

The Speaker's Commission on The California Initiative Process

SPEAKER ROBERT M. HERTZBERG



DAVID ABEL, COMMISSION CHAIR

JANUARY 2002



Robert M Hertzberg
Speaker of the California Assembly

Chair

David Abel
Metropolitan Forum Project

Commissioners

Lynn Alvarez
The California Endowment

William Arno
Arno Political Consultants

Ruben Barrales
President and CEO

Hope Boonschaft
Sony Pictures Entertainment

John Chiang
Board of Equalization

John B. Emerson
Capitol Group Companies, Inc.

Lisa Foster
Phillips & Cohen

Robert Foster
Southern California Edison

Joel Fox
Joel Fox Consulting

Karen Getman
Fair Political Practices Commission

Ingrid Gonzales
San Bernardino County

Gary Hart
CSU Institute for Educational Reform

Bill Hauck
California Business Roundtable

John Hein
California Teachers Associations

Andrea Hoch
Supervising Deputy Attorney General

Thomas Hoerber
Coro National

Gary Hunt
The Irvine Company

Lily Y. Lee
Waste Management

Colleen McAndrews
Bell, McAndrews, Hiltachk,

and Davidian

Conny McCormack
L.A. County Registrar-Recorder

and County Clerk

Harry Pachon
Tomas Rivera Policy Institute

John A. Perez
California Labor Federation

Gilbert Ray
O'Melveny & Myers L.L.P.

Joe Remcho
Remcho, Johansen, & Purcell

Connie Rice
Advancement Project

Trudy Schafer
League of Women Voters of California

Jay Schenirer
Foundation Consortium

Robert M. Stern
Center for Governmental Studies

Dean C. Tipps
California State Council Service

Employees International Union

Ex Officio Commission Members

Hon. Jim Costa
California State Senate

Hon. Ross Johnson
California State Senate

Hon. Bill Leonard
California State Assembly

Hon. John Longville
California State Assembly

THE SPEAKER'S COMMISSION ON THE CALIFORNIA INITIATIVE PROCESS

SPEAKER ROBERT M. HERTZBERG



DAVID ABEL, COMMISSION CHAIR

FINAL REPORT

TABLE OF CONTENTS



Robert M Hertzberg
Speaker of the California Assembly

Chair

David Abel
Metropolitan Forum Project

Commissioners

Lynn Alvarez
The California Endowment

William Arno
Arno Political Consultants

Ruben Barrales
*President and CEO
Joint Ventures*

Hope Boonschaft
Sony Pictures Entertainment

John Chiang
Board of Equalization

John B. Emerson
Capitol Group Companies, Inc.

Lisa Foster
Phillips & Cohen

Robert Foster
Southern California Edison

Joel Fox
Joel Fox Consulting

Karen Getman
Fair Political Practices Commission

Ingrid Gonzales
*San Bernardino County
Registrar of Voters*

Gary Hart
CSU Institute for Educational Reform

Bill Hauck
California Business Roundtable

John Hein
California Teachers Associations

Andrea Hoch
Supervising Deputy Attorney General

Thomas Hoerber
Coro National

Gary Hunt
The Irvine Company

Lily Y. Lee
Waste Management

Colleen McAndrews
*Bell, McAndrews, Hiltachk,
and Davidian*

Conny McCormack
*L.A. County Registrar-Recorder
and County Clerk*

Harry Pachon
Tomas Rivera Policy Institute

John A. Perez
California Labor Federation

Gilbert Ray
O'Melveny & Myers L.L.P.

Joe Remcho
Remcho, Johansen, & Purcell

Connie Rice
Advancement Project

Trudy Schafer
League of Women Voters of California

Jay Schenirer
Foundation Consortium

Robert M. Stern
Center for Governmental Studies

Dean C. Tipps
*California State Council Service
Employees International Union*

Ex Officio Commission Members

Hon. Jim Costa
California State Senate

Hon. Ross Johnson
California State Senate

Hon. Bill Leonard
California State Assembly

Hon. John Longville
California State Assembly

LETTER FROM ASSEMBLY SPEAKER HERTZBERG	1
MESSAGE FROM THE CHAIR	3
ACKNOWLEDGEMENTS	5
EXECUTIVE SUMMARY	7
SUMMARY OF RECOMMENDATIONS	9
RECOMMENDATIONS	
I. <u>Drafting and Qualification Issues</u>	11
Establish an Indirect Initiative Process	
II. <u>Disclosure, Campaign and Election Issues</u>	15
Increase Public Information	
Campaign Finance Reform	
Public Awareness of Financial Disclosure	
Statement of Validity/Constitutionality	
Review by The Secretary Of State	
Signature Gathering in Public Spaces	
Signature Verification Requirements	
III. <u>Post Election Issues</u>	19
The Single Subject Rule	
An Alternate Point of View	
PROPOSALS CONSIDERED BUT NOT ADOPTED	21
Citizen Legislative Petition	
Citizen Indirect Initiative	
Pre-Election Review for Potential Legal Issues	
Special Status for Constitutional Amendments	
Vote Requirements for Enactment of Initiatives	
Ballot Identification of Conflicting Measures	
Legislative Deliberation	
Ballot Pamphlet Disclosure of Proponents/Opponents	
Amending Initiatives	
Effective Date of Initiative Enactment	
Enhancing Public Debate	
Alternative Petition Gathering Methods	
APPENDICES	
A: Commission Meetings	
B: Resource Material	
C: Public Opinion Surveys on the Initiative Process	

LETTER FROM THE SPEAKER



Robert M Hertzberg
Speaker of the California Assembly

October 30, 2000

Dear Friends & Commission Members:

The initiative process in California has evolved into a virtual fourth branch of government. There is hardly any aspect of daily life for any Californian that is unaffected by voter-approved initiatives. Issues that have confronted voters when casting their ballots have included such far reaching and diverse public policy issues as increasing criminal penalties, victims rights, wildlife and environmental protection, term limits for legislators, the treatment of illegal aliens, state and local tax issues, increasing the minimum wage, automobile and health insurance matters, and even something as personal as the right to die. And this is just a sample from only the last ten years.



The increasing impact of initiatives on the structure and functioning of government and their influence on the people of California were the motivation for the creation of the Speaker's Commission on the California Initiative Process. It is impossible to face the challenges of the future without contemplating the role of initiatives. That, simply stated, is why this Commission was established.

It is appropriate that on the eve of an election with still more initiatives on the ballot that a full scale review of the initiative process be undertaken. If we are to face the reality and fully acknowledge the importance of initiatives, we must be willing to critically examine how this particular form of direct democracy operates.

Some of the myriad of questions that can be explored:

- Can the manner of drafting and reviewing initiatives be improved to avoid unintended consequences and minimize constitutional challenges?
- Do voters understand the implications of an initiative when they sign a petition to place the initiative on the ballot?
- Are voters concerned with who is financing the qualification of an initiative and the campaign for and against it?
- How can voters receive accurate, impartial information about the impact of initiatives?

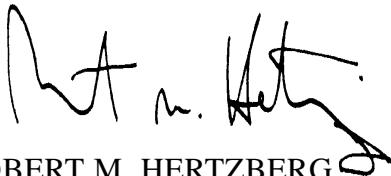
These questions just begin to scratch the surface. I hope that readers will delve into this topic with the creative thinking and energy that I know each of you possesses. I implore you to cast aside preconceived notions, conventional wisdom, and traditional thinking. This large and diverse group was assembled because I believe that divergent perspectives with a myriad

of viewpoints will lead to innovative solutions and recommendations that will improve the initiative process for the future.

I would be remiss if I did not acknowledge the time, effort, and commitment of my good friend David Abel. I am very grateful that he agreed to accept the challenging assignment of tackling this issue. I would also like to thank David Lyon and specifically Fred Silva from the Public Policy Institute of California as well as Charlene Wear Simmons from the State Library for their significant efforts and contributions.

Once again I thank all of you for your service to the people of California.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. M. Hertzberg". The signature is fluid and cursive, with a large initial "R" and "M".

ROBERT M. HERTZBERG
Speaker of the Assembly

LETTER FROM THE CHAIR

The process of making policy in California is not a spectator sport. It involves elected officials, groups of people with specific interests and concerns, and the general public who make choices through their votes. For over 90 years, state voters have had direct access to the public policy making process through the initiative and referendum process. They have had the responsibility not only to pick policy leaders at the state and local level but also to make choices that may, and often do, constrain the actions of those officials.



The initiative process has been one of the tools that like-minded groups have used to change the course of state and local policy—sometimes to advance it and sometimes to restrict it. It has been long recognized that the core value of the initiative process, direct access to the ballot, is an important part of our constitutional structure. Our charge was to review the initiative process and to recommend changes to improve the process, making it more responsive to the voters.

Our central task was to improve this important part of our state governmental process. We have recommended three actions that will meet our objective of improving the initiative process:

- Establish an alternative process that will allow initiative proponents and our elected representatives in the Legislature to work together on initiative measures by holding hearings, refining ideas, making sure that technical problems are avoided and enacting measures when proponents, the Legislature, and the Governor are in agreement.
- Provide more information to the voters. In a democracy, information is essential to the deliberation of the voters. We recommend a series of financial disclosures that will assist the voters in understanding who supports and opposes initiative measures.
- Strengthen and enhance the enforcement of the rule that requires initiative measures to contain one subject.

The commission was not asked to replace the existing direct initiative process. Our collective task was to improve the drafting and deliberation prior to measures being placed on the ballot by the voters and improving the information needed by the voters so that their decisions would be made on the basis of all the facts.

We submit these ideas for your consideration.

DAVID A. ABEL
Commission Chair

ACKNOWLEDGEMENTS

California State Assembly Speaker Robert M. Hertzberg (D-Van Nuys) formed a non-partisan commission in October 2000, to examine California's initiative process and to recommend improvements to make it more responsive to voters: "Those who gave California's voters this powerful tool for reform would have a hard time recognizing the initiative process we know today, where powerful interests clutter the ballot with contradictory proposals incapable of passing Constitutional muster," Speaker



Hertzberg said. "I want this panel to find ways to restore public confidence in the process." As the Speaker noted in his written charge to the Commission, "There is hardly any aspect of daily life for any Californian that is unaffected by voter-approved initiatives."

The 34-member Commission studied issues of concern in the current initiative process, including the cost of qualifying measures for the ballot, the proliferation of "counter initiatives," the use of paid signature gatherers, a lack of accurate and objective information for voters to review, and the rising number of court challenges to voter-approved initiatives. Wide-ranging discussions took place in nine public meetings held over the course of eight months. The appendix includes a list of the presentations made to the Commission.

The Commission wishes to thank all of the people who provided their expertise, testified and attended meetings of the Commission. Their knowledge, insight and participation were invaluable. Larry Sokol and Lori Barber of the Speaker's Office and Jonathan Levey, Esq., of the law firm Munger Tolles & Olsen, provided vital aid to the Commission.

The Commission appreciates the important assistance and support of the Public Policy Institute of California and the California Research Bureau of the California State Library. Both organizations provided most of the research materials to the Commission. In particular, the Commission wishes to thank Charlene Wear Simmons, Assistant Director of the California Research Bureau, Fred Silva, Senior Advisor, Governmental Relations, and Mark Baldassare, Survey Director, both of the Public Policy Institute of California, and Professor Floyd Feeney, University of California at Davis for their generous assistance.

EXECUTIVE SUMMARY

The direct initiative process is the method used by citizens to directly affect public policy. It was added to the state Constitution in 1911 to provide the people with a means to enact laws separate and apart from their elected officials. By allowing citizens and various interest groups to directly enact statutes and amend the Constitution, it has evolved into a powerful tool in California's policy-making process. The directive to the Speaker's Commission on the California Initiative Process was to review the initiative process and recommend changes to improve it, making it more responsive to the people.

However, major changes in the use of the initiative process have occurred over the last 25 years. The days when a grassroots movement or a committed band of reformers could qualify an initiative without major financial support are, for practical purposes, over at the statewide level. Today, many people believe that initiatives are almost exclusively controlled by many of the same economic and political interests that engage in the legislative process. Rather than simply providing a citizen vehicle to enact laws, it has



become an alternative method for special interests to advance their causes. A specialized industry has grown up around the initiative process. Companies providing expensive services such as signature gathering, legal advice, and campaign consulting, are all integral to successfully qualifying and passing an initiative. This state of affairs is a far cry from the citizen's role that was envisioned 90 years ago. Today, an initiative proponent must put together a statewide organization, raise large amounts of

money, and run a statewide campaign similar to the way statewide office holders run their campaigns. The days of romanticizing the "citizens" initiative process are over at the statewide level.

Over the last 15 years, various academic, citizen and legislative groups have studied the initiative process, and have often questioned the unbalanced relationship between it and the state's system of separation of powers, the legislative/executive decision-making process. California's initiative process provides for a fundamentally different way of lawmaking, one not subject to the safeguards of the normal legislative process such as numerous public hearings, expert testimony, independent analysis and legal review. The legislative process usually results in important technical revisions to improve legislative clarity and constitutionality and usually involves compromise to accommodate various policy and political concerns. California, unlike many of the other twenty-four states that have an initiative process, does not provide for a blend between the legislative decision-making process and the initiative process.

Existing timelines and election requirements make the initiative process a constant year-round endeavor. The drafting, circulating, and qualifying of an initiative operate on a very different schedule from the two-year legislative or election cycle. For example, at least 11 initiative measures are currently being circulated attempting to qualify for the November 2002 ballot. Additional initiatives are being filed all the time and it is likely several of them will in fact qualify.

A critical concern is whether California's initiative process, as currently structured, adequately provides for an informed, deliberative discussion and debate on important issues.

The central theme of the Commission's recommendations is improvement of the existing initiative process by offering additional methods for public review, for refining initiative proposals, and for providing more timely information to the voters. The Commission was not interested in proposing the abolition of the current initiative process or replacing it with other processes. The Commission focused on four objectives:

- Improve the quality of the drafting of initiatives placed on the ballot by providing a system for early review.
- Increase public disclosure of the financing of initiatives and the information available to the voters on the policy issues appearing on the ballot.
- Improve the signature qualification process.
- Clarify the judicial standard for reviewing initiative measures.

SUMMARY OF RECOMMENDATIONS

Goal 1: To provide a system of early review to improve the quality of the drafting of initiatives placed on the ballot.

RECOMMENDATION 1: Establish an Indirect Initiative

Establish an alternative initiative process, known as the indirect initiative, which would provide for legislative review, amendment and possible enactment prior to consideration by the voters.

Goal 2: To increase public disclosure of the financing of initiatives and provide greater information to the voters on the policy issues appearing on the ballot.

RECOMMENDATION 2: Increase Public Information

Increase the amount of information available to the public about the sponsorship of initiatives at the time the initiative is filed with the Secretary of State, before signature gathering.

RECOMMENDATION 3: Require Campaign Finance Information

Require campaign finance information about an initiative's proponents to be available and disclosed at the time of petition circulation.

RECOMMENDATION 4: Increase Public Awareness

Increase public awareness of campaign financial disclosure information of initiatives by improving the information available in the ballot pamphlet.

RECOMMENDATION 5: Include a Statement of Validity

Provide a statement in the ballot pamphlet for each proposition stating that the validity or constitutionality of all or part of a ballot measure may not have been determined before it is voted upon and may be challenged in court after the election. As a result of any legal challenge, a court may determine that the ballot measure is valid and constitutional or that all or a portion of the measure is invalid or unconstitutional.

RECOMMENDATION 6: Require Sec. of State to Select Arguments

Require the Secretary of State to select the arguments against a measure submitted to the voters by the Legislature. If a Legislative measure amends an initiative that has been previously enacted and a proponent of the initiative submits an argument, then the proponent's arguments shall be selected. If not, the Secretary shall first choose members of the Legislature, then bona fide associations of citizens and then individual voters, in that order.

Goal 3: To improve the signature qualification process.

RECOMMENDATION 7: Allow Signature Gathering In Large Public Spaces

Require large public spaces such as shopping centers and other large retail establishments to allow petition signature gathering.

RECOMMENDATION 8: Revise Signature Verification Requirements

Revise the signature verification requirements by allowing initiative measures to qualify for the ballot on a random sampling method projecting 105 per cent of the required signatures, instead of the current requirement of 110 percent.

Goal 4: To clarify the judicial standard for reviewing initiative measures.

RECOMMENDATION 9: Strengthen Single Subject Rule

Strengthen the single subject rule and require the Attorney General to review initiative proposals for compliance.

ESTABLISH AN INDIRECT INITIATIVE PROCESS

The Commission finds that improvements are needed in the initiative process so that proponents and the public can better understand an initiative's potential impact. Writing laws is a complicated process. If drafting problems are discovered in an initiative being circulated, there is no process for correcting such mistakes. Providing some form of legislative review would allow for valuable public testimony and deliberation. It would also allow legislative and legal experts to examine the proposal and make recommendations to the proponents. Proponents would have the opportunity to amend and improve their proposals before final ballot consideration by the voters. The opportunity for

*Recommendation:
Establish an alternative initiative process, known as the indirect initiative, which would provide for legislative review, amendment and possible enactment prior to consideration by the voters.*

a more deliberative initiative process could lead to more precise citizen lawmaking with less likelihood that an initiative measure would result in unintended consequences or judicial rejection.

The Commission proposes an alternative to the direct initiative process that would allow the Legislature to enact an initiative into law, with the proponent's consent, thereby removing the need for the initiative to go to the ballot. Such a process would reduce ballot confusion (fewer measures for voters to consider) and eliminate the need for expensive campaigns. At a minimum, bringing an initiative proposal before the Legislature would help proponents refine their proposal and receive outside suggestions for improvement. It would also give voters more time to consider the merits and disadvantages of the initiative proposal, leading to a more informed vote.

As an incentive to encourage the use of the indirect initiative, the Commission discussed the prospect of reducing the number of signatures required to qualify an indirect initiative for the ballot. Some felt a reduced threshold was important in order to make the indirect initiative an attractive option for initiative proponents' consideration. Others argued that reform of the signature-gathering process was a necessary companion to reduce the cost of qualifying an initiative. Absent those dual reforms, the belief was that special interest groups would merely exploit the reduced signature-gathering requirement and make it easier for such groups to bring their issue to the Legislature and place the measure on the ballot if not enacted. In the end, given the lack of consensus, the Commission opted not to pursue a lower threshold recommendation.

The Commission also considered establishing an additional initiative process to make it easier for grassroots efforts to qualify an initiative using

all-volunteer signature-gatherers. In such a proposal, the number of signatures required would be reduced and the amount of time to collect signatures would be lengthened. However, some members of the Commission believed that current judicial determinations, which make it almost impossible to restrict the financing of initiative campaigns, would make it impossible to establish a special category for all-volunteer initiative measures. In the final analysis the Commission opted for the establishment of an indirect initiative process that would have the same requirements as the current direct initiative but would allow for more review and discussion in the Legislature.

The indirect initiative process would work as follows. Proponents would choose either the direct or indirect initiative process when the proposal is submitted for title and summary. If the indirect initiative process is chosen, measures that attain the requisite number of petition signatures would be placed before the Legislature for its consideration. The appropriate legislative committees would conduct hearings and could amend the initiative proposal. The Legislature could amend the initiative proposal so long as the amendments were consistent with the intent of the initiative and the amendments have the consent of the proponent. Once a statutory initiative is adopted by the Legislature and signed by the Governor in a form acceptable to the proponents, the measure would become law and the initiative petition would be withdrawn and not appear on the ballot. Constitutional amendments would be submitted to the voters. The proponents of the initiative would always retain the option of rejecting the Legislature's amendments and placing their measure on the ballot, either in its original form or in an amended form consistent with the original intent of the initiative petition.



In the Commission's view, the proposed indirect initiative process offers the best of both worlds. It would not limit the proponent's control of the initiative but it would ensure a more deliberative process. The proposed indirect initiative would contain the following elements:

- The indirect initiative would be in addition to, and not replace, the existing direct initiative process, and would apply to both statutory and constitutional initiative proposals.
- The petition would disclose that the proposal would be submitted to the Legislature for review, possible amendment, and enactment (except for constitutional amendments).

- The number of signatures required for an indirect initiative would remain the same as the number required for a direct initiative.
- Upon an indirect initiative's certification for the ballot by the Secretary of State, the Legislature would be required to conduct a public hearing and to complete its consideration of the measure within thirty calendar days. Proponents could extend the legislative review period to sixty days. For a statutory initiative, once the measure was passed by the Legislature, the Governor would have ten days to sign or veto it.
- The indirect initiative proponents could adopt any legislative amendments, or any other amendments, within 14 days following the end of the legislative review period. All legislative amendments would have to be approved by the proponents to be valid.
- Any amendments adopted or approved by the proponents would have to be consistent with the "purposes and intent" of the initiative and be submitted to the Secretary of State and the Attorney General. The Attorney General would have ten days to examine the amendments to determine if they are consistent with the purposes and intent of the proposal. This determination could be appealed by the proponents to the Sacramento Superior Court.
- If an indirect statutory initiative proposal is adopted by the Legislature in the form proposed by the proponents or amended in a manner acceptable to the proponents and signed into law by the Governor, the original proposal would be withdrawn from the ballot.
- If a proposal is not passed by the Legislature in a form acceptable to the proponents, the Secretary of State would place the measure with proponent amendments, if any, on the next statewide ballot (a minimum of 117 days before the date of that election).

INCREASE PUBLIC INFORMATION

Elections are critical instruments of democracy. They connect citizens and policymakers by aggregating individual preferences into a majority. Because initiatives bring statutory and constitutional proposals directly to the people, without a legislative forum for discussion and review, voters receive virtually all of their information during the campaign and from ballot materials. For this reason, the Commission spent considerable time discussing how to improve the quality and transparency of the information presented to the public during the campaign and in ballot materials. The Commission seeks to provide more and better information to the electorate to minimize abuse, manipulation, and ballot clutter.

Recommendation:

Increase the amount of information available to the public about the sponsorship of initiatives at the time the initiative is filed with the Secretary of State, before signature gathering.

The Commission finds that there is insufficient public information available about the sponsorship and financial support of the proponents of initiative proposals at the time petitions are circulated. In California, the Political Reform Act requires that individuals and organizations seeking to influence legislation provide accurate, timely and detailed information about their sponsors, expenditures and activities. An initiative is a form of legislation, but without legislative review. As such, it should be subject to timely and detailed financial disclosure reporting requirements, and that information should be available when petition signature gatherers solicit supporting signatures from the public. The Commission adopted the following specific proposals:

- Within 30 days of filing for title and summary, the proponent of a statewide initiative, or her agent or authorized committee, shall file with the Secretary of State a report disclosing all sources of \$100 or more received or spent in the prior 12 months, to plan, draft or otherwise prepare the initiative. The report must be filed electronically or on-line or, if filed on paper, must be posted on the Secretary of State's website within 24 hours of receipt. The report need not be filed if all the information will be disclosed fully on a committee report filed with the Secretary of State no later than one month after the initiative is filed for title and summary.
- Once a statewide initiative has been filed for title and summary, any committee that receives contributions of \$1,000 or more or makes independent expenditures of \$1,000 or more to support or oppose the initiative shall file campaign statements on a monthly basis until the election.
- Once a statewide initiative has been filed for title and summary, any committee that receives contributions of \$5,000 or more to support or

oppose the initiative shall report such contributions electronically or online within 48 hours of receipt.

CAMPAIGN FINANCE REFORM

Like most legislative proposals introduced in the Legislature, initiatives have sponsors. The principal sponsors craft the language and provide the volunteer and/or financial support required to gain access to the ballot. When deciding whether or not to sign an initiative petition, voters should have information available about an initiative's sponsors to fully inform their decision. The Commission recommends the following:

- All petitions to qualify a statewide initiative for the ballot shall be accompanied by a written campaign financial disclosure, which may be printed on, attached or bound to the petition. It need not be contiguous. Potential signers would be informed either orally or in writing that financial disclosure information concerning the initiative can be obtained on the Secretary of State's website.

- All mass mailings sent by committees urging voters to sign petitions to qualify a statewide initiative must disclose the top five contributors to the committee and the cumulative amount of each one's contributions, as of the committee's most recent campaign report.

- Any committee employee or contractor who circulates a petition to qualify a statewide initiative must make available to potential signers the names and cumulative amounts of the top five contributors to the committee as of the committee's most recent campaign report. This information shall also be made available through the proponent's web site. Information on the location of the web site shall be made available to the potential signer. Committees must request volunteer petition circulators to provide the same information.

PUBLIC AWARENESS OF FINANCIAL DISCLOSURE

Voters obtain information about initiative proposals from campaign publications, television advertisements and the ballot pamphlet. Information on the financing of initiative campaigns is often difficult to find. For this reason, the Commission recommends the following:

*Recommendation:
Require campaign
finance information about
an initiative's proponents
to be available and
disclosed at the time of
petition circulation.*

*Recommendation:
Increase public
awareness of
campaign financial
disclosure information of
initiatives by
improving the
information available in
the ballot pamphlet.*

- In the ballot pamphlet, insert a statement directing voters to the Secretary of State's website for updated campaign finance disclosure information about initiative proponents and opponents.

STATEMENT OF VALIDITY/CONSTITUTIONALITY

Surveys have found that voters are confused as to the constitutional status of pending initiative measures. They experience considerable frustration when an initiative is passed but is subsequently invalidated by the courts. Many incorrectly assume that the state pre-reviews ballot measures for constitutionality and would not allow a potentially unconstitutional measure on the ballot. Voters rely heavily on the ballot pamphlet for information about initiative measures. For that reason, the Commission agreed to recommend the following proposal:

Recommendation:
Provide a statement for each proposition as to the ballot measure's validity or constitutionality before it is voted upon.

- Provide a statement in the ballot pamphlet for each proposition stating that the validity or constitutionality of all or part of a ballot measure may not have been determined before it is voted upon and may be challenged in court after the election. As a result of any legal challenge, a court may determine that the ballot measure is valid and constitutional or that all or a portion of the measure is invalid or unconstitutional.

REVIEW BY THE SECRETARY OF STATE

For amendments to voter-approved initiative measures placed on the ballot by the Legislature, the Legislature has the power to select the authors of the ballot arguments for and against. This selection may or may not provide the voters with an adequate representation of the arguments against a particular measure.

Recommendation:
Secretary of State to select arguments against a measure submitted by the Legislature.

- Require the Secretary of State to select the arguments against a measure submitted to the voters by the Legislature. If a legislative measure amends an initiative that has been previously enacted and a proponent of the initiative submits an argument, then the proponent's arguments shall be selected. If not, the Secretary shall first choose members of the Legislature, then bona fide associations of citizens, and then individual voters, in that order.

SIGNATURE GATHERING IN PUBLIC SPACES

There is growing litigation by shopping center property owners regarding petition signature gathering at major shopping centers. Recent U. S. Supreme Court decisions have restricted the ability

of petition signature gathering in front of large commercial shopping centers as well as large retail establishments. This has the effect of restricting first amendment protection on these quasi-public places. The Commission recommends that statutory protections for signature gathering be expressly provided for large public spaces such as large retailers or shopping centers.

- Require large public spaces such as shopping centers and other large retail establishments to allow petition signature gathering.

*Recommendation:
Require large public
spaces to allow
signature gathering.*

SIGNATURE VERIFICATION REQUIREMENTS

The current initiative signature verification process is cumbersome for signature gatherers and costly to counties, and could be made more efficient. For this reason, the Commission recommends that initiative measures qualify for the ballot on a random sampling method projecting 105 percent of the required signatures, instead of the current requirement of 110 percent.

- Revise the signature verification requirements by allowing initiative measures to qualify for the ballot on a random sampling method projecting 105 percent of the required signatures, instead of the current requirement of 110 percent.

*Recommendation:
Revise the signature
verification
requirements.*

THE SINGLE SUBJECT RULE

Post-election legal challenges can frustrate the expectations of voters and have a negative impact on their perceptions of the initiative process and the judicial system. There are important ways in which the process can be strengthened, both procedurally and substantively, by resolving some issues prior to passage of an initiative measure.

Lengthy initiatives covering a range of topics are common on California ballots. Other states have tighter standards relative to the single subject rule.

The California Constitution [Article II, section 8(d)] currently provides that, “An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.” The California Supreme

Court has historically interpreted the single subject rule broadly, requiring that an initiative’s provisions be either reasonably germane or functionally related. In 1999, the California Supreme Court removed a measure from the ballot for violation of the single subject rule [*Senate v. Jones*, 21 Cal.4th 1142(1999)].

*Recommendation:
Strengthen the
single subject rule
and provide for
pre-circulation
review by the
Attorney General’s
Office.*

Logrolling can occur in an initiative when multiple unrelated provisions are placed in one measure in an attempt to gain a majority vote. This practice confuses the voters, who may want to adopt one provision yet not like, or be aware of, unrelated provisions addressing other subjects. Strengthening the single subject rule could reduce confusion by ensuring that voters get a simpler and cleaner choice at the polls. However, several commissioners felt that the existing constitutional provision does not need strengthening.

The Commission concluded that if the provision were strengthened, that some form of review prior to action by the voters would be useful. The Commission discussed several approaches including early review by the Attorney General or a panel of three state constitutional officers. The Attorney General’s Office objected to having that office perform this review due to their concern that this function might cause a conflict in future litigation. Notwithstanding the Attorney General’s concerns, the Commission concluded that the Attorney General’s office was the best office in which to have this responsibility.

The Commission recommends adding the following italicized language to the California Constitution, Article II, section 8(d), so that it reads:

An initiative measure embracing more than one subject may not be submitted to the electors or have any effect. *All of a measure's provisions must be both functionally related and reasonably germane to each other. The Attorney General may not prepare a title and summary for any measure not meeting these requirements, but shall permit a proponent to submit separate initiatives for each subject. The determination as to whether the single subject rule has been complied with shall be subject to expedited independent judicial review.*

AN ALTERNATE POINT OF VIEW

Some of the members of the Commission were opposed to changing the existing single subject standard, arguing that the current language was sufficient for the courts to ensure that initiatives contained a single subject. Those objecting to the proposed change were concerned that the proposed single subject standard would inhibit the people's ability to write initiatives. The following summarizes the views of several of the Commissioners who opposed the single subject recommendation.

Complex sets of laws established by the Legislature cannot always be reformed by a simply worded initiative. One observer to the Commission's work wrote that the proposed change in the single subject law would constrain the initiative, making a comparison between the newly proposed language and the Florida single subject provision, which is interpreted so strictly to be considered by many to be practically insurmountable.

It's not too hard to imagine that the state's most famous initiative, Prop. 13, might have been pulled from the ballot under this expanded single subject definition. Is raising the vote requirement to pass taxes by the Legislature germane to cutting property taxes? When considering overall tax reform it is. But using this new definition, it is possible that an Attorney General or a judge would find that these two subjects should be handled in separate initiatives.

Another example lies in the Political Reform Act of 1974 (Proposition 9, passed by 70% of the voters) which might have been declared invalid under this proposal. The California Supreme Court ruled that Prop. 9 contained a single subject under the standard currently set forth by the California Constitution, but a dissenter on the court used the standard recommended by the Commission majority and found the proposition violated that standard.

Putting the power to decide single subject matters initially in the hands of the Attorney General invites partisan politics into a process reserved by the Constitution for the people.

PROPOSALS CONSIDERED BUT NOT ADOPTED

Following a six-month review of the initiative process, the Commission discussed a variety of proposals that warranted further discussion and study but were not recommended for legislative action. The following is a list of ideas that may be worthy of further consideration.

CITIZEN LEGISLATIVE PETITION

The Commission discussed several alternative proposals to encourage a citizen-driven initiative process, in contrast to the expensive, interest-driven process currently in existence. The Commission submits the following proposal for legislative consideration in the form of a concept that would provide a process for citizens to petition the legislative branch of government. While not constituting a recommendation, nor supported by a majority of commissioners, the Commission did find it worthy of inclusion in the report and recommends the concept for further consideration.



The Citizen Legislative Petition would institute a mechanism to open up the legislative process to citizen advocates. The process would enable citizens to propose statutes directly to the Legislature for its consideration. Proponents would use all-volunteer signature gatherers to circulate the petition and gather signatures.

The Citizen Legislative Petition would institute a mechanism to open up the legislative

process to citizen advocates. The process would enable citizens to propose statutes directly to the Legislature for its consideration. Proponents would use all-volunteer signature gatherers to circulate the petition and gather signatures.

- A summary of the proposal and a statement that it would be submitted to the Legislature for consideration if it qualifies would be printed on the petition.
- The number of signatures required for submission to the Legislature would be two percent of the votes cast for the Governor at the last gubernatorial election. The petition could be circulated for up to 365 days.
- Once submitted to the Legislature, the measure would be introduced and referred to the appropriate policy committee for consideration. Alternatively, a member of the Legislature could agree to introduce the petition as a bill. The Legislature would be required to hold a hearing in each house. Finally, the Attorney General would review all amendments to ensure that they are consistent with the purposes and intent of the petition.

CITIZEN INDIRECT INITIATIVE PROCESS

Create an additional initiative process that would apply only to statutory initiatives placed on the ballot by all-volunteer signature gatherers. The process would be similar to the proposed indirect initiative in that proposals would be first submitted to the Legislature, where they could be amended or enacted.

-
- The initiative petition would include a summary of the measure and a statement that the proposal would be submitted to the Legislature and could be amended and enacted. The petition would include a statement that the signature gatherer is not paid.
 - The number of signatures required for submission to the Legislature would be three percent of the votes cast for the Governor at the last gubernatorial election instead of the current five percent.
 - The circulation period would be 365 days instead of the current 150 days.
 - Once a petition is submitted to the Legislature, the Legislature would have 30 days to consider the proposal with a possible extension to 60 days if authorized by the proponents. The proponents would have to concur with all legislative amendments, and the Attorney General would review the amendments to ensure that they are consistent with the purposes and intent of the petition.
 - If the measure is approved by the Legislature and signed by the Governor, it would become law and would not be placed on the ballot.

PRE-ELECTION REVIEW FOR CONSTITUTIONALITY OR POTENTIAL LEGAL ISSUES.

- Ensure that the Legislative Counsel's legal review process, which is already available to initiative proponents, is publicized and provides for confidentiality for the proponents.
- Create a panel, such as in Colorado, to advise or rule on an initiative proposal's constitutionality relative to the single subject rule.
- Require a pre-election review by the California Supreme Court or the Attorney General for constitutionality, language clarity or potential legal problems.

SPECIAL STATUS FOR CONSTITUTIONAL AMENDMENTS

- Place constitutional amendments only on the November ballot, where more voters participate.
- Raise the vote requirement to 3/5 (60 percent) for constitutional amendments.
- Adopt Nevada's two-step vote to adopt constitutional amendments: an initial vote, a court review for constitutionality and a second vote.

VOTE REQUIREMENTS FOR ENACTMENT OF INITIATIVES

- An initiative measure that requires a super-majority vote should be passed by a super-majority vote.

BALLOT IDENTIFICATION OF CONFLICTING MEASURES

- Initiative measures covering similar subjects should be grouped together on the ballot.
- If two initiatives conflict, list them in succession and note the conflict in the ballot pamphlet.

LEGISLATIVE DELIBERATION

- Require an advisory vote by both houses of the Legislature on every

PROPOSALS CONSIDERED BUT NOT ADOPTED

ballot measure qualified for the ballot.

BALLOT PAMPHLET DISCLOSURE OF PROPONENTS AND OPPONENTS

- List self-identified proponents and opponents on the summary page of the ballot pamphlet.
- Proponents of a ballot measure should be able to select the authors of their ballot arguments.

AMENDING INITIATIVES

- Allow the Legislature and the Governor to amend a statutory initiative after a period of time without a confirming vote of the voters.

EFFECTIVE DATE OF INITIATIVE ENACTMENT

- In order to provide government agencies sufficient time to implement an initiative proposal, have the initiative become effective January 1 of the next calendar year, as is the case for non-urgency legislation.

ENHANCING THE PUBLIC DEBATE

- Limit the number of measures on a ballot to promote careful deliberation.

ALTERNATIVE PETITION GATHERING METHODS

- Authorize the collection of petition signatures through the Internet.

APPENDIX A: COMMISSION MEETINGS

OCTOBER 30, 2000

State Capitol, Sacramento

Commission Received Charge and General Discussion

NOVEMBER 27, 2000

State Capitol, Sacramento

Guest Speakers:

Fred Silva, Senior Advisor Public Policy Institute of California

Charlene Wear Simmons, Asst. Dir. of the California Research Bureau

DECEMBER 18, 2000

State Capitol, Sacramento

Guest Speakers:

Andrea Hoch, Attorney General's Office

Bion Gregory, Legislative Counsel

Mac Taylor, Legislative Analyst Office

Kathy DaRosa, Secretary of State's Office

Conny McCormack, Los Angeles County Clerk

Dane Waters, Initiative & Referendum Institute

Floyd Feeney, University of California, Davis

JANUARY 22, 2001

State Capitol, Sacramento

Guest Speakers:

Walter Baer, Rand Corporation

Marc Strassman, Online initiative proponent

David Jefferson, Compaq Computer Systems

Mina Yaroslavsky, Research Associate, Public Policy Institute of California

Public Testimony

The Oaks Project

The California Voter Foundation

FEBRUARY 26, 2001

Public Policy Institute of California, San Francisco

Guest Speaker:

Mark Baldassare, Public Policy Institute of California

Public Testimony

Common Cause

CALPIRG

MARCH 27, 2001

State Capitol, Sacramento

General Discussion and Development of Recommendations

APRIL 23, 2001

State Capitol, Sacramento

Discussion of Proposed Recommendations

MAY 31, 2001

State Capitol, Sacramento

Discussion of Proposed Recommendations

JUNE 27, 2001

State Capitol, Sacramento

Adoption of Final Recommendations

APPENDIX B: RESOURCE MATERIAL

The Initiative Process in America: An Overview of How it Works Around the Country. M. Dane Waters, President of the Initiative and Referendum Institute. This document and related material can be found at www.iandrinstitute.org.

Legal Restrictions Applying to the California Initiative Process. Floyd Feeney, School of Law, University of California, Davis.

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

Constraining Populism: The Real Challenge of Initiative Reform. Kenneth P. Miller, Department of Political Science, University of California, Berkeley.

The Smart Initiatives Papers. Marc Strassman, Executive Director, Smart Initiatives Project.

Ballot Measures and Judicial Review, 1986-2000. David J. Jung and Janis M. Crum, Public Law Research Institute, Fall 2000. University of California, Hasting College of the Law.

The California Initiative Process: Background and Perspective. Resource material for the Speaker's Commission on the California Initiative Process. Fred Silva, Senior Advisor, Public Policy Institute of California, November 2000.

Improving the California Initiative Process: Options for Change. Philip L. Dubois and Floyd F. Feeney. California Policy Seminar, University of California, 1992.

Lawmaking by Initiative: Issues, Options and Comparisons. Philip L. Dubois, University of Wyoming and Floyd Feeney, University of California, Davis; Agathon Press New York, 1998.

Democracy by Initiative: Shaping California's Fourth Branch of Government. Report and Recommendations of the California Commission on Campaign Financing.

A History of the California Initiative Process. Prepared by Bill Jones, Secretary of State, August 1998.

Book of the States, Council of State Governments, 1998.

Legal Restrictions Applying to the California Initiative Process. Floyd Feeney, School of Law, University of California, Davis.

Western Initiatives: A Challenge to Representative Democracy. David B. Magleby, Distinguished Professor of Political Science, Brigham Young University, Elisabeth R. Gerber, Associate Professor of Political Science, University of California, San Diego. Council of State Governments, October 2000.

E-Democracy and Initiative Process Bibliography. Prepared by Charlene Wear Simmons, California Research Bureau, California State Library, October 2000.

California Initiative Process. Charlene Wear Simmons, Ph.D., California Research Bureau, May 1997.

APPENDIX C: PUBLIC OPINION SURVEYS ON THE INITIATIVE PROCESS

PUBLIC POLICY INSTITUTE OF CALIFORNIA: CALIFORNIANS AND THE INITIATIVE PROCESS

Californians like the idea of using ballot initiatives to make public policy.

Most Californians give the state's initiative process glowing reviews. Seven in 10 believe that making laws and changing public policies through initiatives is a "good thing." Nearly six in 10 like the fact that a majority of voters can use the initiative process to make permanent changes in the state's Constitution.

Many Californians (56%) believe that the policy decisions made through the initiative process are probably better than the policy decisions made by the Governor and Legislature. Voters across political parties, regions of the state, and racial and ethnic groups believe this is true. (Oct. 2000)

But most think that the initiative system needs some changes.

Although Californians have a lot of respect for the initiative process, most believe it is far from perfect. Only 10 percent of the state's residents say they are "very satisfied" with the way the process works. Most (58%) are only "somewhat satisfied," and one in four is not satisfied.

Three in four residents say they would like to see changes in the initiative process. One in three would like to see major changes, while four in 10 believe the changes need only be minor. Only one in five residents describes the initiative process as "fine the way it is." (Oct. 2000)

Special interests are perceived to play a powerful role.

Nine in 10 Californians say they think the initiative process is controlled "a lot" (52%) or "somewhat" (40%) by special interests. Consistent with this belief, eight in 10 would support a proposal to increase public disclosure about the financial backers in the signature-gathering process for initiative campaigns. In addition, six in 10 would favor a proposal which would require that only volunteers could gather signatures to qualify initiatives, thus banning the use of paid signature gatherers. However, a majority of Californians (61%) would oppose a law that allowed signature gathering over the Internet. (Jan. 2001)

Pre-ballot review of initiatives is a priority.

Californians overwhelmingly support reforms to improve the quality of initiatives placed on the ballot. Voters express frustration with the large number of initiatives that appear on the ballot, confusing ballot language, and initiatives that are passed but then are overturned by the courts. Perhaps reflecting this frustration, eight in 10 Californians support creating a system of review that would seek to address problems with ballot language for proposed initiatives, and nine in 10 support a system of review that would raise constitutional or legal questions before initiatives are placed on the ballot. (Jan. 2001)

	All Adults	Democrat	Republican	Other Voters	Not Registered
<u>Statewide Survey Oct. 2000</u>					
Do you think it is a good thing or a bad thing that a majority of voters can make laws and change public policies by passing initiatives?					
Good thing	69%	66%	69%	73%	73%
Bad thing	23	25	23	21	18
Don't know	8	9	8	6	9
Do you think public policy decisions made through the initiative process by voters are probably better or probably worse than public policy decisions made by the governor and state legislature?					
Better	56%	50%	56%	60%	64%
Worse	24	27	22	22	19
Same (volunteered)	5	7	6	5	3
Don't know	15	16	16	13	14
Do you think that the initiative process in California is in need of major changes or minor changes or that it is basically fine the way it is?					
Major changes	32%	31%	27%	33%	40%
Minor changes	43	43	48	41	35
Fine the way it is	19	19	19	20	19
Don't know	6	7	6	6	6
<u>Statewide Survey Jan. 2001</u>					
How much would you say that the initiative process in California today is controlled by special interests?					
A lot	52%	55%	57%	52%	35%
Some	40	40	36	40	51
Not at all	3	2	2	3	5
Don't know	5	3	5	5	9
Would you favor or oppose increasing public disclosure of the financial backers of signature gathering for initiatives and initiative campaigns?					
Favor	78%	78%	83%	76%	66%
Oppose	14	15	11	16	20
Don't know	8	7	6	8	14
Would you favor or oppose a system of review of proposed initiatives to try to avoid drafting errors and problems with ballot language?					
Favor	77%	80%	75%	78%	75%
Oppose	15	13	14	17	15
Don't know	8	7	11	5	10

Source: PPIC Statewide Surveys. For complete data and questions about the initiative process, visit <http://www.ppic.org> and follow the links to the PPIC Statewide Surveys for Oct. 2000 and Jan. 2001.

David A. Abel, Commission Chair
811 West Seventh Street, Suite 900, Los Angeles, California 90017
Phone: 213-629-9019 • Fax: 213-623-9207 • Email: abl@earthlink.net
Commission Website: www.cainitiative.org