



Democracy by Initiative:

SHAPING CALIFORNIA'S FOURTH BRANCH OF GOVERNMENT

Second Edition



CENTER *for* GOVERNMENTAL STUDIES



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Second Edition – 2008



CENTER *for* GOVERNMENTAL STUDIES



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Foreword to the Second Edition

Much has happened in the past 16 years since the Center for Governmental Studies (CGS) published the first edition of this report, *Democracy by Initiative: Shaping California's Fourth Branch of Government*.

The impact of California's ballot initiative process over state policy continues to grow. Initiatives still circumvent the state legislature. Voters often address major issues through the initiative rather than the legislative process. Contributions to and expenditures by ballot measure committees continue to skyrocket.

California's ballot initiative process has not changed significantly in almost 100 years. Although Californians still strongly support the initiative process, they increasingly acknowledge its need for reform. This report therefore proposes that Californians modernize its initiative process by the centenary of its creation in 2011.

This report, the result of two years of work and analysis by CGS staff and interviews with over 100 outside experts, elected officials, academics, reporters and business and civic leaders, addresses California's ballot initiative concerns. It updates the findings and recommendations in the original edition, which CGS and the California Commission on Campaign Financing published in 1992. It describes the growing importance of the initiative process in setting California's policy agenda. It identifies existing and emerging ballot initiative problems. And it presents a comprehensive package of reforms to modernize the state's system of citizen democracy.

CGS Chief Executive Officer Tracy Westen and CGS President Robert M. Stern provided the impetus for this report and oversaw all research, recommendations, editing and final preparations. Anna Meyer managed the final publication of the report. Shakari Cameron Byerly organized early versions of the report. Meyer and Byerly also researched data and events since 1992, updated several chapters and conducted expert interviews. Steve Levin, Betsy Rosenfeld and Laura Richter prepared significantly updated chapters. Jeannie Wilkinson and Todd Nelson contributed research and updates to individual chapters. Nancy Volpert contributed valuable advice. Janice Roberts and Saidah Johnson provided administrative support. CGS interns, including Kelli Brown, Adam Isen, Sheela Krothapalli, Steven Lockfield, Amanda Lopez, Jeff Lyu, Dan Mitchell, Ketav Patel, AJ Petrie, Margeaux Randolph, Maneesh Sharma, Rachael Shook, Chauncey Smith and Andrew Sternlight, contributed research assistance. Leslie Connor contributed copy editing, Linda DeMasi prepared layout design and typesetting and Yvonne Crane designed the report's cover.

CGS thanks the many individuals who, over the years, contributed advice, ideas and assistance. A list of these people appears in Appendix D to the full report. CGS also thanks the James Irvine Foundation and Carnegie Corporation of New York for the generous funding necessary to prepare this report, although they take no position on its findings or recommendations.

Foreword to the First Edition (1992)

This report is the summation of two years of study by the California Commission on Campaign Financing into the impact of the initiative process on California politics and policy. It is the fifth in a series of Commission reports on important policy problems confronting the State of California.

The Commission, formed in 1984, is a nonprofit, bipartisan, private organization. Twenty-four prominent Californians from the state's business, labor, agricultural, legal, political and academic communities, about equally divided between Democrats and Republicans, currently serve as its members.

The Commission's first report, *The New Gold Rush: Financing California's Legislative Campaigns* (1985), focused on the problems of campaign financing in the state legislature. The 353-page report, now in its second printing, served as the model for statewide Proposition 68 in the June 1988 election, as well as the campaign finance portions of Proposition 131 in the November 1990 election. The Commission's second report, an *Update to The New Gold Rush*, was published in 1987.

The Commission's third report, *Money & Politics in the Golden State: Financing California's Local Elections* (1989), focused on campaign financing in city and county elections. The Commission also published a fourth report, *Money and Politics in Local Elections: The Los Angeles Area* (1989), which addressed the problems of Southern California's most populous metropolitan area. These two reports were in part a catalyst for the landmark June 1990 Los Angeles City campaign finance ordinance, the most innovative in the nation.

The Commission wishes to express particular gratitude to its Executive Director Tracy Westen and Co-Director Robert M. Stern, who together oversaw the Commission's study and were responsible for the preparation of this report. Matthew Stodder created the Commission's computerized data base. Craig Holman was the Commission's principal researcher. Janice Lark, office administrator, designed and coordinated the report's production. Susie Newman, Peter Vestal and Jerry Greenberg contributed early research to the project. Attorney Catherine Rich helped edit the final product. Virginia Currano, Julie Epps, Julie Hansen, Davina Perry and Sherry Yamamoto assisted in the Commission's Data Analysis Project. Robert Herstek designed the report's cover.

The Commission also wishes to acknowledge the special dedication of its Co-Chairman Francis M. Wheat, whose extra efforts in helping the Commission prepare its recommendations made a significant contribution to this report.

The Commission extends its warm appreciation to hundreds of public officials, reporters, political experts, academicians, political consultants and concerned citizens for their generous assistance. A list of these people appears in Appendix H to the full report.

The Commission's study of California's initiative process was funded by the William and Flora Hewlett Foundation, the James Irvine Foundation, the Ralph M. Parsons Foundation and the Weingart Foundation. In addition, the John Randolph Haynes and Dora Haynes Foundation contributed special funding toward the Commission's study of the initiative process in the Los Angeles metropolitan area, the results of which will be published separately in the near future.



EXECUTIVE SUMMARY

DEMOCRACY BY INITIATIVE IN CALIFORNIA

California’s ballot initiative process has become a major catalyst of reform in the state and the leading example of direct democracy in the nation. Ballot initiatives bypass the normal institutions of representative government and place legislative power directly in the hands of the people. Although the idea of direct democracy by vote of the people is ancient, predating even the Greek city states, nowhere has it been applied as rigorously and with such sweeping results as in California.

During the past three decades, Californians have used ballot initiatives to write, circulate, debate and adopt many of the state’s most important laws. Insurance, education, income tax indexing, rail transportation, the environment, toxic chemicals, term limits, lottery, property tax relief, handguns, reapportionment, rent control, crime prevention, cigarette taxes, wildlife protection, tribal gaming, children’s hospitals, mental health services, felony sentencing, stem cell research and campaign financing—all have been addressed by the electorate through the initiative process. On many of these pressing issues, the elected state legislature and governor failed to act or respond in a manner that would satisfy interested parties.

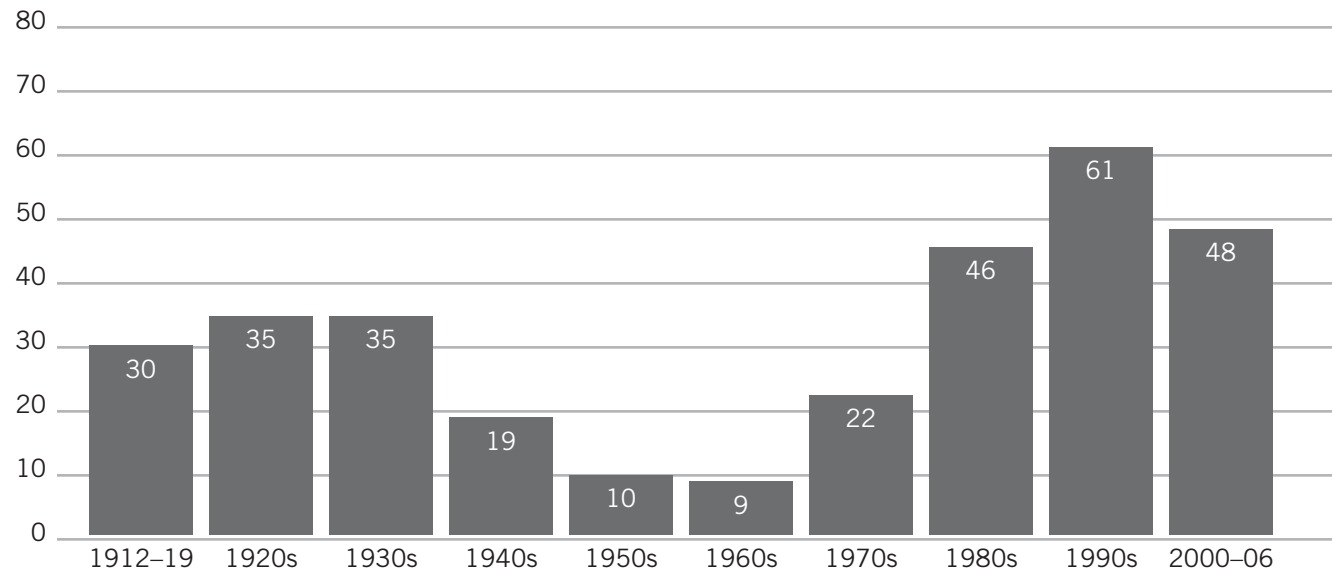
The number of initiatives circulated, qualified and adopted in this state has reached record proportions in recent decades—jumping more than sixfold since the 1960s (see Table I). Adjusted for inflation, spending on initiative campaigns has also risen by 750% in the past 30 years—peaking in the 2006 general election, which saw \$154 million spent for and against a single measure (Proposition 87, alternative energy) and \$330 million spent on all the measures in the election. As the state confronts a growing

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.....

list of problems and as public confidence in state government continues to wane, more and more individuals, business groups, special interests and even officeholders are choosing to advance policy proposals through the initiative process instead of the legislative process.

When early 20th-century Progressives designed California’s ballot initiative process, they envisioned that it would act as a safety valve, enabling citizens to supplement the work of the legislature when it failed or refused to act. Today’s initiative process, however, has outstripped this vision. An emerging culture of democracy by initiative is transforming the electorate into a fourth and new branch of state government. Voters now exercise many of the powers traditionally reserved for the legislative branch of government.

Some critics have expressed concern that ballot initiatives undermine party responsibility and the traditional forms of representative government in this state, discarding

TABLE 1 Number of Statewide Initiatives Qualified for the California Ballot* (1912 to 2006)

* Does not include indirect initiatives that qualified for legislative consideration but the legislature did not place on the ballot—an option available up until 1966.

Note: Two of the 46 initiatives in the 1980s were ruled unconstitutional by the California Supreme Court after qualifying for the ballot. The 2000s include election years between 2000 and 2006. During this period the California Supreme Court ruled one initiative unconstitutional after qualifying for the ballot.

Source: Center for Governmental Studies data analysis.

its checks and balances and its deliberateness in favor of ill-conceived, rash and poorly drafted schemes. Initiatives, they fear, shift the policy-making burden to the voters, leaving them overwhelmed by the growing number of measures on the ballot, confused by poor drafting, deceived by misleading campaigns, bewildered by counter-initiatives and frustrated by court rulings that declare provisions unconstitutional.

At the same time, ballot initiative supporters argue that the public remains firmly committed to the process. The ballot initiative, they contend, represents a rare and precious flowering of democracy, a remedy of last resort for a public frustrated by an unresponsive government. Ballot initiatives allow the people to circumvent a legislature blockaded by special interests, to enact needed reforms ignored by the government and even to limit the basic powers of government itself.

This report concludes that effective initiative reform must begin with accurate identification of key problems. The following critical problems confront California's ballot initiative process:

- *Initiative language is too inflexible.* Proponents cannot correct errors or omissions once circulation begins; legislators often cannot make amendments, enact improvements or eliminate oversights once an initiative is adopted.
- *The legislature plays an insignificant role in the process.* The current process discourages the legislature from negotiating with proponents for compromises or improvements that might reduce the number of expensive election campaigns.

- *Initiatives are frequently too long and complex.* Many voters lack the capacity, education, reading skills or time to understand them.
- *The qualification process has become outmoded.* Initiatives are too easy to qualify with paid circulators and too difficult to qualify with volunteers in the limited time available.
- *Initiatives are too easily used to amend the state constitution.* Once enacted, constitutional amendments are extremely difficult to repeal and impair legislative flexibility.
- *Counter-initiatives that conflict with and supersede each other are used as a tactic to confuse voters.* A 1990 California Supreme Court decision has encouraged the use of such measures.
- *Media campaigns disseminate deceptive information.* Misleading television advertising is widespread.
- *Voters frequently struggle to make informed decisions.* Official voter information sources are outdated.
- *Money plays too important a role in initiative qualification and campaigns.* Heavy-spending, one-sided campaigns dominate and distort the electoral process.
- *The courts have not yet struck the proper balance in initiative review.* Court decisions have invalidated some popularly enacted initiatives but left other equally complex initiatives in place.

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 The initiative process
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 but improved to
 transform the elec-
 torate into a more
 responsible branch
 of government.

Many proposed solutions have been advanced to remedy perceived problems with the initiative process. Initiative opponents—often those who have been initiative targets—have called for abolition of the process. Initiative defenders—often those who regularly circulate initiatives to support a cause or generate funding support—have strenuously argued for its retention.

This report concludes that the initiative process should be retained but improved to transform the electorate into a more responsible branch of government. This report sets forth an innovative, balanced, comprehensive and interrelated set of reforms that will enable the electorate, acting through the initiative process, to function as a more effective and mature partner in state governance.

This report's recommendations appear below, along with cross-references to the text of the full report. A complete checklist of recommendations appears in Appendix A, the statutory language to implement the proposed reforms appears in Appendix B and a time line of the initiative process under this report's recommendations appears in Appendix C.

THE COLORFUL HISTORY OF THE INITIATIVE PROCESS IN CALIFORNIA

In the 1800s, before direct democracy was enacted in California, only one kind of politics took place in California: “corrupt politics,” according to a leading newspaper reporter of the time. The Southern Pacific Railroad, called the “Octopus,” controlled almost everything in the state—the legislature, the courts, even the press.

It is somewhat ironic that initiative process backers sought to wrest control of the state's political process away from special interests, especially the Southern Pacific Railroad, in the early 1900s. The irony became apparent when Southern Pacific itself took

advantage of the initiative process. It contributed significant financing to the ballot qualification of Proposition II6, a 1990 initiative passed by the voters to provide for \$2 billion in bond measure financing to support rapid rail transit. Southern Pacific, like many other special interest groups, now uses the initiative process to achieve goals it cannot meet through the legislature.

The initiative, referendum and recall were first enacted at the local level in California when Dr. John Randolph Haynes convinced Los Angeles voters to adopt his reform package in 1903. The statewide reform movement was aided by corruption and bribery trials of several prominent labor leaders and corporate executives that began in 1906. Five years later, after many futile attempts to persuade the legislature to adopt the initiative process, direct democracy became part of a package sponsored by newly elected Governor Hiram Johnson. In 1911, his first year in office, the legislature placed the three components of direct democracy—initiative, referendum and recall—on the ballot. The voters overwhelmingly approved them.

.....
 In 1911, his first year in office, the legislature placed the three components of direct democracy—initiative, referendum and recall—on the ballot.

Attempts to weaken the process began almost immediately. After 17 measures qualified for the 1914 ballot, opponents of the initiative process placed on the ballot in 1920 an initiative attempting to triple the number of signatures required to place a measure affecting taxes on the ballot. The measure failed. In 1943, the legislature enacted a law limiting the time a proponent could circulate an initiative to no more than two years (before 1943, proponents could circulate for an unlimited time). Thirty years later, the legislature cut the circulation time to 150 days.

Until 1966, proponents were required to collect signatures amounting to 8% of the votes for governor at the previous election for both constitutional amendments and statutory initiatives. If proponents used the indirect initiative process for statutory initiatives, however, they only needed to gather signatures equal to 5% of the last vote for governor. The indirect process required proponents to submit their proposal to the legislature for consideration before the measure could reach the ballot. Because the legislature only met in odd-numbered years for all matters other than the budget, the indirect process was rarely used, since it required proponents to begin circulation at least two-and-a-half years before the election. In 1966, the legislature and the voters repealed the indirect initiative. (The history of the ballot initiative in California is detailed in Chapter I.)

HOW INITIATIVES QUALIFY FOR THE BALLOT IN CALIFORNIA TODAY

Before circulating a measure, initiative proponents must first submit their proposal to the attorney general’s office. The attorney general obtains a fiscal analysis from the Department of Finance and the joint Legislative Budget Committee and then provides the proponent with a title and summary that must be placed at the top of each petition. Proponents must pay the attorney general \$200, a fee that is refunded if the initiative qualifies for the ballot.

Proponents need to obtain valid signatures amounting to 5% of the vote in the last gubernatorial election to place a *statutory* initiative on the ballot and signatures amounting to 8% of the vote in the last gubernatorial election to put a *constitutional* initiative on the ballot. Despite significant population growth in the state, the number of signatures

needed today for ballot qualification is only about 40,000 signatures more than was needed in 1982 because the number of voters in the 2006 gubernatorial election was nearly the same as it was, on average, in the 1980s. Circulators generally gather signatures from nearly every county in California in proportion to their population. Only one county—San Diego—has routinely provided a disproportionately large share of petition signatures, although it yielded a more proportionate number of signatures in 2006 than it had in the past.

The secretary of state must verify that a petition has obtained the required number of signatures at least 131 days before the next statewide primary, special or general election. All initiatives that qualify for the ballot require a simple majority of those voting on the measure to be enacted. If two measures cover the same subject and provisions are in conflict, the measure that receives the most votes may prevail in its entirety, and none of the provisions of the other proposition, even though not in direct conflict, may go into effect (for more information on current initiative procedures, see Chapter I).

THE SWEEPING IMPACT OF BALLOT INITIATIVES IN CALIFORNIA

Ballot initiatives are increasingly shaping major state policies. Since 1978, California voters have approved 62 initiatives, many enacting sweeping reforms and some drastically curtailing the powers of government itself. For decades now, ballot initiatives have been “the main way to get big things done” in California, says Sacramento political consultant David Townsend (*California Business*, February 1990).

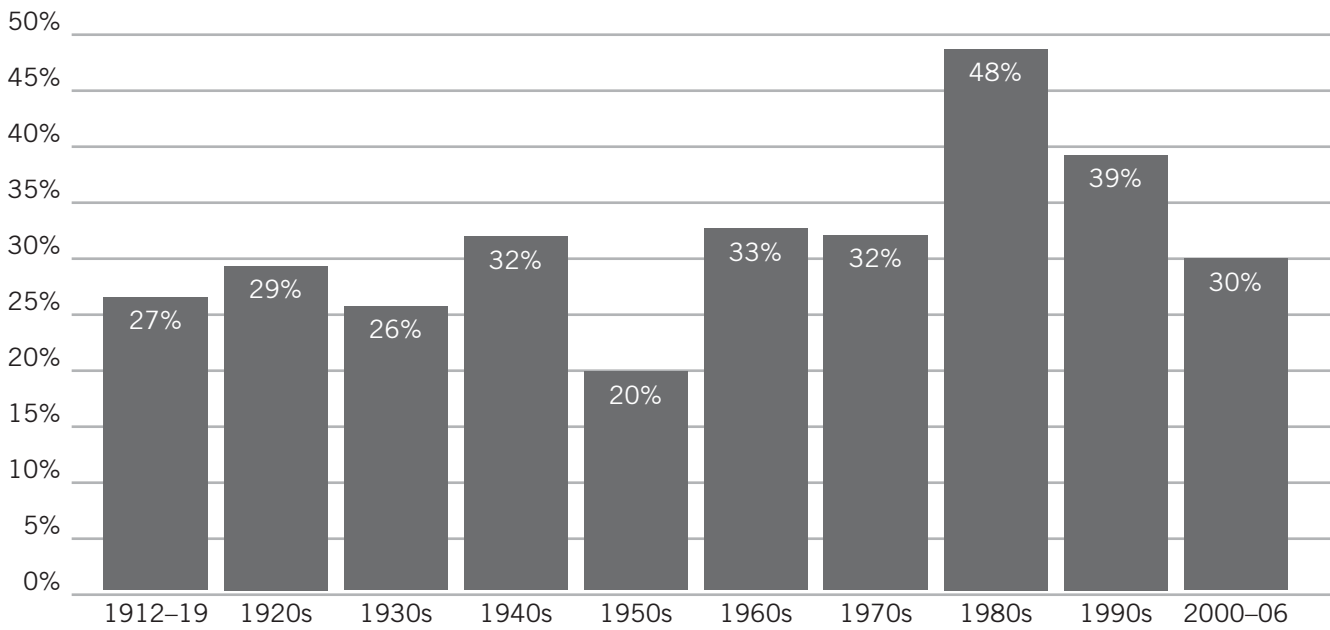
THE NUMBER OF INITIATIVES ON THE CALIFORNIA BALLOT HAS GROWN ENORMOUSLY BUT HAS RECENTLY BEGUN TO TAPER OFF

In the first three decades following adoption of the ballot initiative in California (1911 to 1939), the number of initiatives qualifying for the ballot reached a high of 35 in one decade, then began to diminish to a low of only 9 in the 1960s. From the 1960s to the 1970s, however, the number of qualified ballot initiatives on the ballot more than doubled. Ten initiatives qualified for the June and November 1972 ballots, covering such diverse subjects as property tax relief, marijuana legalization and the death penalty. A total of 22 initiatives qualified during the entire decade.

From the 1970s to the 1980s, the number of initiatives doubled again—perhaps sparked by Proposition 13 (property tax relief), overwhelmingly approved by the voters in 1978. Forty-six initiatives qualified for the ballot (2 were removed by the courts) in the 1980s—more than double the previous decade—and 18 initiatives qualified in each of the 1988 and 1990 election cycles. These numbers have remained fairly high but began to decline in the 2000s (see Table I).

CALIFORNIA VOTERS HAVE RECENTLY BEEN CAUTIOUS ABOUT ADOPTING INITIATIVES

In the 1970s, voters adopted 32% of the 22 initiatives on the ballot (see Table 2). In the 1980s, even though 46 initiatives appeared on the ballot, the voters approved 46% of them—more than were approved in the 1940s through the 1970s combined. The initiative

TABLE 2 Percentage of Balloted Initiatives Approved* (1912 to 2006)

* Calculations include only initiatives that appeared before voters.

Note: Includes special election of 2005, in which all measures on the ballot were voted down.

Source: Center for Governmental Studies data analysis.

approval rate reached its peak in June 1990, when voters approved three of the five initiatives on the ballot for a record adoption rate of 60%.

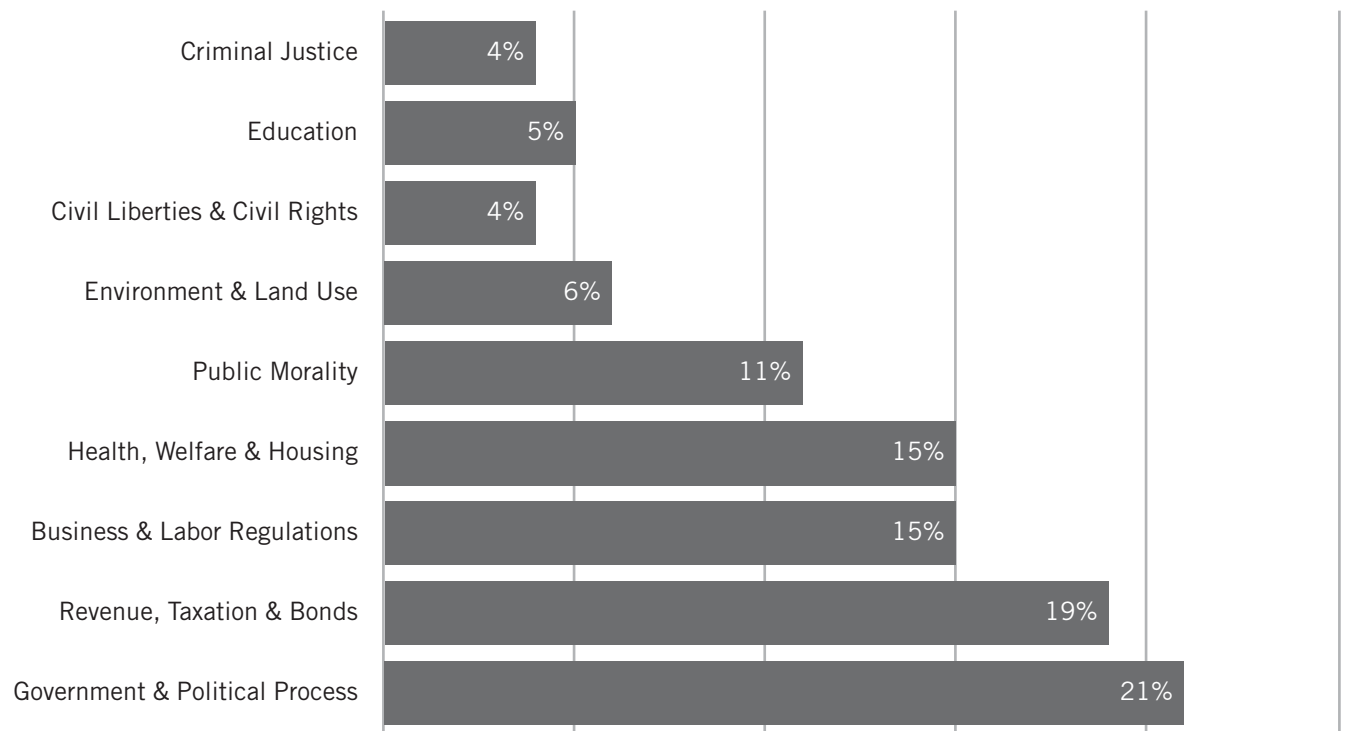
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 The 2000s have seen the lowest overall initiative approval rates since the 1950s—only 30% of 48 initiatives were approved from 2000 through 2006.

This trend has not continued. Voters in November 1990 passed only 3 (23%) of the 13 measures on the ballot. The 2000s have seen the lowest overall initiative approval rates since the 1950s—only 30% of 48 initiatives were approved from 2000 through 2006. Because all eight initiatives on the ballot in the 2005 special election failed, driving down the overall percentage, it is not clear whether initiative approval rates will remain low over the next several years.

Despite the large number of ballot decisions the electorate must often make—voters in some areas have faced as many as 100 separate decisions, including statewide candidates, judges, legislative candidates, county, special district and city candidates and state, county and city ballot measures—voters apparently are not fatigued by long ballots, and their voting does not drop off toward the end of the ballot. In some primary elections, voters have cast even more votes for ballot initiatives, such as Proposition 13 (property tax relief in 1978), than for gubernatorial candidates.

BALLOT INITIATIVES HAVE A MAJOR IMPACT ON THE LIFE OF THE STATE

Since its inception, Californians have used the initiative process to change almost every aspect of California life (see Table 3). Since 2000 alone, ballot initiatives have addressed sex offender sentencing (Proposition 83), water quality (Proposition 84), children's hos-

TABLE 3 Subject Matters of California Initiatives (1912 to 2006)

Source: Center for Governmental Studies data analysis.

pitals (Proposition 61), mental health services (Proposition 63), DNA sampling for certain convicts (Proposition 69), stem cell research (Proposition 71), after school programs (Proposition 49), juvenile crime (Proposition 21), the definition of marriage (Proposition 22), use of private contractors for public works projects (Proposition 35), drug treatment diversion programs (Proposition 36) and school facilities (Proposition 39).

LEGISLATIVE DEADLOCK HAS BEEN A PRINCIPAL CAUSE OF THE GROWTH IN INITIATIVES

Many initiatives can be traced to stalled legislative efforts and governmental inaction. Property tax relief, the most well-known example, languished in the legislature before Howard Jarvis and Paul Gann sought reform with Proposition 13 in 1978. The \$80 million automobile insurance reform battle in 1988, when the voters approved Proposition 103, resulted from the legislature's failure to adopt its own program or forge a compromise between competing consumer, trial lawyer and insurance interests.

The number of initiatives has increased in part because of California's politically divided government—a Republican governor and a Democratic-controlled legislature from 1967 to 1975, from 1983 to 1998 and from November 2003 to the present. Democratic legislation vetoed by a Republican governor has reappeared as ballot initiatives at the polls. Legislation proposed by Republican governors but defeated in

Democratic-controlled legislatures has also qualified for the ballot. Proponents find it easier to obtain a simple majority at the polls than legislative approval, which often requires a two-thirds vote. Without a legislative forum for compromise, interest groups have increasingly battled each other via initiatives.

OFFICEHOLDERS USE THE INITIATIVE PROCESS TO FURTHER THEIR OWN POLITICAL GOALS

Officeholders regularly circumvent the legislative process by sponsoring ballot initiatives themselves. In the November 2005 election, for example, Governor Schwarzenegger called a special election in November of that year to place four initiatives, which the legislature would not pass, on the ballot. Voters soundly rejected the entire package of reforms.

EASY ACCESS TO AN INITIATIVE INDUSTRY HAS STIMULATED THE USE OF BALLOT MEASURES

The emergence of a support industry to qualify and campaign for initiatives has also increased the use of initiatives. For \$1 million to \$2 million, political consultants can qualify almost any initiative. For millions more, they will conduct a vigorous campaign for or against any initiative of their client's choosing. The easy availability of these powerful resources has encouraged many individuals and organizations to promote initiatives and bypass the legislative process altogether.

CRITICAL ISSUES IN THE BALLOT INITIATIVE PROCESS

Ballot initiatives in California suffer from a number of critical problems that distort law and policy in the state. Without reforms, most of these problems will continue to grow.

POORLY DRAFTED INITIATIVES REAP CONFUSION AMONG VOTERS AND COURTS

Initiatives are too often poorly-drafted, ambiguous, vague, overreaching, underinclusive, contradictory and even unconstitutional. These defects cause unexpected interpretations, unforeseen consequences, misleading electoral campaigns, litigation, legislative inaction, judicial invalidation and voter confusion and resentment.

Proposition 13, for example, the 1978 property tax measure, was drafted so poorly that UCLA law professor Donald Hagan charged its authors should be arrested for "drunken drafting" (*Los Angeles Times*, August 11, 1982). The measure contained over 40 ambiguities (according to the governor's office), spawned dozens of court cases and stimulated 16 clarifying ballot measures. Proposition 8, the 1982 "Victims' Bill of Rights," lacked such care in drafting and was so loosely worded as to "defy clear interpretation" (Assembly Committee on Criminal Justice, *Analysis of the Victims' Bill of Rights*, 1982).

Initiatives also contain serious omissions and oversights. Two unsuccessful AIDS initiatives in 1986 and 1988 were so poorly drafted that, had they been enacted, they would not have changed public policy. Two initiatives that passed, one in 1984 and one in 1986,

declared English the state's official language but failed to specify the consequences of that declaration. Their impact has been nominal.

In some cases, complicated initiative wording has confused voters and caused them to vote no instead of yes, defeating measures that otherwise could have won. Poor drafting has also led to invalidation by the courts on statutory or constitutional grounds.

INITIATIVE TEXTS ARE TOO LONG AND TOO COMPLEX

Before 1988, California voters rarely faced excessively long initiatives. Most initiatives in the 1980s contained between 1,000 and 3,000 words. Only two initiatives from 1980 to 1987 exceeded 5,000 words—Proposition 15 (gun control) in 1982, and Proposition 37 (lottery) in 1984.

In the 1988 and 1990 elections, however, voters had to wade through 13 initiatives, each exceeding 5,000 words. Several were longer than 10,000 words, and one (Proposition 131, ethics, campaign finance reform and term limits) was so long at 15,633 words that the attorney general's summary could not include all its provisions. Since 1990, lengthy initiatives have been common. Between 2000 and 2006, 15 of the 46 initiatives on the ballot were over 5,000 words long, and 8 of those exceeded 10,000 words in length.

Ballot measures in recent years have often been inflated because proponents fear legislative tampering and try to close every loophole. Some initiatives add provisions (protecting specific park lands, for example) in exchange for pledges of financial support. Not only do extremely long initiatives have a greater chance of rejection at the polls, but they also undermine voter understanding, damage voter confidence in the initiative process and jeopardize the underlying integrity of the system itself (see generally Chapter 3).

THE INITIATIVE PROCESS IS INFLEXIBLE AND PREVENTS PROPONENTS FROM CORRECTING ERRORS ONCE CIRCULATION BEGINS

Unlike many other states, California requires no formal review of the wording, substance, legality or constitutionality of ballot initiatives before signature circulation begins. Proponents can draft an initiative, circulate it, place it on the ballot and campaign for its successful enactment—all without any mandatory or meaningful public hearing. Moreover, proponents cannot correct their own mistakes or oversights once circulation begins. For tactical reasons, therefore, proponents are forced to deny knowledge of errors or omissions they have discovered after circulation begins (see generally Chapter 3).

THE LEGISLATURE IS DISCOURAGED FROM PARTICIPATING IN THE INITIATIVE PROCESS

The California Constitution designates the legislature as the state's principal policy body. The legislature has access to expert staff, outside consultants, extensive research capabilities, testimony from interested parties and its own accumulated expertise to support its decision making. None of this expertise is applied to ballot initiatives.

Although the legislature must hold public hearings on initiatives that qualify for the ballot, the hearings typically have no useful effect. Neither the legislature nor proponents can amend the text of an initiative following the hearing, even if significant flaws are identified. If the legislature enacts legislation that is comparable or even identical to that

of the initiative, the measure cannot be removed from the ballot. And if the initiative passes, it cannot be amended without another vote of the people.

Many initiative proponents view the legislature as irrelevant or hostile and ignore it altogether. Proponents do not seek legislative advice, and legislators see themselves as powerless to affect initiatives. California law thus virtually eliminates any incentive for legislative involvement in the initiative process (see Chapter 3).

EVEN AFTER ENACTMENT, CALIFORNIA LAW BLOCKS LEGISLATIVE AMENDMENTS

California is the only state that prohibits the legislature from amending initiatives without the proponent’s permission. Unless an initiative specifically allows for legislative amendments, only another ballot measure placed on the ballot and approved by the voters can correct errors or address new concerns—a time-consuming and costly procedure.

A 1922 initiative allowing chiropractors to practice in California, for example, did not allow legislative amendments. Technical changes to the law have required voters to consider eight different chiropractic ballot measures since the first amendment appeared on the ballot in 1948. By contrast, all other states allow their legislatures to amend initiatives after enactment. Some require supermajority votes (up to three-fourths) of their legislatures; some allow simple majority votes after a multiyear waiting period; and some place no limit on legislative amendments at all.

.....
 Unless an initiative specifically allows for legislative amendments, only another ballot measure placed on the ballot and approved by the voters can correct errors or address new concerns—a time-consuming and costly procedure.

In recent years, most statutory initiative proponents in California have voluntarily included language allowing the legislature to make amendments, provided that at least two-thirds of the legislature approves them and the amendments further the purposes and intent of the measure. Of the 42 statutory measures between 1990 and 2006 that qualified for the ballot, 33 (or 79%) had language authorizing amendments. Many proponents permit legislative amendments because they know that all initiatives sooner or later will need modification, no matter how well-drafted they are.

The California Legislature has generally been respectful of initiatives, not amending them without the tacit approval of proponents. The 1974 Political Reform Act (Proposition 9), for example, permitted legislative amendments, and the legislature has since amended it over 200 times without significant public objection. However, legislative amendments to some other initiatives have been challenged by proponents who claimed that the legislature’s changes did not further the purposes and intent of the initiative in question (see Chapter 3).

QUALIFICATION BY SIGNATURE PETITION IS TOO EASY WITH MONEY AND TOO DIFFICULT WITHOUT

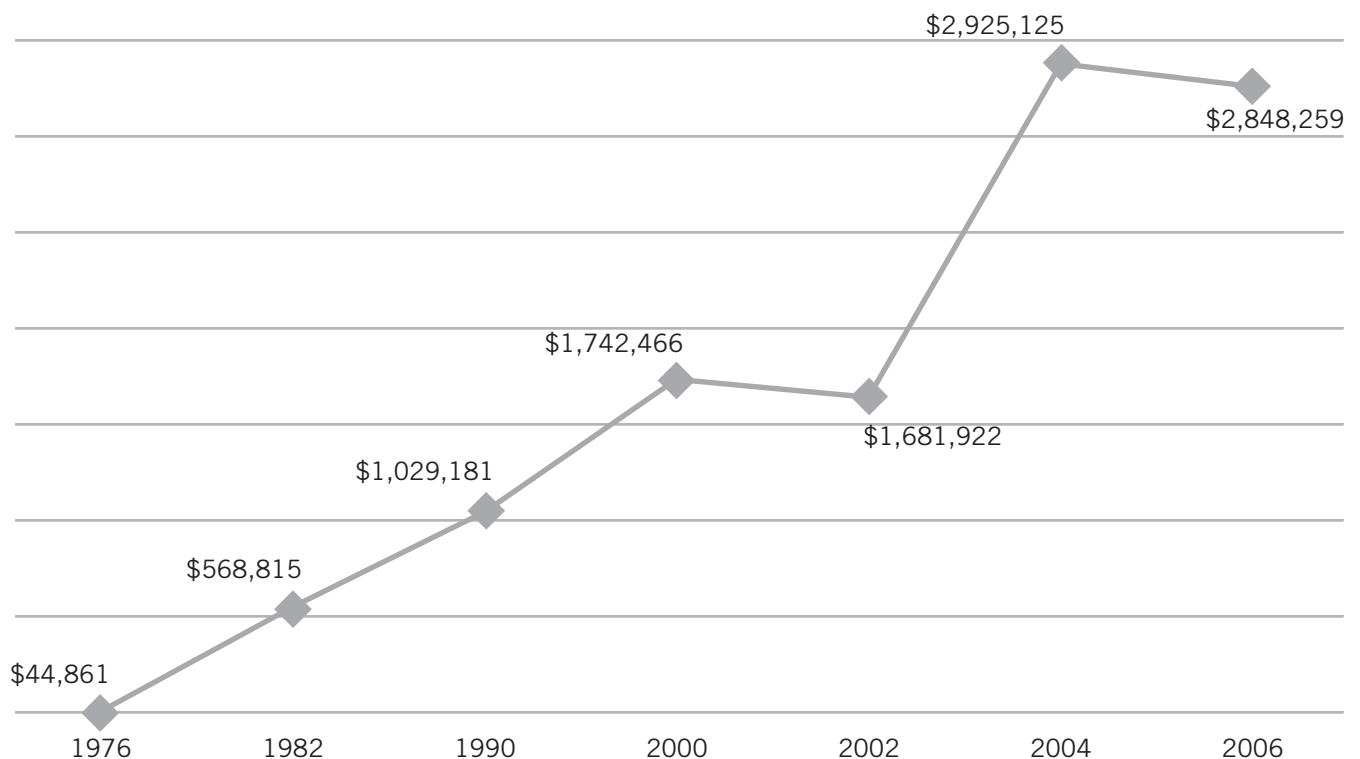
Every initiative state requires proponents to gather enough signatures to demonstrate the measure’s popular support. In California, proponents must obtain valid petition signatures from 433,971 registered voters to place a statutory change on the ballot and signatures from 694,354 registered voters to put a constitutional amendment on the ballot (as of 2008). Although California qualifies more initiatives for the ballot than any other

state, it only allows 150 days in which to collect the necessary signatures, the third-shortest circulation period of any state. Only Oklahoma (90 days) and Massachusetts (90 days plus 30 days after legislative consideration) impose shorter time periods, and these states require far fewer signatures for qualification than does California.

The architects of the initiative process assumed that volunteers and grassroots organizations would circulate petitions, explain measures to potential signatories and obtain signatures backed by thoughtful consent. Today, however, petition circulation has become so professionalized and dependent on financial resources that it is difficult to defend it as a true test of popular support. Now that virtually any initiative can be qualified if the backer has enough money to hire paid circulators, signature collection has become an antiquated measure of broad public support. Although a few states have tried to prohibit the use of paid signature gatherers, the U.S. Supreme Court has deemed these efforts unconstitutional.

In 1976, the median initiative qualification cost was about \$45,000. By 1990, the median cost had exploded to more than \$1 million and in 2004 and 2006, the median cost tripled to nearly \$3 million (see Table 4). Money, rather than breadth or intensity of popular support, has become the primary threshold for determining ballot qualification in most instances.

TABLE 4 Rising Initiative Qualification Costs Median Petition Circulation Expenditures for California Initiatives (by Select Election Year, 1976 to 2006)



Source: Center for Governmental Studies data analysis.

California's 150-day circulation period is sufficient for those who have money—one initiative qualified in 28 days at a cost of several million dollars—but it is far too short for volunteer circulation drives. A successful all-volunteer petition drive has not been waged in California since 1982 (see Chapter 4 for further discussion of petition circulation).

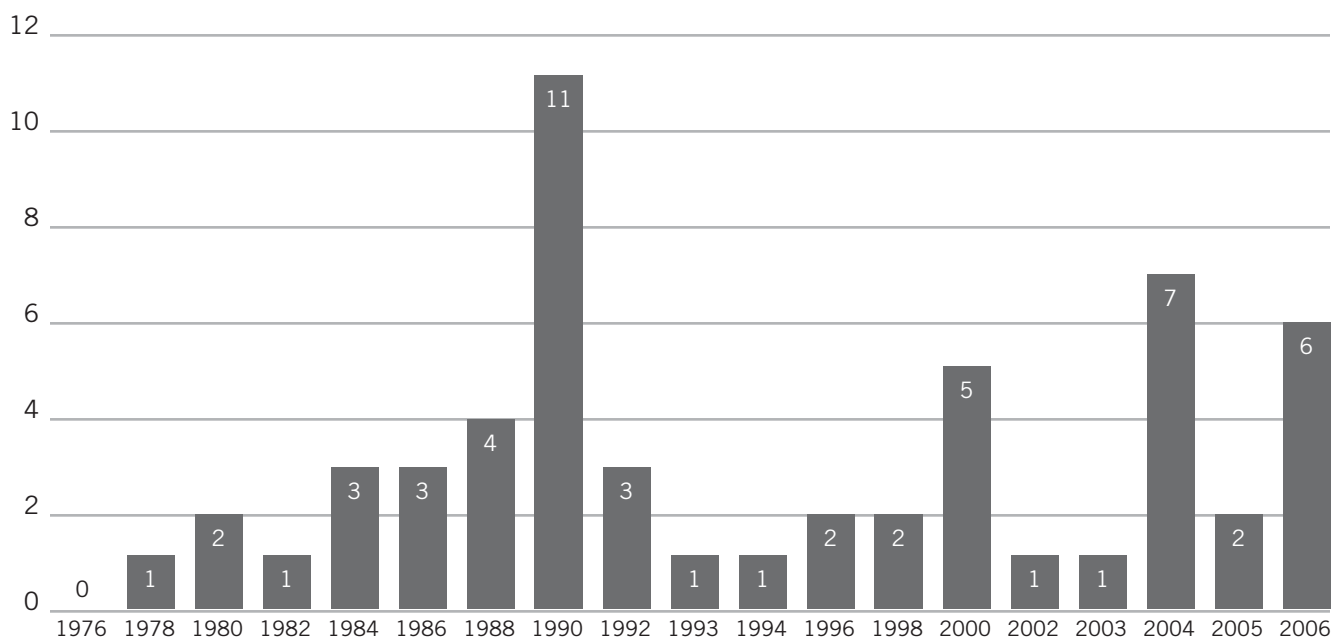
INITIATIVES AMEND THE STATE CONSTITUTION TOO OFTEN

California allows citizen initiatives to amend both state statutes and the state constitution. Each requires a simple majority vote for approval, although initiative constitutional amendments require more signatures to qualify for the ballot.

Constitutional initiatives have historically been far fewer in number and harder to pass, but elections in the past 25 years have seen a sharp reversal in this trend. In 1990, for the first time in California history, initiative constitutional amendments outnumbered initiative statutory amendments on the ballot, 11 to 7. Although 1990 proved to be an aberration, constitutional initiatives have remained frequent since then (see Table 5). Most recently, they accounted for six of the nine measures on the primary and general ballots in 2006.

The heavy use of constitutional initiatives is troubling. Because constitutional amendments are more costly to place on the ballot than statutory amendments and cannot be changed without further constitutional initiatives, the resulting constitutional amendments are more permanent—in some instances enshrining ill-considered policies into state law and filling the constitution with language that requires another vote by the people for even the smallest amendment (see Chapter 5 for further discussion of constitutional amendments and revisions).

TABLE 5 Number of Constitutional Initiatives on the California Ballot (1978–2006)



Source: Center for Governmental Studies data analysis.

**BALLOT PAMPHLETS AND THE SECRETARY OF STATE'S WEBSITE
ARE IMPORTANT SOURCES OF VOTER INFORMATION BUT DO NOT
COMMUNICATE THAT INFORMATION EFFECTIVELY**

California law requires the secretary of state to mail a detailed ballot pamphlet to the home of every registered voter over a month before each election. For each measure, the ballot pamphlet contains a title and summary prepared by the attorney general, an analysis of fiscal impact prepared by the legislative analyst, pro and con arguments submitted by the proponents and opponents, rebuttals to those arguments and the text of the measure. It does not list key endorsers or opponents, positions of legislators or groupings of legislators by political party affiliation. It is not available in video on demand formats.

In a November 2006 Public Policy Institute of California (PPIC) survey, 42% of respondents found the official voter information guide as the most helpful source of information available. Improving the ballot pamphlet further would allow the state to reach even more voters with accurate and understandable information (see Chapter 6 for further discussion of voter information).

ONE-SIDED AND DECEPTIVE MEDIA CAMPAIGNS DISTORT ELECTION OUTCOMES

Voters have fewer sources of objective information available to them in initiative campaigns than in candidate campaigns. Initiatives lack the voting cues associated with political candidates—such as party affiliations, personality traits, incumbents' records and candidates' personal histories. Initiatives are thus often more difficult to comprehend than candidates.

Initiative voters depend heavily on television advertising. The tendency of campaigns to use misleading advertising is exacerbated by unbalanced campaign spending. Many campaigns use deceptive advertising simply because they can get away with it—the other side is unable to finance adequate rebuttals. This may be why, in 40% of cases the PPIC studied in California from 1996 to 2006, public opinion reversed from yes before election day to no on election day. Long ballots, counter-initiatives and voter skepticism also contribute to initiative defeats.

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.....

Slate mailers are another potent source of voter information. But instead of allowing like-minded groups to inform voters of initiatives that align with their own political philosophy, slate mailers sell endorsements to the highest bidder or give free endorsements to popular candidates with or without their knowledge in order to reap a benefit from their association. One "Democratic

Voter Guide," for example, endorsed Republican candidates running in nonpartisan races who were prepared to pay more for their inclusion than their Democratic opponents. Many mailers mislead voters by deliberately appearing to represent official party endorsements when they do not.

Endorsements by political and community leaders have a considerable impact on election outcomes—particularly when initiatives are difficult to understand, objective information is inadequate or choices are complicated by unbalanced campaign advertising. Newspaper editorial endorsements, in contrast, appear to have less effect. They are persuasive when the voters have few other sources of information but ineffective on controversial measures in which the voters are keenly interested and have already formed strong opinions.

The broadcast news media are a minor source of voter information. Broadcasters believe that a thorough, substantive discussion of most measures is not saleable to a public thought to be more interested in lighter stories, and ballot measures are not given high priority as newsworthy stories. The practice of using truth boxes to analyze the accuracy of television campaign advertisements could begin to check misleading advertisements if it becomes more widespread.

The Internet is creating new sources of voter information in addition to more traditional media. Blogs, podcasts, viral videos (such as those on YouTube.com) and online communities have changed the world of voter information. These technologies have created new spaces where analyses and opinions about ballot measures and other political issues can be published without first being mediated or filtered by editors or campaign managers (see Chapter 7 for further discussion of news coverage and paid advertising).

LARGE CONTRIBUTIONS AND HIGH SPENDING DOMINATE ELECTIONS

In 1911, frustrated by the spectacle of wealthy special interests using money to bribe legislators and influence legislation, California citizens enacted the initiative process to bypass altogether the legislature and its moneyed contributors. Today, 97 years later, money often dominates the initiative process even more than it does the legislative process. In some election cycles, proponents and opponents now spend more to influence the electorate to vote on initiatives than lobbyists spend to influence legislators to vote on bills. California's initiative process has become a costly battleground, besieged by sophisticated and expensive media weaponry. Provided in sufficient quantities, money can qualify, and frequently defeat, any ballot measure.

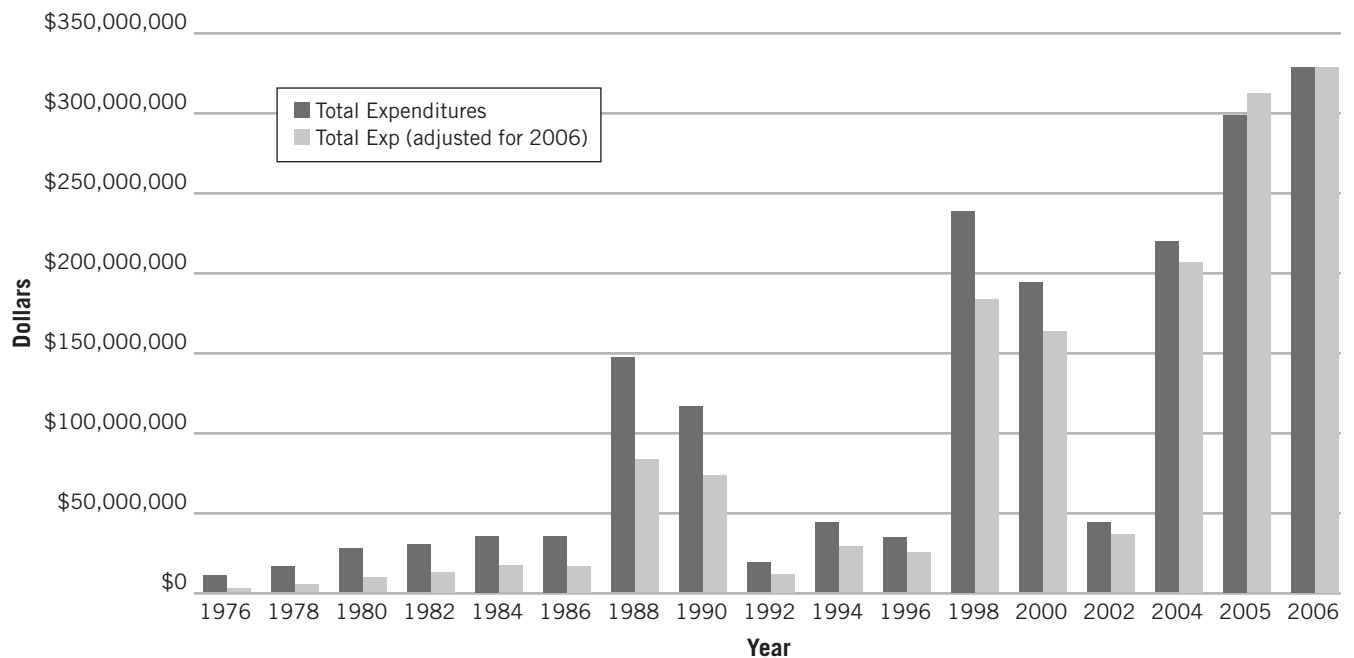
Large contributions to initiative campaigns are growing. In 1990, two-thirds of all contributions came in amounts of \$100,000 or more, and one-third came in amounts of \$1 million or more. By 2006, two-thirds of all contributions came in amounts of *\$1 million or more*. One individual contributor, Steven Bing, gave over \$48 million to support one initiative.

Effective campaigns for or against ballot measures can easily cost tens of millions of dollars, and some have reached \$100 million on one side alone. Since 1956, the 14 most expensive campaigns for and against initiatives in California have spent a combined total of \$955 million. The most expensive ballot measure campaign in U.S. history occurred when Hollywood producer Steven Bing financed Proposition 87, an unsuccessful alternative energy initiative on the November 2006 ballot. Oil companies squared off against Bing, environmental and consumer groups in a \$154 million battle (see Table 6).

Ballot access today is less a drive for broad-based citizen support than an exercise in fund-raising strength. Volunteer signature gatherers have largely given way to legions of expensive paid circulators. Professional signature-gathering firms regularly and single-handedly qualify initiatives (see Chapter 4 and Chapter 8 for further discussion of circulation and campaign spending).

Campaigns were once waged in precincts using volunteers and low-cost media; today they rely almost exclusively on paid consultants, media buyers and expensive broadcast advertising. The explosive growth in campaign expenditures has distorted the information

.....
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 broad-based citizen
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 raising strength.

TABLE 6 Total Spending in California Ballot Initiative Campaigns (1976–2006)

Source: A complete description of the methodology for compiling this data are available on file with the Center for Governmental Studies.

available to the voters. Opponents have far outspent underfunded initiative proponents in many campaigns by approximately 20 to 1, and one ballot measure contest witnessed broadcast advertising differentials of 400 to 1. The Federal Communications Commission has unwisely repealed the fairness doctrine for ballot measures, leaving the underfunded side with no ability to balance distorted messages from the opposing side (for a full discussion of the impact of money on initiative campaigns, see Chapter 8).

COURT DECISIONS INVALIDATE POPULARLY ENACTED INITIATIVES

Opponents of a successful measure often ask the courts to invalidate initiatives on constitutional or statutory grounds. Although the courts have shown considerable deference to the initiative process, from 1964 to 2007 they completely overturned 9 of 65 initiatives approved by California voters and partially overturned another 11 (see Chapter 9, Table 9.1 for a list of ballot initiatives that the courts have partially invalidated). Of the initiatives approved by the electorate since 1964, 68% have either survived court challenges altogether or not been challenged at all.

Some rulings in the early 1990s suggested a greater willingness by the courts to invalidate popularly enacted initiatives, but to this day, the courts have maintained their traditional respect for voter-approved initiatives. Nevertheless, the California Supreme Court has ruled that, in cases when two competing initiatives conflict significantly with each other, only one initiative may be enacted, while the other must be invalidated in its entirety. Under the court's ruling, an initiative can receive a majority vote and still be overturned if a

conflicting initiative receives more votes—even though voters may have wanted provisions of both to go into effect, may not have been aware of the conflict in provisions and may not have understood that a conflict between provisions would invalidate one of the measures in its entirety (see Chapter 9 for a detailed discussion of the role of the courts).

THE NEED TO RETAIN AND IMPROVE THE BALLOT INITIATIVE PROCESS

Californians cherish the initiative process and trust it three times more than they trust the legislature. They now turn almost instinctively to the initiative process to address almost any problem, without first seeking a legislative solution.

PROBLEMS THAT TRIGGERED THE CREATION OF CALIFORNIA'S INITIATIVE PROCESS STILL EXIST

In a perfect or near-perfect system of representative democracy, ballot initiatives would be unnecessary. Elected officials would be closely attuned to the public's needs and desires, voters would be well informed on the issues of the day and legislators would be open to arguments on their merits. Government would respond appropriately to public needs, temper rashness with deliberation and accommodate legitimate desires for change without the necessity of direct popular votes through ballot initiatives.

But today such a legislative system does not exist in California or in any other state—if it ever did. The financial demands of elected office force candidates and officeholders to raise ever-increasing sums of money from special interests, leaving them susceptible to pressure and influence. The desire of incumbents for reelection has made them reluctant to develop controversial new policy initiatives. The complexity of governmental issues, together with the need of many officials to shape or control the spin of media information, has left many voters without the ability to review critically the records of officeholders at election time.

The root causes of these problems have not disappeared, and some have intensified. For a detailed discussion of one such problem, see an earlier Center for Governmental Studies (CGS) report, *In the Dead of the Night: How Midnight Legislation Weakened California's Campaign Finance Laws, and How to Strengthen Them* (2006). Until such problems are resolved, the need for the initiative process will remain (see Chapter 2).

THE PUBLIC SUPPORTS RETENTION AND IMPROVEMENT OF THE INITIATIVE PROCESS

Californians clearly wish to keep their right to decide public policy through the initiative process, although they acknowledge that the process needs reform. Today, 80% of the voting public holds a favorable view of the initiative process according to a June 2006 CGS-sponsored survey (conducted by Fairbanks, Maslin, Maullin & Associates and Winner & Associates). In addition, voters have rarely passed an initiative that they have lived to regret—for example, Proposition 13 would probably pass by a higher margin today than it did in 1978.

At the same time, most voters agree that the initiative process has some serious problems. The 2006 CGS survey indicates that only 12% of California voters feel very satisfied with the way the state's ballot initiative process is working, and an overwhelming majority—73%—feel that special interests, especially well-funded ones, too easily manipulate the initiative process. Moreover, 66% find the ballot wording for initiatives complicated and confusing; 58% feel that initiatives often result in vague, ambiguous or contradictory laws; and 57% think there are too many propositions on the ballot. Voters also complain about misleading television advertising and want greater disclosure of financial contributors in initiative advertising. A full 69% want contribution limits on donations to campaigns (see Chapter 2). The time is clearly ripe to consider thoughtful and responsible modifications to California's initiative process.

THE INITIATIVE PROCESS NEEDS COMPREHENSIVE IMPROVEMENTS

Some Californians argue that the initiative process should be preserved as an essential part of California's democratic tradition and a necessary check against legislative inaction. Others are concerned that the initiative process causes the state considerable harm and damages the more representative branches of government.

..... This report recommends a package of reforms. It concludes that California's initiative process should be retained but significantly modernized. Although the ballot initiative system has become significantly outmoded, its elimination is neither feasible nor desirable. The public would quickly reject the elimination of a right that it views as fundamental. Moreover, the initiative's check on potential abuses of governmental power should not be eliminated while the need for that safeguard remains.

..... Ninety-seven years have passed since California first adopted the initiative process. During this time, Californians have seen the emergence of radio and television advertising, paid petition circulators, demographically targeted slate mailers, computers, the Internet, websites, blogs, video-on-demand, professional campaign managers, modern fund-raising techniques and a growing industry of specialists who will write, circulate, qualify and campaign for any initiative—if paid a suitably high price. Comprehensive reforms are necessary to update the initiative process and enable it to deal with the political exigencies of a more complex age.

SUMMARY OF RECOMMENDATIONS

This book is the second edition of *Democracy by Initiative*, first published in 1992 by CGS on behalf of the California Commission on Campaign Financing (see Appendix E for a list of commission members). In updating the findings and recommendations in this report, CGS staff interviewed initiative proponents, circulators, campaign consultants, business leaders, academics, legislators and many other expert observers of the initiative process. Staff carefully researched the history of California's ballot initiative over the past

97 years and analyzed the laws of the District of Columbia and the 24 states that use the initiative process. Staff compiled and analyzed extensive sets of data on initiative campaign spending from 1992 through 2006, and it researched all the available scholarly, legal and current literature analyzing the initiative process.

CGS believes that significant, long-term and sweeping improvements must be made to California's initiative process. The full package of recommendations in this report involves modifications to the processes of initiative drafting, circulation, public and legislative review, voting, dissemination of voter information, campaign financing and judicial review. Although some of the recommendations can be adopted individually, true reform will benefit from their adoption as a package.

A detailed discussion of the recommendations appears in Chapters 3 through 9; a summary of recommendations appears in Appendix A; legislative language for enacting the recommendations appears in Appendix B; and a time line of the initiative process under the recommendations in this report appears in Appendix C.

I. THE LEGISLATURE SHOULD HOLD A MANDATORY PUBLIC HEARING ON EACH INITIATIVE AFTER THE RAW COUNT OF SIGNATURES EXCEEDS 100% OF THE QUALIFICATION THRESHOLD

A 30-day public comment period should begin the day after the secretary of state determines that the raw count (before certification) of signatures submitted exceeds 100 percent of the required threshold. The legislature should be required to conduct a public hearing on each initiative during this period within 20 days after the secretary of state certifies the raw count. The hearing will take place a little less than a month after proponents submit petition signatures to the county officials, giving the legislature ample time to prepare for the hearing. Hearings can be conducted by each house separately or by a joint senate-assembly committee.

A mandatory public hearing will air issues that proponents might wish to address through legislative negotiations or subsequent amendments (see below). It will involve the legislature in the initiative process, encourage it to consider compromises and allow it to adopt original or amended initiative proposals as legislation. It will alert the public and the press that an initiative is likely to appear on the ballot, giving them the opportunity to begin early discussions of the initiative. This potential for amendability or legislative enactment will make the legislative hearing a critical component in an improved initiative process (for further discussion of this recommendation, see Chapter 3).

2. THE LEGISLATIVE ANALYST SHOULD PREPARE AN EARLY IMPARTIAL ANALYSIS OF EACH INITIATIVE

The legislative analyst should prepare an impartial analysis of each ballot measure and release it publicly within 20 days after counties submit petition signatures to the secretary of state for verification, unless the secretary of state notifies the legislative analyst that the ballot measure in question is certain not to qualify. The legislative analyst currently releases an analysis 30 days after a measure *qualifies* for the ballot.

The earlier release of this analysis will increase the opportunity for public discussion of initiatives on the ballot, allowing the electorate to become more responsible custodians of

the initiative process. The analysis could be used in the legislative hearing, voters would have more time to evaluate each measure for themselves, and grassroots organizations would have more time to disseminate their own assessments of how each initiative would affect their members and the public (for further discussion of this recommendation, see Chapter 3).

3. PROPONENTS SHOULD BE ALLOWED TO NEGOTIATE WITH THE LEGISLATURE AND WITHDRAW THEIR INITIATIVE IF THE LEGISLATURE ADOPTS IT OR ACCEPTABLE COMPROMISE LEGISLATION

Proponents should be allowed to withdraw their initiative from the ballot if the legislature enacts an acceptable version of their proposal. They should also be allowed to make limited modifications to their initiative immediately after the legislative hearing if they do place their measure on the ballot.

During the public comment period, proponents will thus have the opportunity to negotiate changes with the legislature and take one of three actions: (1) withdraw the initiative from the ballot if the legislature enacts and the governor signs the original or an amended version acceptable to proponents; (2) condition withdrawal of the initiative on the provision in new law that future legislative amendments must be approved by up to a two-thirds majority, be consistent with the law's purposes and intent and be printed and circulated three days before the legislative vote; or (3) place the original or a proponent-amended (see below) version of the initiative on the ballot if the legislature does not enact an acceptable version, so long as the changes are consistent with the initiative's original purposes and intent.

This process would encourage proponents to engage the legislature in shaping initiatives, take advantage of legislative expertise and experience, improve ill-considered proposals, simplify the ballot and, most importantly, tie the legislative and initiative processes together to produce more constructive political compromises (see Chapter 3 for further discussion of this recommendation).

4. PROPONENTS SHOULD BE ALLOWED TO AMEND THEIR INITIATIVE BEFORE IT GOES ON THE BALLOT

If a legislative compromise is unobtainable, proponents should be able to place either their original initiative or an amended version of that initiative on the ballot after the 30-day public comment period. Any amendments to their original proposal must be submitted in writing to the attorney general within seven days after the 30-day period. The attorney general must then issue a written determination within seven days of receipt stating whether the amendments comply with the initiative's original purposes and intent. Proponents should then have seven days to modify their amendments to comply with the attorney general's ruling or seek final review in the Sacramento County Superior Court. The court should have seven days to complete any further reviews.

Proponent amendability is important to any reform effort. It will allow proponents to correct errors or omissions in the texts of their initiatives before they appear on the ballot. It will encourage the legislature to take its hearings seriously. Most importantly, it will allow proponents to remove defects from initiatives that might otherwise become enshrined into law. Proponent amendability is thus another way to help the initiative process become a more responsible branch of government.

Proponent amendability will leave proponents with complete control over their initiatives. If proponents accept substitute legislation, that legislation will still have to meet the purposes and intent of the original initiative. Proponent amendments or legislative compromises will thus remain loyal to the general intent of ballot measure signatories, who rarely read initiative texts but, in signing, endorse the general purposes of initiatives and view proponents as representing these interests. Review by the attorney general and the court will provide safeguards to ensure that amendments serve the initiative's original purposes and intent (for further discussion of this recommendation, see Chapter 3).

5. THE LEGISLATURE SHOULD BE ALLOWED TO AMEND ANY INITIATIVE AFTER ENACTMENT BY A TWO-THIRDS SUPERMAJORITY VOTE

California is the only state that prevents its legislature from amending an initiative after enactment unless a measure specifically permits it. The legislature should be able to amend initiatives to correct errors, resolve ambiguities and address unforeseen contingencies. At the same time, the legislature should not be given carte blanche to repeal or drastically alter initiatives.

This report recommends that the legislature be allowed to amend any initiative after its enactment, so long as the change is approved by a two-thirds vote of both legislative houses and is consistent with the measure's original purposes and intent. Any proposed amendment must be in print at least ten days before final passage to permit public inspection.

This recommendation adds flexibility to the law and permits elected representatives to respond to changing conditions. The principal objection comes from proponents who worry that the legislature will gut or undermine their initiatives. The three safeguards attached to this proposal—the two-thirds supermajority, the purposes and intent requirement and the requirement that legislation be in print for ten days—will adequately prevent legislative abuse (for further discussion of this recommendation, see Chapter 3).

6. THE SECRETARY OF STATE'S AND LEGISLATIVE COUNSEL'S OFFICES SHOULD PUBLICIZE THE DRAFTING ASSISTANCE THEY CAN PROVIDE

The secretary of state's office should be required to publicize the drafting assistance it and the legislative counsel's offices are legally required to provide during the initiative drafting process. This information should be placed in the *Statewide Ballot Initiative Handbook* and other materials made available to initiative proponents.

A review of an initiative's language for form and clarity would improve the quality of statutory and constitutional language put in place by initiatives. More proponents would likely take advantage of this assistance if it were made known to them (for further discussion of this recommendation, see Chapter 3).

7. THE CIRCULATION PERIOD SHOULD BE LENGTHENED

The circulation period should be lengthened from 150 to 365 days. Although paid circulators find it easy to qualify measures in 150 days, proponents relying on volunteers, particularly for constitutional amendments that require additional signatures, find the 150-day period is too brief. Extending the circulation period would place citizen pro-

ponents, who must rely on volunteer circulators, on a somewhat more level playing field with well-financed proponents, who can pay for professional circulators (see Chapter 4 for further discussion of this recommendation).

8. SOME CIRCULATION AND QUALIFICATION REQUIREMENTS SHOULD BE EASED, OTHERS TIGHTENED

The principal problem plaguing the initiative circulation and qualification process is that any proponent with a million or more dollars can qualify virtually any initiative by hiring paid circulators. This allows well-financed proponents to circumvent the screening mechanisms designed by the drafters of the initiative process to ensure that initiatives reach the ballot with broad public support.

The U.S. Supreme Court has invalidated restrictions on the use of paid circulators on First Amendment grounds, but other improvements can and should be made to the circulation process:

- *Internet Petition Access.* The secretary of state's office should make all initiative petitions in circulation available online and allow voters to download and print them for signature and submission by mail.
- *Disclosures.* Signature petitions should list the secretary of state's Website address and include a prominent notice at the top and in bold type that voters can find information about the measure's major contributors on that website. Publicizing where financial disclosures can be found will increase the likelihood that voters will use this important information.
- *Additional Statements.* Within 30 days after the attorney general titles and summarizes an initiative, proponents should be required to file an additional disclosure statement listing contributions received and expenditures made up to seven days before the filing.
- *Notice of Later Amendments.* Signature petitions should disclose that the proponent may later amend the initiative so long as the amendments are consistent with the initiative's original purposes and intent.
- *Signature Verification.* Random sample signature verification procedures by the counties should be simplified. Initiatives should qualify if the random sample verification of signatures indicates that proponents have gathered at least 105% (currently 110%) of the valid signatures needed for qualification. No county should be required to verify more than 1,500 signatures. This sample size is more than adequate to provide accuracy and will ease the financial burden on counties and speed up the verification process.
- *Online Circulation and Other Alternative Methods.* Alternatives to the current signature-gathering method for qualifying initiatives should be carefully studied and debated. Methods less dependent on financial resources should be considered, particularly using the Internet to gather signatures and either supplementing or supplanting circulation with public opinion polls (for further discussion of initiative qualification techniques, see Chapter 4).

9. STATE CONSTITUTIONAL REVISION PROCEDURES SHOULD BE AUGMENTED

In California, initiatives can amend both state statutes and the state constitution. Although constitutional amendments must pass a higher signature threshold for qualification—8% for constitutional amendments as opposed to 5% for statutory amendments—the higher threshold is no longer a significant impediment to well-financed special interest groups. Moreover, constitutional amendments are being used more frequently as part of a counter-initiative strategy to undercut competing statutory initiatives. As a result, the California Constitution is increasingly cluttered with amendments that cannot be changed without further constitutional amendments.

- *Constitutional Revision by Initiative.* Rather than making the constitution more difficult to amend—for example, by raising the vote requirement for constitutional initiatives to 60%—this report recommends easing the state’s constitutional revision process. Citizens should be allowed to circulate and qualify initiatives that *revise* (as well as *amend*) the state constitution. Currently, only the legislature may propose constitutional revisions. The state constitution allows constitutional initiatives to *amend* the constitution but not *revise* it. This approach will increase the number of opportunities for Californians to ensure that the constitution reflects their needs and priorities as a whole without making amendments more difficult. It will also help to streamline the constitution and eventually reduce the need to amend it in the first place.
- *Constitutional Revision Commissions and Constitutional Conventions.* Every 20 years, a constitutional revision commission should be established automatically, and the legislature should vote on whether to place its recommendations on the ballot. Every other 20 years, a constitutional convention should also be held, and its recommendations should be placed on the ballot without legislative review (see Chapter 5 for further discussion of these recommendations).

10. AD HOC SUPERMAJORITY VOTES SHOULD BE DISCOURAGED

No initiative or constitutional amendment (for example, that future taxes cannot be raised or lowered without a two-thirds vote) should be allowed to require future ad hoc supermajority votes for passage unless the measure itself receives at least the same vote as its provisions dictate for future elections, and unless it takes effect the day after the election. Simple majorities should not be permitted to disenfranchise larger future majorities (for further discussion, see Chapter 5).

II. THE SECRETARY OF STATE SHOULD IMPROVE THE DESIGN AND CONTENT OF ITS WEBSITE

The secretary of state’s Website, a key source of independent voter information, should be made more user-friendly. Its navigation and search capabilities should be simplified. Proponents and opponents should be allowed to submit video statements for and against initiatives, and these should appear on the website. The Website should also offer video and audio versions of official voter information; links to organizational supporters, opponents and outside sources of information; and forums for voters to discuss and

share information about ballot initiatives (see Chapter 6 for further discussion of this recommendation).

I2. THE PRESENTATION OF INFORMATION IN THE EXISTING BALLOT PAMPHLET SHOULD BE IMPROVED

This report recommends a number of changes to the ballot pamphlet. Conflicting initiatives should be grouped together in the pamphlet and on the ballot to allow voters to compare them more easily, and the attorney general should place an advisory notice in ballot pamphlets and on ballots indicating that only the measure receiving the most votes may go into effect. Proponents and opponents of each measure should be given up to one-half of a page to list the individuals and organizations endorsing their cause. Proponents and opponents should be encouraged to include charts and graphs in their ballot pamphlet arguments. The cover of the official voter information guide should notify voters that the information in the pamphlet can also be found online in seven different languages. All content should adhere to a 12th-grade readability standard (see Chapter 6 for further discussion of recommendations for improving voter information).

I3. VOTERS SHOULD BE ABLE TO CHOOSE WHETHER TO RECEIVE THE BALLOT PAMPHLET VIA E-MAIL INSTEAD OF MAIL

The ballot pamphlet is an important source of election information for voters, but it does not arrive on time for many absentee voters and costs the state significant millions of dollars to print and distribute. Voters should be able to opt to receive their ballot pamphlets by e-mail instead of mail. An electronic version of the pamphlet is always available over a month before hard copies are printed and distributed, and the costs associated with e-mailing it would be far less than the costs of mailing it (see Chapter 6 for further discussion of this recommendation).

I4. THE FCC'S FAIRNESS DOCTRINE SHOULD BE REINSTATED FOR BALLOT MEASURES

In 1992, the Federal Communications Commission repealed the fairness doctrine as it applied to ballot measure campaigns. The doctrine required broadcast stations to cover both sides of ballot measure campaigns. This repeal has resulted in one-sided ballot measure information, allowing the side with the most money to dominate the debate. The federal government should reinstate the fairness doctrine as it applies to ballot measures. This report also encourages the broadcast media to voluntarily apply the fairness doctrine to paid initiative advertising (see Chapter 7 for further discussion of this recommendation).

I5. CONTRIBUTIONS TO BALLOT MEASURE COMMITTEES SHOULD BE LIMITED TO \$100,000 AND CONTRIBUTIONS TO CANDIDATE-CONTROLLED BALLOT MEASURE COMMITTEES TO \$10,000

Campaign financing issues are among the most difficult and troubling in the entire study of ballot initiatives. On the one hand, the effects of huge contributions and heavy one-sided

- *Providing Summaries of Data.* The secretary of state should post at least one preelection and one postelection summary of campaign finance data for each ballot measure campaign (as well as candidate campaigns), detailing how much has been contributed toward and spent on behalf of each measure.
- *Conducting Further Study.* Supreme Court rulings have made it difficult to make other concrete recommendations in this area, but this report urges further study of workable initiative campaign finance reform. The court should be presented with carefully researched data and arguments so that it can consider upholding responsible limitations on certain initiative campaign financing practices. New techniques to redress one-sided advertising campaigns should also be considered (see Chapter 8 for further discussion of these recommendations).

16. MAJOR CAMPAIGN CONTRIBUTORS SHOULD BE DISCLOSED IN MEDIA ADVERTISEMENTS

The integrity of the initiative process depends substantially on the quality and quantity of the information on which the voters base their choices. Because paid broadcast advertising is a dominant source of voter information, the disclosures in these communications should be significantly improved.

Television advertisements should display disclosure information on the bottom one-fourth of the screen in white letters against a black background for the duration of the ad. Also, late contribution reports should tally all contributions by individual contribution sources to facilitate easy identification (see Chapter 8 for further discussion of these recommendations).

17. CALIFORNIA COURTS SHOULD REEVALUATE DECISIONAL RULES FOR INVALIDATING CONFLICTING INITIATIVES

California courts have been understandably respectful of the initiative process and reluctant to overturn successful measures that have received a popular mandate. However, California courts have invalidated initiatives on four grounds:

1. The initiative violated the state's single subject rule.
2. Federal law preempted the initiative in question.
3. The initiative violated the First Amendment.
4. A competing initiative receiving more votes superseded the initiative.

Some critics argue that the courts should tighten the current judicial definition of a "single subject" (by which an initiative is invalidated when its provisions are not reasonably germane to each other) and more aggressively strike down initiatives that appear to address too broad a range of subjects. All proposed alternative definitions, however, have unacceptable difficulties. Consequently, this report does not recommend a change in the current definition. The courts have demonstrated that they can apply the current definition in a manner that is neither too strict nor too tolerant.

spending on ballot initiative qualification and electoral campaigns destabilize and corrupt the democratic process. With enough money, any individual or organization can single-handedly place an initiative on the ballot, and with massive amounts of money anyone can purchase enough negative television advertising to virtually doom any initiative to defeat. Any system of direct democracy that places vital issues before the public for a vote and then significantly determines the outcome on the basis of money is deeply troubling.

On the other hand, potential remedies could have both positive and negative consequences. On the plus side, a high contribution limit of \$100,000 per donor, for example, might prevent single individuals or corporations from buying their way onto the ballot and require them to seek smaller donations from a wider spectrum of supporters. On the negative side, large contributors might circumvent these remedies through independent expenditure groups—spending their money directly on ballot qualification and initiative campaigns without funneling it through ballot measure committees to which limitations might apply.

The U.S. Supreme Court, however, has apparently placed these rational approaches beyond reach. The Court ruled in 1976 that contributions to candidates can be limited to avoid the appearance or actuality of corruption, but expenditures cannot be limited because they are not corrupting. In 1982, the Court invalidated limits on contributions to ballot measure committees, concluding without much analysis that ballot initiatives cannot be corrupted because their texts, unlike the willpower of candidates or elected officials, cannot be pressured or altered.

The recent addition of new members to the Court makes future rulings difficult to predict. Although a majority of the Court may still be willing to allow contribution limits, but not expenditure limits, for *candidates*, it may be unwilling to uphold limits on contributions to *ballot measure committees*. It is possible, however, that some future litigant may establish that very large contributions corrupt the ballot initiative process as well by directly purchasing provisions in a measure or by flooding the electorate with one both side of an issue.

This report proposes several reforms to improve ballot initiative campaign financing practices—some of which are more likely to pass constitutional muster than others, and all of which enjoy strong popular support:

- *Limiting Contributions.* Contributions to ballot measure committees should be limited to \$100,000, and contributions to candidate-controlled ballot measure committees should be limited to \$10,000.
- *Considering Expenditure Limits.* Although limiting expenditures in ballot measure campaigns would probably not survive a constitutional challenge, setting expenditure ceilings at a reasonable level would be one of the strongest single measures to reduce the impact of escalating costs and leveling the playing field in the initiative process.
- *Disclosing More Information.* Ballot measure proponents should be required to disclose their names along with the committee treasurer's name on the committee's statement of organization and first campaign statement, regardless of whether the proponent controls the committee.

The California Supreme Court should return to the earlier definition of the test by which the courts invalidated competing initiatives. Although the state constitution provides that only conflicting *provisions* of competing initiatives receiving fewer votes at the same election should fail, the court has announced it will invalidate entire competing initiatives receiving fewer votes when they are offered as all-or-nothing alternatives or create comprehensive regulatory schemes. This test is at odds with the wording of the state constitution, the approaches of several other states and the undoubted intent of many voters support competing initiatives to enact as many reforms as possible. This test may also encourage greater use of counter-initiatives prepared and promoted for the sole purpose of invalidating a competing initiative should it receive a larger vote. If so, the test will generate more ballot confusion and work for the courts (see Chapter 9 for further discussion of these recommendations).

IMPLEMENTING THE PROPOSALS IN THIS REPORT

Enacting any reforms to California's ballot initiative process will not be easy. After 97 often turbulent years, the initiative process has acquired semi-sacrosanct status. Many of its defenders argue that it is inviolate and should not be touched. Even some opponents resist suggesting reforms for fear they will be branded as "enemies of the people."

Yet most observers recognize that the initiative process can and must be improved, even though they differ over the improvements they believe necessary. The voters still strongly support the initiative process, but they acknowledge at the same time that it has gotten out of control and needs significant changes.

Piecemeal reforms have been suggested, and some have been introduced in the legislature. Such reforms are politically tempting because they create the impression that a single solution can resolve a complex problem. However, the complexity and diversity of the current problems confronting the initiative process require a broader set of reforms.

Those with a vested interest in the status quo, those who feel the recommendations in this report go too far and those who feel they do not go far enough—all may resist change. To anticipate these concerns, this report has carefully devised a comprehensive package of reforms. Presented individually, this report's recommendations might be perceived as one-sided or divisive. Taken as a whole, however, they can be implemented without tilting significantly in favor of either supporters or opponents of the initiative process.

For example, proponents must submit their initiative to scrutiny at a legislative hearing before their measure is placed on the ballot, but they maintain control at all times over the final language of the initiative that appears on the ballot. Proponents will have a significantly longer period to circulate initiative petitions for signatures, but they must provide increased campaign financing disclosure, both during and after the circulation period.

The entire package of recommendations could be adopted by a single, integrated ballot measure, placed on the ballot by the legislature or by an initiative, which would combine both constitutional and statutory amendments. Most of the report's recommendations could be adopted immediately by the legislature or, after circulation of signature petitions, by a direct vote of the people on a statutory ballot initiative. Four of the rec-

ommendations—allowing the legislature by a two-thirds vote to amend initiatives after their enactment, allowing voters to revise the constitution via the initiative process, establishing constitutional revision commissions and conventions and preventing the imposition of future supermajority vote requirements without their adoption by an equal supermajority vote—would require constitutional amendments for enactment.

The comprehensiveness of the reforms addresses criticisms of the initiative process from both its opponents and supporters. Adopting them as a package will enhance the political feasibility of reform. Implementing all the reforms proposed in this report will help the initiative process become a responsible and effective part of California's governance well into the future.

DEMOCRACY BY INITIATIVE:
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