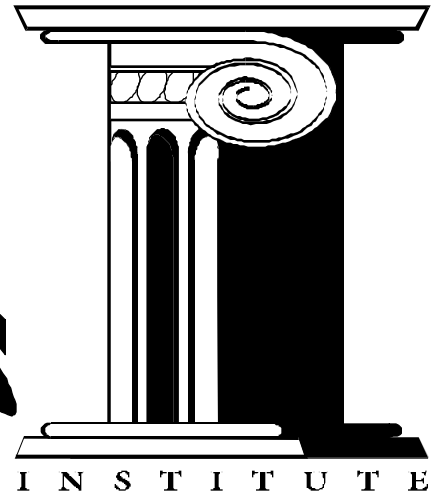


# LIMITS



*On Power and the Use of Power*

## Initiative and Referendum Update

by Amy K. Frantz

Voters in states that went to the polls on November 4, 1997 faced a number of ballot measures, and the results were good news for supporters of limited government. Americans for Tax Reform's Director of Initiatives Kolt Z. Jones reports that 66 percent of the measures on the 1997 ballots were proposed by people demanding more control of their own lives, rather than more government interference. Here is what is happening in many of the states:

### CALIFORNIA

California voters already have eight initiatives that have qualified for the June 1998 ballot, and over 30 other groups are working to have initiatives placed on the June or November ballots.

One initiative Californians will vote on in June will prohibit foreign contributions in

California state campaigns, and require any employer or union that collects dues from employees or union members to receive written permission from those employees or union members to use any portion of the dues for political purposes. A recent *Washington Post* poll found 82 percent support nationwide for this type of initiative.

Another initiative that may appear on the California June ballot is the "English for the Children" initiative. This initiative would eliminate the state's current system of bilingual education and replace it with an English immersion program for non-English speaking children. The initiative also provides funds for adult English classes, provided that the adults taking the classes use those skills to help children learn English. Under the current bilingual program, non-English speaking students

are taught in their native language while attending English as a Second Language classes for 30 to 90 minutes a day. The English immersion program is English instruction designed for new learners, to help them more quickly catch up and be able to join their English-speaking classmates.

The Honorary Chairman of English for the Children is Jaime Escalante, whose success in teaching Advanced Placement Calculus to inner-city students was acclaimed in the movie *Stand and Deliver*. *Los Angeles Times* polls show that the English for the Children initiative has 80 percent approval overall and 84 percent approval among Latinos.

Voters in Orange City, California overwhelmingly approved an initiative on the November 1997 ballot to abolish bilingual education and replace it with an English

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immersion program. The Orange City initiative was approved with 86 percent of the vote. This local approval of an English immersion program is a good sign for supporters of English for the Children state-wide.

On the November 1998 ballot, California voters may also have to decide on initiatives to increase the state's tobacco tax, to approve tax credits to pay for the costs of improved air pollution control, and to revoke or require voter approval to maintain business tax loopholes. The tax loophole initiative proposals target corporate tax benefits in an effort to persuade the business community to oppose the union contribution initiative on the June ballot.

The Supreme Court on Monday, November 3, 1997 announced it would not hear a legal challenge to California's Proposition 209. California voters approved Proposition 209 last year to prohibit the state and local governments, public universities and schools, and other government agencies from discriminating against or giving preferential treatment to an individual or group in public employment, public education, or public contracting on the basis of race, sex, color, ethnicity, or national origin. The Ninth Circuit Court of Appeals had ruled that Proposition 209 did not violate anyone's constitutional rights.

The Supreme Court's announcement does not set a

national precedent; it merely allows a lower-court ruling to stand. However, the announcement will likely spur other states to propose similar initiatives. In fact, groups in many states are already working to bring anti-discrimination initiatives before the voters.

**COLORADO**

The voters in Colorado rejected a ballot initiative that would have raised taxes on citizens of that state. The initiative, proposed by Colorado's Governor Roy Romer, would have increased the state's gas tax, increased the registration fees for vehicles, and imposed an initial \$100 registration fee for new vehicles in the state. The funds raised by this proposal would have been used for the state's highway funding. However, the Governor withdrew his support for his own proposal following strong opposition and the discovery of a tax surplus.

Denver voters also defeated a local referendum to increase a phone tax, with 73 percent voting against the tax increase.

**FLORIDA**

This fall, Orange County citizens voted 56 percent against a local sales tax to create a general purposes fund.

Florida voters may see at least two ballot initiatives in 1998. The judicial selection reform initiative would provide for direct election of Florida's

judges, allow judges to serve for one eight-year term, and provide for a recall election to remove a judge from office. Polls show support for all three provisions of this initiative, with the highest support, 92 percent, for the recall election.

Supporters of the Florida Civil Rights Initiative are also continuing to collect signatures and raising funds to put the Florida CRI on the 1998 ballot.

**MAINE**

Two ballot measures were rejected by the citizens of Maine this November. The first would have allowed the government to place limits on clear-cutting in Maine's forests; the second proposed a constitutional amendment to lift the ban on voting by mentally ill persons with a guardian.

**OHIO**

Ohio voters also considered two measures on the ballot this November. Voters supported a victims' rights measure to allow judges to deny bail for individuals arrested for certain felonies if the individual is a serious physical danger to others. The second referendum overturned the workers' compensation reform legislation enacted by the Ohio Legislature. This referendum had generated a very nasty television ad campaign.

Ohio civil rights initiative supporters are trying to bring legislation similar to

California's Proposition 209 before the Ohio Legislature next year. While it is unlikely to pass in the current Legislature, the debate may spark interest in a ballot initiative in 1998 or 1999.

## OREGON

The state of Oregon conducted a special statewide election by mail this fall to decide two ballot measures. Oregon citizens voted to retain the Oregon Death With Dignity Act, a law permitting physician-assisted suicide that was originally approved by Oregon voters on the 1994 ballot. Opponents of the law greatly out-spent the law's supporters, but the voters chose to retain the law. Oregon is the only state in the nation that currently has a law allowing physician-assisted suicides, but the support shown for the law in the state of Oregon may drive other states to enact assisted-suicide laws.

## PENNSYLVANIA

Pennsylvania's voters voted 63 percent in favor of a measure ensuring voter approval of local property taxes; and also defeated an increase in that state's sales tax.

## TEXAS

In the city of Houston, Texas, an initiative on the November 1997 ballot to end the requirement that city con-

tractors must give 20 percent of their work to minority-owned or women-owned companies was defeated, by a vote of 54 to 46 percent. While some are saying this result may signal a slowing down of the momentum to end affirmative action programs, others point out that due to changes in the ballot language, the Houston vote does not accurately reflect the voters' views on a California Proposition 209-like measure.

Ed Blum, the sponsor of the Houston initiative, objected to Houston's affirmative action program's quotas, not the intent to reach out and help economically disadvantaged people. The original language of Mr. Blum's initiative read, "The City of Houston shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment and public contracting."

However, Houston's outgoing Mayor Bob Lanier, a supporter of the city's affirmative action quotas, changed the wording of this initiative on the ballot. In Houston, the city council may approve changes in the language of initiatives. The mayor's language read, "Shall the Charter of the City of Houston be amended to end the use of affirmative action for women and minorities in the operation of City of Houston employment and contracting, including ending the current program and any similar pro-

grams in the future?"

The change in the initiative language was enough to tip the scales in favor of affirmative-action supporters. As stated in a *Wall Street Journal* editorial on September 30, 1997, "It is an odd time when an initiative that uses the language of the path-breaking 1964 Civil Rights Act can be attacked as intolerant and divisive."

## WASHINGTON

In the state of Washington, over 60 percent of those voting supported Referendum 47 to limit property tax increases. This referendum lowers the limit on increases in property tax revenues from the current six percent to the lower of six percent or the rate of inflation. It also spreads out large increases in value in individual properties over future years and extends this year's reduction in the state's property tax levy into future years.

Voters in Washington also defeated initiatives to legalize the use of marijuana and certain other drugs for medicinal use, to require trigger locks on handguns that are sold and safety courses for handgun owners, to ban workplace discrimination based on sexual orientation in private companies, and to allow workers to keep their doctor if they change health plans by requiring insurance companies to pay for any qualified health-care provider chosen by an insured individual.

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# The People Should Rule

by Paul Jacob

This decade has witnessed an explosion in the people's use of initiative and referendum. In 1996 alone, more state initiatives were voted on across the country than in the entire decade of the 1960s.<sup>1</sup> The reason for this tremendous increase in the use of citizen initiatives is simple: The initiative is the one part of the governing process that is available to the people.<sup>2</sup>

The people's faith in legislatures at the state and federal level has been shattered. A recent poll showed a whopping 80 percent of voters believe their representatives care more about being reelected than serving their constituents. Less than 20 percent of the public consistently approves of the performance of Congress. Former Delaware Governor Pete du Pont compares elected officials to "dukes and barons."<sup>3</sup> Becky Cain, president of the League of Women Voters, admits, "Our political system is failing the American people. Citizens are disgusted — and they have every reason to be."<sup>4</sup>

Voters think their state legislatures fail to represent them, especially on issues that affect legislators personally. For example, nearly every state with the initiative process has term-limited their state legislators, but of the 27 states without the initiative process, only Louisiana has allowed the voters to cast ballots in favor of limited tenure.

As the public has sought to overcome legislative stonewalling

or to limit the power of the legislature or other governmental bodies, legislatures (and the special interests who thrive in a legislative environment) have attacked the initiative process.

*The initiative is the one part of the governing process that is available to the people.*

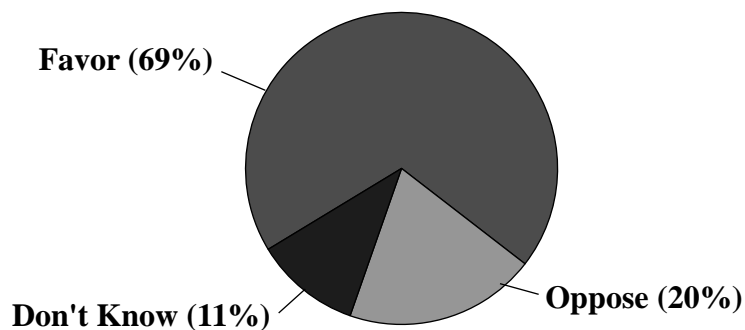
Legislatures in Maine, Mississippi, and Washington arrogantly attempted to outlaw paying signature gatherers in direct violation of a U.S. Supreme Court ruling protecting such pay as "fundamental" political speech.<sup>5</sup> In response to a successful term limits initiative, the unicameral legislature in Nebraska passed draconian restrictions on the right of initiative that were challenged as unconstitutional and thrown out by a federal court.<sup>6</sup>

## Unfounded Objections to Citizen Initiative

The American people favor the initiative process by better than three to one.<sup>7</sup> (See graph) But they are fighting to protect the process in the 23 states where it exists and to expand it to the other states — and possibly to the federal government — because legislators want to keep their monopoly on passing laws. The arguments against allowing citizens to petition and place measures before their fellow citizens disregard common sense and basic American political ideals. Let us examine several of these contentions.

Some opponents claim that the initiative process is at odds with representative government, or a republican form of government. But representative government is designed to facilitate citizen control of government and to express the people's will, not to thwart it. James Madison

## Support for the Initiative Process



Source: Survey of 600 adult Americans by Tarrance Group Poll, March 1995.

wrote in *Federalist* No. 49, that “the People are the only legitimate fountain of power,”<sup>8</sup> and Alexander Hamilton added in *Federalist* No. 78, “To deny this would be to affirm that the deputy is greater than his principal; that the servant is above the master; that the representatives of the people are superior to the people themselves.”<sup>9</sup>

A republican form of government is created by a constitution that protects individual and minority rights against pure democracy. Removing constitutionally permitted decision making from the people does not enhance the republican character. We elect representatives to make decisions we do not have time to make and still pursue our vocation and family life. Our Founders’ goal was not to create a government removed from the people, but rather, a government under the consent of the people.

Many opponents of the citizen initiative process are surprisingly bold in labeling the people as too ignorant to make decisions themselves. They seem to prefer government by elites. “Do we want to run the risk that issues such as homosexual marriage, right to life, right to carry [gun] laws, tort reform, home schooling and casino gambling would be decided by a poorly informed and apathetic electorate?” asked Shirley Spellerberg of the Texas Eagle Forum in opposing initiative and referendum in Texas.<sup>10</sup>

The answer is “Yes.” The people should rule. Who else did Ms. Spellerberg and other opponents of citizen initiative have

in mind? Thomas Jefferson may have said it most eloquently:

I know of no safe repository of the ultimate power of society by the people, and if we think them not enlightened enough, the remedy is not to take the power from them, but to inform them.<sup>11</sup>

To contend that voters cannot make decisions or understand complex issues suggests our elected representatives should make all decisions without any direct citizen involvement. This reasoning is without merit — these same voters (supposedly incapable of deciding issues) are argued to be capable of deciding which candidates should hold office to make the same decisions.

Some opponents spread fear that initiatives will lead to a tyranny of the majority. But the idea that initiatives are more dangerous to individual or minority rights than legislative actions is without merit. The same constitutional protections citizens enjoy when the legislature is making laws equally regulate lawmaking when done directly by voters through the initiative process.

### **Giving Democracy Life**

Initiatives are no less deliberative than legislative acts. The drafting phases of initiatives vary in their public reach, diversity, and rigor, and so do acts of the legislature.

Unlike legislative bills, initiatives must demonstrate significant public support to even be considered. Petitioners must engage

*These same voters (supposedly incapable of deciding issues) are argued to be capable of deciding which candidates should hold office to make the same decisions.*

from 3 to 15 percent of voters in a state, inform them of the proposal, and obtain their signatures as evidence they want an opportunity to vote on the measure.<sup>12</sup>

Granted, citizens cannot amend an initiative once it is filed as legislators can move to amend a bill before them. But initiatives are often withdrawn, revised, and refiled. Perhaps the inability to make changes to an initiative accounts for the fact that most initiatives are defeated by the voters — two-thirds of them, in fact.<sup>13</sup> Ultimately, legislators must vote on a law that may contain elements both favorable and unfavorable, just as initiative voters do.

### **Initiatives’ Virtues**

On the other hand, the advantages to lawmaking by initiative are numerous. Laws passed by initiative more completely reflect the will of the people. At times, legislators have fallen prey to bribery,

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selling their vote for some personal gain. The people acting collectively cannot, by definition, receive special benefit, nor can any special interest afford to bribe the entire electorate. Voters also lack any process for trading votes on one ballot measure for another, yet legislators are infamous for such vote-trading

### *Laws passed by initiative more completely reflect the will of the people.*

behavior. Thus the motivations of the voters on an initiative are likely to be purer than a legislator's regarding a bill.

Even Edmund Burke, the English Parliament's most ardent advocate of legislators deciding issues according to the conscience without regard to the public's sentiments, recognized, "In all forms of government, the people are the true legislator."<sup>14</sup> The initiative process takes the essential foundation of our free society — that the people should rule — and gives it life.

We can govern ourselves and we must. As Thomas Jefferson wrote, "Sometimes it is said that man can not be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the forms of kings to govern him? Let history answer this question."<sup>15</sup> ○

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# Why We Need Constitutional Limits

by Amy K. Frantz

This year, the Iowa Legislature approved four major tax relief laws. On the national level, the Congressional Budget Office projects the federal budget deficit will fall to a 23-year low of \$34 billion. These are positive steps in limiting taxing and spending by our state and national governments. But future legislatures may not abide by the laws passed by current legislators, and spending and taxes are likely to rise again. To protect our children and grandchildren from unlimited taxes, unlimited spending, and huge deficits and debt, we need Constitutional amendments to place limits on government taxing and spending.

We need Constitutional limits on taxing and spending to provide permanent protection. A law can be repealed or changed at any time. One of the most well-known examples of this is the Gramm-Rudman-Hollings Act, passed by Congress in 1985. This law promised to balance the federal budget by 1991. However, just two years after its enactment, Congress postponed the full implementation of the legislation. By 1991, the year in which a balanced budget was promised, Gramm-Rudman-Hollings had been repealed. As Dean Kleckner, President of the American Farm Bureau, says, "Laws can control people. Only the Constitution

can control government."

We need Constitutional limits on taxing and spending to protect our human rights. The U.S. Constitution guarantees its citizens many rights, including the rights to freedom of speech, freedom of religion, freedom of assembly, and freedom from unreasonable search and seizure of property. Shouldn't the Constitution protect Americans' income and property by placing limits on how much the government can take from us?

The Founding Fathers included a prohibition on most forms of direct taxation in Article I, Section 9 of the Constitution. However, in 1913, the Sixteenth Amendment provided for the collection of an income tax, ending the Constitution's protections against unlimited taxes. The tax burden placed on us by federal, state, and local governments has grown to 51 percent of U.S. total personal income. We need

to restore the limit on taxation to our Constitution. Woodrow Wilson said, "The history of liberty is the history of the limitation of governmental power." Our income and property deserve Constitutional protection along with our freedom of speech and freedom of religion.

We need Constitutional limits on taxing and spending to protect us from special interests. Special interests pressure legislators to vote for more and more government spending, and saying "yes" to spending is easier than saying "no."

Legislators are often asked to vote on programs that provide benefits to a limited number of people, but spread the cost of those programs among all U.S. taxpayers. In the next election, it is those who received the benefits who will remember the legislator's

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vote. Most taxpayers are too busy to follow legislators' votes on programs and determine how much those votes will cost them.

We need Constitutional limits to give legislators an easy reason to say no to spending and increasing taxes. It is easier to say no if the reason for saying no is because of a Constitutional limit on taxes and spending.

As economist Milton Friedman says, "Constitutional tax limitation...is our only hope." ○

*Portions of this article are taken from a speech given by David M. Stanley, President of Public Interest Institute, and Jean Leu Stanley; and previously published INSTITUTE BRIEFS.*

**Initiative and Referendum  
Update  
continued from page 3**

Signatures are being collected in Washington in support of a legislative civil rights initiative. The legislative initiative will go before the State Legislature if enough signatures are collected. In Washington, a legislative initiative must be adopted by the State Legislature, but does not have to be approved by the Governor. A legislative initiative campaign of this type avoids the need for a large-scale advertising campaign.

Keep watching this column for further updates on ballot measures for 1998. ○

*Amy Frantz is a Research Analyst with Public Interest Institute.*