. The majority of these bills become effective immediately, upon being signed by the Governor. Other commonly used effective dates are July 1 and January 1. Immediate effectiveness is appropriate when health and safety are truly threatened.

Had the following bills not been implemented immediately the scale of the ensuing damage and injury is difficult to envision: Korean War Veteran License Plate, Male Mammography, Snowmobile Registration, Bicycle Traffic Regulation and Encouraging Breastfeeding. Some Safety Clause bills operate on a date outside of the Referendum Petition window, such as those that go into effect the following January 1, the Presidential Primary Election and Counting Students for Financial Purposes. Because a Referendum Petition could not delay the effective date of these laws, the only rationale for using the Safety Clause is to preclude citizens the possible use of the Referendum Petition.

3.Making it Difficult for Voters

A. Ballot Titles

A ballot title is what voters see when they read their ballot. Voters often review the Blue Book and other voter guides to decide how they will vote prior to entering the voting booth. The ballot title summarizes and differentiates the various issues as a means of assisting the voting process. Excessively long ballot titles confuse and frustrate voters. Colorado ballot titles are long and obtuse. They are probably the worst in the U.S.

The Colorado ballot title was the longest, with a single 283-word run-on sentence written in obfuscating legalese. The shortest (California) was 7 words. Oregon provided its voters a 10 word title. Why the difference?

In 1996 the Term Limits movement ran virtually the same text in 15 states. The "Congressional Term Limits Amendment" sought to amend the U.S. Constitution by encouraging Congress to refer a specified Constitutional Amendment to the states for ratification. The Colorado ballot title was the longest, with a single 283-word run-on sentence written in obfuscating legalese. The shortest (California) was 7 words. Oregon provided its voters a 10 word title. Why the difference?

B. Measuring Readability

The Flesch-Kincaid Grade Level Readability Score rates sentences on a school grade scale with 12th grade as the highest. Over the last decade every Colorado ballot title scored 12. This means voters need no less than a high school education to comprehend any Colorado ballot title. Because Flesch-Kincaid stops at 12, this measurement reveals nothing about how much more difficult Colorado ballot titles are than 12th grade reading level. Ballot titles for all of the issues that Colorado citizens were asked to decide statewide between 1996 and 2005 appear in Appendix C.

The Flesch Readability Formula is a scale from 0 to 100 with 100 being easiest to read. In Oregon proponents and opponents may submit draft ballot titles. The title is set by the Secretary of State and must have a readability score of at least 60.[18] The average score of all Colorado ballot titles over the last decade is 12. One-third of Colorado ballot titles get a Flesch Readability score of ZERO. The most readable Colorado ballot title in the last decade is 1998 (Water Meters), written with 109 words and scoring 57. Thus, no Colorado ballot title would qualify as readable enough to be used as a title in Oregon.

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C. Referred Measures are Different

By contrast, ballot titles for Referred Measures are shorter. Over the last decade the average Citizen Petition received a ballot title of 173 words, whereas the average Referred Measure received a ballot title of 88 words. Some Colorado ballot titles are longer than the text of the measure. The *Rocky Mountain News* editorialized, "Maybe (Coloradans) should be able to understand the measures when they read them. It's a simple idea, really, but apparently also heresy."[19] Referendum F, one of the 2006 referred measures, has a misleading ballot title (drafted by legislators without the possibility of oversight or challenge). "The title says it concerns 'elections to recall state elected officials' … but in fact passage of the referendum would have a much greater effect on local elected officials – who are not mentioned in the title."[20] "What the legislature needs is its own title board to make sure it's not misleading the public with its referendums."[21]

4. The Colorado Constitution

A. Colorado Ballot Activity

The Colorado Constitution was adopted in 1876. Citizens gained the power to draft proposed amendments in 1910 when the Constitution was amended to include Initiative and Referendum. The 1912 election presented voters with the longest ballot in history with 32 issues to decide: 4 referred, 22 initiated, and 6 Referendum Petitions.

From 1912 thru 2005, 350 issues appeared on the ballot for Colorado voters to decide. Thirteen were Referendum Petitions; 83 were statutes, and 254 were constitutional amendments. Of the 83 statutes, 63 were initiated and 20 were referred. Of the 254 constitutional issues, 129 were initiated and 125 were referred. Full tabulation of these can be found in Appendix A, and a list of all 350 ballot issues can be found in Appendix B.

Referred statutes and referred constitutional amendments fare better with voters than initiated proposals. Ten of 20 referred statutes have been approved (50%), while 26 of 63 initiated statutes passed (41.3%). Sixty-nine of 125 referred constitutional amendments have been approved (55.2%), while 42 of 129 initiated amendments have passed (32.6%). The significant majority (69 of 111 = 62.2%) of the amendments adopted into the Colorado Constitution were proposed by the legislature. Only 42 of 111 amendments (37.8%) to the Colorado Constitution have been the product of a citizen initiative petition.

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In 94 years only 68 petitions have produced a law. That is less than one per year (0.72). Over the last decade, 14 petitions have yielded a law (1.4 per

year). By contrast, during this same decade the General Assembly considered over 6,900 bills, of which 4,223 (61%) became law. Thus, legislators impose more than 99.5% of all laws, while initiated laws account for less than one half of one percent. That is a ratio of 4,223 to 14, or about 300 to 1.

B. Statutes in the Colorado Constitution

Some of Colorado's 42 initiated constitutional amendments could have been statutes instead. Probably about one-quarter (10 to 12) of initiated constitutional amendments could have been statutory. Many issues must be constitutional, because they address conflict of interest issues that place limits on government, such as term limits and spending limits.

Another reason initiated laws are made constitutional, rather than statutory, is that legislators sometimes express their frustration with petitions by tampering with the statute after enactment. A successful petition drive and campaign involves massive effort. As long as legislative tampering is a risk, activists will sometimes take the constitutional path as a protection.

If the tampering-risk could be mitigated, ample incentive exists to motivate issue-activists to go the statutory route. Initiated statutes are approved by voters at the rate of 41.3% while initiated constitutional amendments are approved at the rate of 32.6%.

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C. Does Size Matter?

One state senator recently remarked, "… how long and 'messy' our state Constitution is in comparison to the U.S. Constitution. The U.S. Constitution is only 15 pages long whereas our Colorado Constitution has over 700 pages."[22] The ignorance displayed in these few words makes one wonder how much the honorable senator knows about either document.

Using the "Colorado and U.S. Constitutions" published by the Colorado Secretary of State (so the font type and size and page layout of both documents are consistent), one discovers that the U.S. Constitution is 27 pages and the Colorado Constitution is 207 pages. A state constitution cannot be as brief, because it must deal with many operational issues, such as establishing and managing elections, private corporations, and the existence and operation of hundreds of local governments. For example, Colorado has 2,710 local governments of 61 different types (cities, towns, counties, school districts, water districts, fire districts, etc.), each with a set of rules partly defined in the state constitution. State constitutions typically restate or offer an expanded list[23] of the U.S. Bill of Rights, meaning it is impossible for a state constitution to be of equal length to the U.S. Constitution.

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The Colorado Constitution has 45,679[24] words. The longest state constitution is Alabama's with 310,296[25] words and the shortest is Vermont's with 8,295[26] words. With respect to the number of constitutional amendments, Alabama has the most at 711[27] and Illinois has the fewest at 11.[28] Colorado is comfortably in the midrange of both measures.

Amendment 27 (2002 Campaign Finance Reform) is the longest amendment to the Colorado Constitution at 5,685 words. Interestingly, the advocates of Amendment 27 had sponsored a similar initiative as a statute in 1996, but the statute was substantially modified by the legislature. Thus, if the legislature had not tampered with Initiative 15 from 1996, or if more modest changes had been made, or if the issue-advocates had been consulted, Amendment 27 would probably have never been proposed and the Colorado Constitution would be 5,685 words shorter.

Ultimately, though, the question of size is irrelevant. Because a constitution is the contract between the people individually and the same people collectively, the people have the prerogative to determine the things that merit constitutional mention.

5. Limiting the Initiative

A. Single Subject History

The single subject limitation for bills exists in some form in "the constitutions of forty-one of our states."[29] It is a protection against omnibus bills, also called Christmas tree bills. In omnibus bills, something-for-everyone bills, individual legislators use their vote to hold a bill hostage until they can gain something unrelated to the bill. The problem was recognized by Ancient Rome in 98 BC, which imposed the first prohibitions on omnibus bills.[30] Like most states, Colorado imposes a single subject limitation on state legislation.[31]

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The most glaring abuses of omnibus bills is in the U.S. Congress. Lack of an omnibus bill prohibition adds fuel to the federal earmark/pork-barrel problem. This deficiency in the U.S Constitution was recognized in 1861 when the Confederate States included an omnibus prohibition in the Confederate Constitution.[32]

B. Logrolling

Within legislative bodies, issues that cannot stand on their own merits are attached to unrelated bills. The term for this is "logrolling." Together, unrelated issues attract the support needed.

The practice of logrolling cannot occur with the initiative petition process. Once an issue is drafted, it cannot be modified to attract support. During drafting issue-advocates are careful in the ideas and words they choose to maximize support. There is a solid consensus among activists that unrelated issues rarely aid the prospect of gaining voter approval. As a general rule, the more simply and concisely a proposed initiative can be drafted, the more likely it is to be approved by voters.

C. Single Subject in Colorado

The Colorado legislature proposed adding the single subject requirement to the Initiative process in 1994 as a referred constitutional amendment. The single subject burden was to have been on the drafting of the title, not on the scope or text of the measure. The 1994 Blue Book illustrates via example: "The subject of a bill may be broad, such as 'concerning the criminal code,' or it may be narrow, such as 'concerning the crime of trespass.'"[33] If single subject limits were applied as the Blue Book describes or treated similarly to legislation, then the single subject limitation would do no injury to the Colorado's Initiative process. Unfortunately, single subject has become another tool for subverting the petition process.

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Single subject case law aims to avoid two evils: "increasing voting power by combining measure that could not be carried on their individual merits"[34] and "surprising voters by surreptitiously including unknown and alien subjects."[35]

Colorado initiative titles are set by the Title Board, composed of staff from the offices of the Secretary of State, the Attorney General, and Legislative Legal Services. Single subject determination is made by the Title Board at the same time that the title is set. Every Colorado citizen has the right to challenge the work of the Title Board with an appeal to the Colorado Supreme Court. The process is proper in that the Title Board might occasionally make a blunder or act with bias. But the vast majority of initiatives receive a challenge, and the Court has failed to be consistent in its treatment of various issues. The regularity with which challenges are issued and the Court disapproves of the work of the Title Board suggests there is a problem.

Groundless challenges serve two purposes that benefit issue opponents. First, they always defer petitioning, usually escalate costs, and sometimes

prevent petitioning altogether, thus denying a vote and defeating the proposal. Second, challenges empower the Colorado Supreme Court to rule arbitrarily on selected issues, which the Court has done with increasing lawless boldness.

D. Court Undermines Petition Rights

Empowered by the 1994 single subject amendment, the Colorado Supreme Court has become increasingly active with respect to initiatives. Statute requires the Court to make determinations "promptly."[36] Evidently, "promptly" means "whenever they feel like it." Recent actions have abandoned the pretence of promptness or consistency. On June 12, 2006, the Court struck down as having multiple subjects the title of an initiative petition on illegal immigration that the Court had held since January and had approved in a previous election cycle. If the ruling had come promptly, the proponents conceivably could have corrected a flaw and proceeded. Other petition titles were challenged after and ruled on before this petition. The Court's delay suggests that the Court held up the issue for the purpose of denying the proponents the opportunity to petition and denying Colorado voters the right to express their will through voting.

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Public shock and outrage at the Court's action was virtually universal. "The Colorado Supreme Court embarrassed itself Monday by apparently letting its political predilections determine an important decision."[37] "The decision is transparently arbitrary and subjective, and it took the court more than five months to decide the case. This delay, the court knew, would, under existing rules, effectively prevent the initiative supporters from getting the measure on the ballot."[38] "The court deserves a public rebuke for overstepping its bounds."[39] "Owens is right to call 'inconsistent,' 'inappropriate,' and 'arrogant' Monday's Colorado Supreme Court ruling …"[40] "The decision contradicts several previous rulings of the tribunal on the very same legal issue."[41] "Two years ago, the state Supreme Court upheld nearly identical language but delayed its decision until it was too late to gather the required signatures."[42] "The lack of intellectual integrity in this decision, ironically, can be judged by the words of our opponent's attorney … 'Petitioners do not contend that this is a separate subject, nor could they do so in a principled manner.'"[43] Evidently the Court is governed by different principles.

An agenda item on the July 2006 Special Legislative Session was to provide more specific definition in statute to the word "promptly." The bill to change the word "promptly" to "20 days" failed.[44]

6. Solidifying Facts

A. Local I&R

People tend to think of petitions as a statewide instrument. Yet, all of Colorado's 88 home rule cities have the Initiative, although the procedures vary.

In addition all Colorado 183 statutory cities[45] possess an indirect initiative process. The indirect initiative uses a smaller signature threshold (5 percent for Colorado statutory cities and towns), after which the issue goes before the legislative body for possible action before going to the ballot.[46] If the legislative body enacts the proposal, a vote of the electorate becomes moot.

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Although citizens of Colorado counties do not currently have broad Initiative and Referendum powers, the General Assembly has defined in state statute a list of about five items that county citizens may petition, such as changing the number of County Commissioners from three to five members.[47]

Recall petitions exist for every elected office in Colorado, but the signature requirement is sometimes so high that the process is made dysfunctional. Initiative petitions do not currently exist in Colorado at the County level or at the Special District level. Thus, the power to participate in government via Initiative petition exists in only 272 of Colorado's 2,710 governments.[48]

The words in the Colorado Constitution that affix petition powers to local government citizens are: "The initiative and referendum power reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character …"[49]

There is some ambiguity in the word "municipality." Obviously, the authors intended "municipality" to mean something more than "city and town." Oregon was the model from which the Colorado I&R process was drafted. Oregon's similar language was clarified by a court ruling in favor of county citizens having initiative powers.

Turning back to 1910, " … it is manifestly apparent that the legislators … and the voters who came to the polls in November, intended to – and indeed did – reserve the legislative powers of initiative and referendum (to) every form of local governmental entity …"[50] "The omission of counties from section 1(9) simply and logically reflects nothing more than the non-legislative character of counties at the time."[51]

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Although it would be proper for a court to rule in favor of original intent, such a ruling after nearly 100 years is unlikely. If citizens are to recover their local government petition powers, they will need to find a path other than the courts.

B. Voter Turnout

For decades political scientists claimed that issues on the ballot had no effect on voter turnout. This was challenged by David D. Schmidt in 1989.[52] Schmidt, the former director of the Initiative Resource Center in San Francisco, found that initiative states experienced a higher voter turnout than non-initiative states, by an average of 4.4 points. With voter turnout often near 50 percent, 4.4 percent more turnout means about 9 percent more people voting. The effect is greater in non-presidential election years. In presidential election years, issues on the ballot increase voting by 3.1 points, whereas in non-presidential election years, issues on the ballot increase voting by 6.2 points.[53]

Schmidt, the former director of the Initiative Resource Center in San Francisco, found that initiative states experienced a higher voter turnout than non-initiative states, by an average of 4.4 points.

Schmidt's conclusions were corroborated in 2000 by the work of Tolbert, Smith and Grummel. These researchers collected voter turnout data from all states over three decades and applied multiple regression analysis, concluding "states with the initiative process have 2.5% higher turnout in both presidential and midterm elections, than states without this process."[54] With the positive effect of ballot issues on voter turnout empirically proven, deeper questions can be researched: Do referred measures equally influence voter interest, and in turn, voter turnout? Do more issues on the ballot always engender higher interest in voting or is there a point where voter interest begins to decline?

C. Fiscal Effects

I&R detractors frequently assert that the initiative process deprives governments of needed revenue. How can this be, when issues originate equally from both the left and the right and voters typically reject anything extreme? University of Southern California Economics Professor John Matsusaka has thoroughly analyzed the fiscal effects of the initiative process. In a 1999 research paper published in the *Journal of Political Economy*, Professor Matsusaka released his findings. He applied multiple regressions to data for the 30-year period from 1960 to 1990 to arrive at three conclusions: [55]

1. Spending was found to be about $83 per capita lower in a typical initiative state than a typical non-initiative state. This translates to 4 percent less taxation in the initiative states.
2. Spending is more decentralized in initiative states. Local governments spend about 10 percent more, while state governments spend about 12 percent less.
3. In initiative states, broad-based taxes (property, income, and sales) were 8 percent lower, while user-fees for services (such as college tuition) were 7 percent higher. Thus, there is less redistribution of wealth in an initiative state than in a non-initiative state; the beneficiaries of government programs are more likely to pay for them.

Regarding the half century prior to 1960, Matsusaka found: [56]

1. Combined expenditure (and revenue) of state and local governments during this period was higher in initiative than non-initiative states.
2. State and local expenditure was more decentralized in initiative states than non-initiative states.

Thus, I&R can be used to augment spending, as much as it can be used to diminish spending.

That the second half of the 20th century reveals somewhat less willingness on the part of voters to further enlarge government may be an indicator that the mood of the populace with respect to the size of government has changed.

During the first half of the 20th century combined government outlays grew aggressively. The fact that government growth was somewhat more rapid in the initiative states may reflect the electorate's ability to express its will in those states. In 1900 combined government outlays consumed only about 8.1 percent of economic output as measured by Gross Domestic Product.[57] If taxpayers had not wanted more government services, spending advocates could not have succeeded at imposing them. That the second half of the 20th century reveals somewhat less willingness on the part of voters to further enlarge government may be an indicator that the mood of the populace with respect to the size of government has changed.

Matsusaka's other two conclusions were consistent through the entire period studied: (1) voters in initiative states prefer less centralized spending and (2) user fees are preferred over broad-based taxation.

In short, it appears that the initiative helps "to bring fiscal policy more in line with the electorate's preferences."[58]

D. Influence of Money

It is often claimed that the Initiative process is the tool of special interests.[59] In "Are Coloradans Fit"[60] the comprehensive John S. Shockley study of the 1976 Colorado election revealed that over ten times as much money was spent on the no-side of all issues combined, as the yes-side. In response to the assertion that initiatives allow well organized and well financed special interests to subvert the policy process, Professor Matsusaka replies, "None of the evidence supports the subversion hypothesis."[61] For the subversion hypothesis to be true, public policy would be contrary to the desires of citizens. Matsusaka used three fiscal policy questions and regression analysis to quantitatively evaluate the effect of the initiative process on fiscal policy between 1987 and 2000.

In response to the assertion that initiatives allow well organized and well financed special interests to subvert the policy process, Professor Matsusaka replies, "None of the evidence supports the subversion hypothesis."[61]

In "Populist Paradox,"[62] University of California San Diego Political Science Professor Elisabeth Gerber compiled the sources of campaign funding in eight states over the five years between 1988 and 1992. Gerber considers all organized lobbying groups as a single category. Lobbying interests have the greatest access to legislators and the most clout with legislators, and therefore, the most to lose from

citizen participation. Over two-thirds (68%)[63] of all (yes-side and no-side; both initiated and referred) issue contributions come from lobbying interests.

Referred measures attract little interest. Only 8 percent of all issue campaign dollars are spent on referred measures. Of that 8 percent, 98 percent is spent on the yes-side and 70 percent comes from lobbying interest groups.[64]

Initiatives attract 92 percent of spending, of which 68 percent comes from lobbying interests. Of the total spent on initiatives, 61 percent of spending is by the no-side. The no-side receives 74 percent[65] of initiative campaign contributions from lobbying interests.

In short the lobbyist-corps overwhelmingly opposes initiated measures and overwhelmingly supports referred measures.

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E. Something to Contribute

Citizens have something to contribute. After all, they are still sovereign, in spite of elitist attitudes that sometimes suggest otherwise. And none of us is as smart as all of us. Because legislators are called upon to make decisions in every arena, it is difficult for them to be expert in all areas. The highest value of a legislator is in the wise unbiased exercise of judgment and a willingness to search for and acknowledge truth. On any given issue, at least a few citizens know more than any legislator can possibly know. These citizens can address the issue they know with more authority, experience, knowledge and expertise than the entire legislature can. This citizen-knowledge is a strength, not a threat.

Public policy will improve once leaders invent means for involving the knowledge of citizens in policy decisions. In "The Wisdom of Crowds"[66] James Surowiecki points out that the 'invisible hand' of mass decision-making works in many arenas with surprisingly sound results: the stock prices, votes, point spreads, pari-mutuel odds, computer algorithms, Google, futures contracts. Crowds are smart when its members are diverse, independent, and decentralized.[67] In 1906 British scientist Francis Galton set out "to prove that the average voter was capable of very little." In estimating the weight of an ox, the average estimate of 787 participants was more accurate than any expert. Galton understated his conclusion: "the result seems more creditable to the trustworthiness of a democratic judgment than might have been expected."[68]

In May 1968, the U.S. submarine Scorpion disappeared. A diverse group of specialists was summoned. All were supplied with the available information and asked to independently predict the location. None of the predictions were as close as the average, which turned out to be only 220 yards from where the Scorpion was found.[69]

The idea self-government via representative (and constitutional) democracy in America has done a bit better than King George anticipated. Yet, contentment is a trait incompatible with excellence. That things are not as bad as they could be does not prove that they cannot be better than they are. There is untapped knowledge and wisdom in the populace. The challenge is to discover practical means of extracting and utilizing it. These methods must be and will be invented.

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One hundred years from now, folks will look back at today's I&R process and it will look akin to the current view of the Model-T (a rickety old vehicle, marginally capable of doing the job). The Model-T was a huge step forward in its time and was a prerequisite for the invention of the marvels of today: the Corvette, the SUV and the Prius. The idea that citizens should participate less in their government in the future is an absurdity. That the vast knowledge and wisdom of the populace should continue to be ignored in shaping public policy is

equally absurd. What forms I&R will morph into or what systems it will facilitate being invented are beyond our current ability to envision.

Clearly those who seek to injure or destroy the Initiative process are on the wrong path.

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