Public Hearing

before

ASSEMBLY STATE GOVERNMENT COMMITTEE

"Establishment of statewide Initiative
and Referendum in New Jersey"

LOCATION: Committee Room 4
Legislative Office Building
Trenton, New Jersey

DATE: April 30, 1992
9:27 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Robert J. Martin, Chairman
Assemblyman John Hartman, Vice-Chairman
Assemblywoman Virginia Haines
Assemblyman John E. Rooney
Assemblyman Byron M. Baer
Assemblyman Bernard F. Kenny, Jr.

ALSO PRESENT:

Donald S. Margeson
Office of Legislative Services
Aide, Assembly State Government Committee

Hearing Recorded and Transcribed by
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New Jersey State Legislature

ASSEMBLY STATE GOVERNMENT COMMITTEE
LEGISLATIVE OFFICE BUILDING, CN-068
TRENTON, NEW JERSEY 08625-0068
(609) 292-9106

COMMITTEE NOTICE

TO: MEMBERS OF THE ASSEMBLY STATE GOVERNMENT COMMITTEE

FROM: ASSEMBLYMAN ROBERT J. MARTIN, CHAIRMAN

SUBJECT: **PUBLIC HEARING** and **COMMITTEE MEETING - April 30, 1992**

The public may address comments and questions to Donald S. Margeson, Committee Aide, or make bill status and scheduling inquiries to Deborah Del Vecchio, Secretary, at (609) 292-9106.

The Assembly State Government Committee will conclude its series of public hearings on the establishment of Statewide initiative and referendum in New Jersey on **Thursday, April 30, 1992 at 9:00 A.M. in Committee Room 4 of the Legislative Office Building, Trenton, New Jersey.** Witnesses will be called upon in the following order: first, persons who signed up to testify prior to or at the April 23 public hearing but have not yet testified; second, those who shall have signed up after the conclusion of the April 23 public hearing and prior to April 30 and have not yet testified; third, those who sign up on the morning of April 30 and have not yet testified; and fourth, time permitting, all persons -- whenever signed up -- who have previously testified.

* * *

Following the conclusion of the public hearing, the committee will hold a regular committee meeting to consider the following bills:

A-1052 Hartmann/Oros	Grants paid leave to State and county employees who participate in certain emergency service organizations.
A-1056 Kelly	Provides that the employer shall pay the employee's cost for the purchase of PERS membership credit under certain circumstances. (A-4924 of 1991)

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ASSEMBLYMAN ROBERT J. MARTIN (Chairman): Good morning. We have five members present, so we will attempt to get started. I already apologized for running a little late.

We had announced that there would be three public hearings on I&R, but because of the interest in this matter and the fact that we didn't get through the list last week -- after the better part of four hours-- Our alternative would have been to stay there, but we thought it might be better for all concerned if we started fresh today. So we will begin. We will proceed with those persons who had signed up last week. We will go through that list, and then, time permitting, we will take people who have already spoken and/or who wish to be heard today for the first time and have filled out one of these white forms.

Before we start, for those who are not familiar, the members of the Committee are: Assemblyman Rooney, Assemblywoman Haines, and Assemblyman Hartmann, to my left. To my right is former State Chair, Byron Baer. With that--

ASSEMBLYMAN ROONEY: I have to leave about 2:30, so if we get near there can we do the bills? I think you are going to need us for the bills you have up for today.

ASSEMBLYMAN MARTIN: I will take it under advisement.

ASSEMBLYMAN ROONEY: You may need my vote.

ASSEMBLYMAN MARTIN: Thanks for that information.

We will begin with the first person on my list, John Tomicki, National Chairman, League of American Families.

J O H N T O M I C K I: Good morning, Mr. Chairman, and members of the Judiciary Committee.

ASSEMBLYMAN MARTIN: This is the State Government Committee.

MR. TOMICKI: Wait a minute; just wait a minute. We started back in 1986 going before the Judiciary Committee, and it seems almost like deja vu--

ASSEMBLYMAN MARTIN: It was State Government back then.

MR. TOMICKI: No, it was State Judiciary, I thought. Okay, shows you how confused we were.

In the interim, a lot has gone on and there has been a great change, I think, in the politics in New Jersey and the way government has been functioning. To say we are glad there are so many bills now sitting in the hopper, not only in this Chamber, but in the other Chamber, would be an understatement. But I think the bill that has the most promise is Assemblyman Franks' bill -- ACR-1. I know there was a lot of work put into it, to try to balance out the problems. But let's say, on behalf of our organization in New Jersey, which has, at this time, over 6000 affiliate members-- Even though it is a national committee, we do have state chapters.

We look at some of the concepts that say, as Witherspoon stated, "A republic once equally poised must either preserve its virtue or lose its liberty." There is a great unrest in the public. As we have seen from the drop-off of voting attendance, as we have seen even in the political primary season, something is happening. The people are looking to their government again, and saying, "Is there a way to rebuild trust and faith?"

I think our system works well. There is a lot of discussion, as we always hear, on I&R. As you read in the press, "Well, it is the heavy-weight lobbyists that are upset, that are concerned, the big-power interest groups." You know, any individual, any group, any organization has the right to come in and talk to its government, because it is a government of "We, the people."

So, never having had the opportunity to travel into a totalitarian society, like I did in the Soviet Union a few years ago-- Those of us who have had that opportunity realize what a privilege it is to be able to just walk through a door, go see an Assemblyman or an Assemblywoman or a State Senator, meet with the Governor, and sit down and talk about things. No

guards at the door; no having to be cleared with clearances, as you do now in the White House when you want to visit with staff. There was a time when you could go in without being examined. So we have a great free and open society.

So, for those of us who do support Initiative and Referendum, we are a little puzzled that there is this concern that maybe the people shouldn't be given that right. I think, as I read all the writings of, whether it be Washington, Madison, Jefferson, Adams, Patrick Henry, George Mason-- Obviously, I have not been doing all that reading for the past six years, but when you delve into that, there's got to be a basic trust with the people.

New Jersey has had the experiences now of watching I&R around the country. That is why we would be opposed to a direct Initiative and Referendum, as they have in other states. That is why this process, initially, also discussed by former Assemblyman and State Senator Zimmer-- The indirect process is a good process. Then when you get down to the percentages, we think the accommodation of, not only going to indirect, but it is good to come to the accommodation of the percentages, as put forth in Assemblyman Franks' bill.

ASSEMBLYMAN MARTIN: It's 8 and 12.

MR. TOMICKI: It's 8 and 12, I know. Assemblyman Kamin-- I think he's got 3 and 5, which we think is far too low. So the 8 and 12 is a good accommodation. But, relative to that, we notice that Senator Scott's bill, which he has introduced in the State Senate, does not allow -- if I read it correctly -- any Initiative and Referendum process to amend the Constitution.

Our organization would not be in support of such legislation that will not allow the people to initiate a constitutional amendment. We think, therefore, that the accommodation that was made, obviously, with some research of 8 and 12, is a good accommodation. The only thing, I think, in

Assemblyman Franks' bill that has not been addressed, is the question of drop-off. I don't know how to deal with that. We looked at it for quite a long time. We don't know how it can be dealt with, or maybe it shouldn't be dealt with, but I don't know whether if in the hearings-- We have not had the opportunity to sit through all the hearings, but has that question of drop-off on the final vote ever been dealt with or addressed?

ASSEMBLYMAN MARTIN: No.

MR. TOMICKI: We have no firm opinion on that. We are a little concerned, but I can't conceive of a situation that would come where a petition requiring the 8 and 12 would not, likewise, engender enough activity that there would be a significant vote in the fall. So it may, therefore, by the practicality of 8 and 12, not have to be addressed.

Again, we think it is the fundamental right, and sometimes the duty, of the people to petition their government for redress of grievances. We think it is an important essential that can be added to the New Jersey Constitution that will rebuild trust and confidence. There is no doubt that some trust and confidence has been lost. Some people say, "Well, if it isn't broke, don't fix it." Is our system of government broken? No, it's not, but it would be a good thing to allow a situation where the people, by these higher numbers, not by the 3 and 5, not by those low numbers, but by the 8 and 12-- It seems to be a fair accommodation in giving the time parameters that would be involved. I think it is about the best approach that can be taken at this time relative to it occurring.

I think our polling indicates that this bill stands a very good chance in the Assembly. I think all of us will then have to turn our energies towards the New Jersey Senate.

I wish to just note for the record that, although I have been very active in public affairs for almost a decade in this State, our membership comes from diverse people of no

particular political persuasion or ideology. They are across-the-board, whether they be liberals or conservatives, Independents or Democrats.

So we think there is good, strong, broad-based support. I do notice, however, that some groups, which have been traditionally together on issues, like the New Jersey Education Association and Right to Choose, are concerned and are opposed to the Initiative and Referendum process. I think that is a pity. I wish they would have more trust in the people. There is a concern among some of the constituents of our organization that they were worried about special interest groups -- narrow-based special interest groups -- abusing the process. I am not concerned about that. I don't think anybody will really be able to fool the people twice.

Thank you so much. I am open to any questions, if you have any.

ASSEMBLYMAN MARTIN: Any questions of Mr. Tomicki? (no response) Thank you, John.

MR. TOMICKI: Thank you very much for the opportunity.

ASSEMBLYMAN MARTIN: Chester Jankowski -- is he here? (no response) Don Lippincott, N.J. Hands '91 -- is he here? (no response) Bob Hoffmeier? (no response) Barbara Tomkievicz -- is she here? (no response) She's around, I'll call her again. She usually makes her presence known. Dave Kehler, President, Public Affairs Research Institute? (affirmative response from audience) After Mr. Kehler will be Peter Furey, New Jersey Farm Bureau.

D A V I D K E H L E R: Mr. Chairman and members of the Committee: My name is Dave Kehler. I am President of the Public Affairs Research Institute of New Jersey. We are a nonprofit organization concerned with New Jersey State and local government, fiscal and administrative issues.

I came to New Jersey in 1986, and prior to that time I lived and worked on the West Coast--

ASSEMBLYMAN MARTIN: I am getting to know the story. (laughter)

MR. KEHLER: --California, Oregon, and Washington. In the course of living and working out there, I had the opportunity to participate in writing two initiatives, and campaigning for and against several others. On the basis of my experience on the West Coast, I am not enthusiastic about the value of the initiative system.

But, I am not here today to have a theoretical discussion of that. I know you have heard a number of speakers talk about a whole range of issues on Initiative and Referendum, and at the end of a long series of hearings, there is something of a jumble of information presented to you.

What I would like to do today is to speak to three issues developed at your last public hearing by speakers where there was really incomplete or insufficient information about initiative practices in other states. Then I would like to conclude by talking about the signature threshold for the qualification of a constitutional amendment for the ballot under ACR-1.

The three areas for discussion from the prior hearing concern: First, the question of intrastate regional issues. Testimony was presented to the Committee that in other states there have been no recent instances in which intrastate regional issues have been addressed by initiatives. That is clearly not true. I have in my handout for you examples of nine initiatives over the years in California designed to reapportion either congressional representation or the state legislature. There has been an increase in the pace of that type of initiative activity in the 1980s, although none of the recent reapportionment initiatives have been approved in that state.

Also in Oklahoma, in the '80s, there was a reapportionment initiative. Perhaps more to the point is a

1990 initiative in Massachusetts -- an indirect initiative state -- approved by the voters, where the system for allocating state aid to municipalities was altered by the initiative, and was altered to enrich the factor formula by population, so that the more populous areas, which in Massachusetts are increasingly suburban, would be getting a greater percentage of the state government municipal aid. It is very clear that across a number of states -- direct and indirect initiative states -- intrastate regional issues are typically addressed by the initiative system.

Second, you heard from someone from a pro choice group toward the end of the last hearing, who talked about her concern and the possibility that initiatives may address abortion rights issues, and, Mr. Chairman, you asked her a question. You asked: "Has there been any experience in other states where an initiative has been passed to restrict abortion rights?" The witness answered, "No," but, in fact, the answer is, "Yes." In 1984, Colorado voters approved an initiative to eliminate -- or prohibit, rather -- state funding of abortions. The manner in which that initiative was decided is instructive on how difficult these questions can be for voters. A poll taken immediately after that Colorado vote found that 10 percent of the people who cast a vote were unclear whether a "Yes" vote was a vote for the pro choice side or for the antiabortion side.

In 1988, some feminists attempted to reverse that in Colorado, and they put another initiative on the ballot to change the Colorado Constitution to provide for state government funding of abortions. That amendment lost overwhelmingly. I have provided you with the text of that question as it appeared on the ballot. It is a very confused wording. This is another instance where it is very-- While we may wish to trust the people, sometimes the manner in which

these questions are put, or the very structure of the initiative question at hand, are confusing. This is the text:

"Shall there be an amendment to repeal Article 5, section 50, of the Colorado Constitution and to provide instead that the state and its agencies, institutions, and political subdivisions shall not prohibit the use of public funds for medical services for a woman solely because of her choice of whether or not to continue her pregnancy." Is a vote yes on that a vote for the pro choice position, or is the vote no for the pro choice position?

ASSEMBLYMAN HARTMANN: Excuse me. Who worded that?

ASSEMBLYMAN ROONEY: The legislature.

MR. KEHLER: Colorado has a direct initiative system. The Secretary of State in Colorado is responsible for doing the wording of the ballot titles. In every bill introduced to effect an initiative system in New Jersey, there has never been provided a process for appeal, where proponents who are dissatisfied with the way in which their ballot title is phrased can challenge that ballot title. Certainly the bills that are currently before the Legislature don't provide that opportunity.

A problem of the initiative system is that officials who are charged with titling the ballot questions and providing summaries, may do so in a way deliberately to confuse the voters because of the political point of view or some other reason that they wish to inhibit the passage of the measure at hand.

ASSEMBLYMAN MARTIN: You know when you testified before Policy and Rules, this was the reason why you thought if we had this there should be some thought given to possibly electing a Secretary of State. But absent that, do you have some recommendation where you could have a question that wasn't colored dramatically to one side or the other, some better fairness process?

MR. KEHLER: Mr. Chairman, all of the bills that have been introduced to effect an initiative system have explicitly said that simple language ought to be used in establishing the ballot title and the explanatory statement. In some instances, that is possible; in other instances, the questions are so complex, that no simplicity could possibly be obtained.

An analysis of the ballot title for California initiatives during the decade of the 1970s, found that in using a commonly used linguistic analysis system, that in order to comprehend the title, the voter would have to have two years of graduate study. That was the reading comprehension level. So, in some instances, no matter how we do it, the issues are so inherently complex that people won't understand it.

What I would suggest in this regard is that one court, possibly the Mercer County Superior Court, be designated as the court to which proponents may appeal, or opponents may appeal, the titling and summary of the ballot question. A system like that is typically in force in West Coast states. Nonetheless, we are going to have problems. If we have an initiative system, because of the kinds of things that typically are done through this system, we are going to have some confusing questions on the ballot in any instance.

ASSEMBLYMAN MARTIN: Mr. Rooney has a question.

ASSEMBLYMAN ROONEY: You know, I believe that, yes, there should be clear questions, but even this question-- Yes, I can read it, and I can understand it, but it doesn't make any difference because of what everybody previous to you who have been anti-I&R have said. It is the issue of the 30-second sound bite. I cannot believe that the National Organization for Women wasn't on the radio hundreds of thousands of times saying, "If you want State-funded abortions, vote no," or, "vote yes," whatever the issue was at that time. The people who are pro life were on the radio at the same time saying-- They were explaining it. Every newspaper prior to an election

posts an entire synopsis of what the issues are and what groups support them.

So I don't believe that the ballot question is a problem. I believe if it is the issue of the 30-second sound bite, the sound bites will tell the people what the vote should be as far as their position.

MR. KEHLER: May I respond to that, sir?

ASSEMBLYMAN ROONEY: Sure.

MR. KEHLER: In the 1988 initiative contests in Colorado, there were eight questions on the ballot. Let's say that the National Organization for Women had a radio campaign that said, "Vote yes for Proposition 7." The voter may have recognized that somewhere or other there was a proposition on the ballot that addressed the abortion issue. But it is a bit of a reach to suppose that in a jumble of advertising for eight propositions on the ballot, with a great deal of cross-advertising for and against all eight of these propositons, that the public could recall all of these things. They may go into the voting booth with the commitment to preserve the woman's right to choose, or, in this case, to win the woman's right to choose, or what have you, but they may not remember whether it is the yes vote or the no vote on this particular proposition, because everyone else is saying, "Vote yes on 3; vote no on 7; vote yes on 2." Consequently, the idea of the cue through advertising is a legitimate one. I think you are making a good point.

But, the vast number of questions on the ballots in some of these states make it impossible for the citizen to remember what the vote is on any particular issue. Consequently--

ASSEMBLYMAN MARTIN: I just want to make two observations: I am pretty clear that the bill at least that I am going to propose to this Committee as a substitute would have a restriction of the number of questions.

Secondly, the 10 percent number that you gave before-- Actually, I am surprised that it isn't higher. If you asked how many people could distinguish my legislative record against my opponent in any given year, I think 10 percent-- I would be astonished if only a limited 10 percent would be able to discern reasonable differences between candidates. Some of that is a problem of just an informed electorate, which I&R, at least in theory, is supposed to help cure by giving them a greater interest in what is happening in State government, as you know.

MR. KEHLER: I would love to respond to both parts of your statement. You are making an excellent point, that the voters in your district probably don't know how you cast a vote on the whole range of issues you face as a member of the Legislature. But they know something about you. They know your name; they know your presence in the community; they know you have been in the Legislature for a long time. They know you have a future in New Jersey, and that you are not likely to jeopardize that future by going in an aberrant course in your service in the Legislature.

They know you personally, possibly, because you have campaigned over a number of years in your district. They probably know something about your background as an educator. They may not know how you cast a vote on any particular bill before the Legislature, but they will know something about you as a person, because we run from districts in New Jersey, and you have been in that district for a number of years.

Your second comment is a really important one, too. The question is: What do people really know? How confident are they about the knowledge that folks bring to the voting booth about these questions? I am going to have to use a California example, Mr. Chairman, because the most extensive polling on voter attitudes toward initiatives comes from California. The source of that is the Field Institute. The

Field Institute Poll regularly asks California voters what they think about initiatives in upcoming elections, and then after the elections they do some post-voting analysis.

In 1990, the Field Institute asked California voters whether they thought they were well-informed or ill-informed about the propositions on the '90 ballot. The result was that 4 percent of the voters thought that they knew sufficient information about all of the questions on the ballot to make reasonable decisions. Seventeen percent thought that they knew a good bit about some of the questions on the ballot. And the remaining 81 percent said that they were very concerned about the lack of information about questions on the ballot.

This goes to Assemblyman Rooney's point: In California, between 1988 and 1990, a quarter of a billion dollars had been spent on initiative advertising, pro and against a variety of questions that appeared on the ballot. So, in the state where there is by far the greatest awareness of initiative issues via advertising, the voters lacked confidence in their ability to discern all of the questions that faced them on the ballot.

Mr. Chairman, your recommendation in legislation that the number of questions be limited in some respect probably would turn upon the issue of who would collect the most signatures. Okay? One of the problems that you might encounter is that opponents of grass-roots initiatives may use paid professional signature gatherers to get large numbers of signatures for initiatives they propose, but don't particularly favor, simply to preempt grass-roots questions from getting on the ballot.

Were I an opponent of a particular-- Speaking as someone who has worked in the initiative world in my West Coast days for a number of years, were I an opponent of a particular initiative that, let's say, you had proposed, I would file five or six initiatives, whatever the threshold would be, on a

variety of questions. I would pay signature gatherers to collect those signatures, and it would obviate the necessity of my fighting your initiative on a ballot campaign. It would be cost-effective for me to do so.

I believe the consequence of your reform, which is a good idea on its face, would be that the grass-roots citizens' initiatives would be completely crowded off the ballot. I know that is not your intent, but speaking as a person who has worked in this vineyard for a long time, the technique I described would be used immediately.

ASSEMBLYMAN MARTIN: Well, I am sure there are various preemption strategies. I will look at that.

MR. KEHLER: I could discuss a number of others at great length, but I know you would like to hear from other witnesses.

I would like to address, very quickly, two other things.

ASSEMBLYMAN BAER: Mr. Chairman, before we go on to other things, I have a question in this area.

ASSEMBLYMAN MARTIN: Go ahead.

ASSEMBLYMAN BAER: Even if one were to hypothesize a limited number of validations and a fairly high level of media material on it, which does not apply, certainly, to every issue-- By the way, aren't there some issues where there is very little media coverage?

MR. KEHLER: Absolutely right, sir.

ASSEMBLYMAN BAER: Isn't there a distinct possibility that you might have a situation where it would be a close call, and even of those who vote in error because of the confusing or misleading way something is worded-- Even if that were only to swing 5 percent from one side to the other, that 10 percent shift would make the difference between passage and nonpassage, and would distort where the majority of the public stood.

MR. KEHLER: You are so right. The Colorado 1984 abortion rights issue, which I mentioned a minute ago, was a very, very narrow margin where the pro choice side lost. That was the one where I mentioned that 10 percent of the voters in the exit poll were confused about whether their yes vote was the pro choice or the antiabortion position.

ASSEMBLYMAN BAER: Do you know, in that particular situation, whether there were any studies or polls conducted around that time with the same proposition worded differently in a way that was not confusing, to see if there was a different result?

MR. KEHLER: I know there was not. But the point I would like to make with regard to that is, citizens and voters are not necessarily the same. The person who spoke before me talked about the issue of voter drop-off. Some people don't cast votes. Although they go to the polls, they don't cast votes on initiative questions because they are confused. So, in confusion, they may pass on them. So, it is theoretically possible. I don't know whether it has ever happened that the confusion has impacted the question by just dissuading people from casting a ballot, thus changing the decision.

ASSEMBLYMAN BAER: What are the states that have I&R procedures with the court appeal process, as I think you are suggesting--

MR. KEHLER: Virtually all of them.

ASSEMBLYMAN BAER: --to eliminate or to reword misleading or--

MR. KEHLER: Virtually all of them.

ASSEMBLYMAN BAER: Virtually all of them--

MR. KEHLER: Sure.

ASSEMBLYMAN BAER: --but that is not contained in--

MR. KEHLER: That has--

ASSEMBLYMAN BAER: --the proposals before this Committee?

MR. KEHLER: That has never been included in an initiative bill since I have been in New Jersey -- since 1986.

If you are interested in crafting an initiative system, it is really important to take a look at how these really operate in other states.

ASSEMBLYMAN BAER: Is there any one state that you think has stronger provisions than the others so far as eliminating, or rewording, these misleadisng, or confusing statements and propositions?

MR. KEHLER: The two states in which I worked on initiative matters have sufficient procedures in this regard: California and Washington.

ASSEMBLYMAN BAER: California and Washington?

MR. KEHLER: California and Washington.

ASSEMBLYMAN BAER: Thank you.

ASSEMBLYMAN MARTIN: May I just ask you one question?

MR. KEHLER: Yes, sir.

ASSEMBLYMAN MARTIN: On constitutional amendments, are there states that have higher than a majority -- a bare majority?

MR. KEHLER: I think one does. That state is Minnesota. For changing the Minnesota Constitution by vote, it has to be a majority of the people who went to the polls that day. Now, they don't have an initiative system, but voters in 49 states--

ASSEMBLYMAN MARTIN: They don't have a super majority in any of the states for something like a constitutional amendment?

MR. KEHLER: Not to my knowledge; not to my knowledge.

ASSEMBLYMAN MARTIN: Are there any states that have a restriction that would limit, for example, something that touches on traditional First Amendment issues?

MR. KEHLER: Sure, yes. That is not uncommon. I have noticed that that is a component of a number of the bills that have been introduced in our Legislature.

ASSEMBLYMAN MARTIN: Maybe you can sort of--

MR. KEHLER: Yes. I will be quick. A person from the Jewish Federation talked about minority issues at our last hearing. I would like to speak to the history of bias initiatives over the years in the United States, in a number of states.

We know that feminists championed the initiative system as a way of obtaining suffrage. In three states, suffrage was won through initiatives. We know that union organizations favored the adoption of initiative procedures because they wanted the eight-hour day, and they wanted to crack down on child labor. We know there were great successes on both of those fronts in the early days of the initiative. But what is less documented is the underside of the initiative system:

The 1920 initiative in California that prohibited Japanese ownership of land. The 1957 initiative in Arkansas, when President Eisenhower was battling racist Governor Faubus for the integration of Central High School. That initiative in Arkansas instructed the Governor to preserve segregation by all constitutional means. The abolition of the Fair Housing Act in California in 1984, subsequently overturned by a court decision. The antibusing initiatives in the 1970s in California, Colorado, and Washington, the last one of which was overturned by a court decision. The 1984 initiative restricting -- or, attempting to restrict, rather -- Indian fishing rights in Washington. The 1984 initiative in California petitioning Federal officials to provide no multilingual balance. The 1988 initiatives in states with large Hispanic populations -- Arizona, Florida, Colorado -- and in 1986 in California, declaring English the official language, all sponsored by one organization, U.S. English.

Every one of the initiatives I just mentioned passed, every single one of them. I am not for a minute suggesting

that voters in New Jersey are racist. I am not suggesting that an anti-Hispanic initiative of the sort passed in Florida or Arizona would pass in New Jersey. I am just raising the question that the person who provided that testimony didn't have the facts, but was raising an important issue for you; that this is a vehicle -- this is not the only vehicle, but this is a vehicle -- by which conflict among races, among ethnic groups--

ASSEMBLYMAN MARTIN: David, you know that state legislatures have also enacted very racist legislation.

MR. KEHLER: Absolutely, and in my written testimony I go further than that. State legislatures have also, over the years, been involved in restrictions on women's rights in a variety of ways.

My concluding comment on this is: State legislatures recently have not been doing that. Since people of color have been elected in the '70s and '80s and now in the '90s in state legislatures, it is unlikely that we will be seeing, any time soon, the sort of things that I have just described. Yet, we have seen in the 1980s an increasing pace of bias-related -- what I consider to be bias-related -- initiatives aimed at Hispanics.

You are absolutely right, Mr. Chairman. The legacy of the use of State power to oppress minorities is an unfortunate stain on our heritage. I know you and I would agree that that is something which you and I, as Americans, are really embarrassed about.

I wanted to raise these points to try to balance the record, though, because this issue had been raised, but without supporting facts, in a prior hearing.

ASSEMBLYMAN BAER: Through you, Mr. Chairman, is that all dealt with as thoroughly in your written testimony there, as you have presented it here?

MR. KEHLER: There are additional--

ASSEMBLYMAN BAER: Is additional testimony going to be provided to us?

MR. KEHLER: By the end of the day. Additional examples, including anti-Catholic biased initiatives, will also be included in there, yes.

ASSEMBLYMAN BAER: Could you get that to the Committee members as quickly as possible?

ASSEMBLYMAN MARTIN: If you make a copy available to me, or to Mr. Margeson, he will distribute it to the members of the Committee.

MR. KEHLER: Yes, sir.

ASSEMBLYMAN MARTIN: Thank you, David.

MR. KEHLER: Mr. Chairman, one last point, and I will be very brief. The first item before you is a comparison of ACR-1 and California law regarding the amendment of the State Constitution.

I would like to make a brief comment about signature thresholds. Signature thresholds involve five issues: It is a percentage of something; the signatures are collected over a period of time; there is something that defines a valid signature, and something that defines an invalid signature; and then there is the question of the ability to gather the signatures, which is, in part, a dimension of population density.

It is my contention that it would be easier to qualify a constitutional amendment under ACR-1 than it is in California, despite the signature distribution requirement. California has a very restricted period of time to gather the signatures -- 150 days. My final comment on this is that there is extensive literature and a great deal of anecdotal evidence suggesting that people sign petitions to put questions on the ballot because they are asked. Professor Daniel Lowenstein, of UCLA, and Bob Stern, recently published an article in "The Hastings Constitutional Law Quarterly," reviewing extensive

literature on petition signing for these purposes. They said: "The significance of the popularity of the measure is minor relative to the significance of the number of people who can be solicited." The result is that the true hurdle for qualifying measures for the ballot is not having a proposal that people want to sign, but inducing enough people to go out and circulate the petitions.

I will leave you with an anecdote on this: Not so long ago in California, to demonstrate this point, a reporter drew up a petition, the point of which was to suggest that if approved by the voters there would be an overhead sewer line going down Market Street in San Francisco, the main arterial, and 75 percent of Californians who were asked to sign that petition, did so. (laughter) It is my experience, having gathered a few signatures, that it is very easy to get people to sign.

Mr. Chairman, members of the Committee, thank you very much for giving me so much time.

ASSEMBLYMAN BAER: I have a question.

MR. KEHLER: It was a joke; it was a joke.

ASSEMBLYMAN ROONEY: Did it get on the ballot?

MR. KEHLER: No.

ASSEMBLYMAN MARTIN: Byron has a question. Maybe we should take one last question.

ASSEMBLYMAN BAER: Two. One is a follow-up on what we were discussing: Relative to those procedures where there are confusing or misleading questions, has that also dealt with whether questions in conflict-- Do any of these provide for consolidation? That is my first question.

MR. KEHLER: No. I think that consolidation is probably unfair to proponents of initiatives, because a small-- As you know as legislators, small nuances in wording have big impacts in some policy areas. The consequence of having multiple initiatives on the same topic, is because some

topics, to be thoroughly explored, would require a multitude of choices.

Now, with your indirect initiative system, you may want to try to devise a consensus among supporters of various nuances on a particular position. In my view, that is one of only a couple of advantages of the indirect system over the direct system, but it is an important advantage.

ASSEMBLYMAN MARTIN: Put your next question.

ASSEMBLYMAN BAER: I'll let that go, in view of the time. Thank you very much. Maybe I will raise some of that outside, to save the Committee time.

MR. KEHLER: Thank you very much. While I am a critic of this, I would like to say for the record that I have the highest opinion of the supporters. I know they are trying to do something good for the people of New Jersey.

ASSEMBLYMAN MARTIN: Thank you. Peter Furey, and then I would like to have Assemblyman Franks appear briefly to maybe make a short statement. We might have a couple of questions related to some issues that have come up.

I would like to point out that I gave Mr. Kehler a lot of time, but he is one of the few people who talk very specifically about various elements of the existing legislation, which is really necessary for this Committee to consider when trying to come up with the specifics of a proposed bill.

Mr. Furey, how are you?

P E T E R F U R E Y: Good morning, Mr. Chairman, and members of the Committee. In the interest of time, I would like to perhaps just disclose to you our position, as the Farm Bureau, in opposition to I&R.

Unlike, perhaps, some of the other opponent groups to I&R, we are perhaps a little bit different, in the sense that we have no PAC, and we do not even endorse candidates. Our policy and procedure for lobbying lies in the fact that we

articulate our positions, lay them in front of the Legislature, and, hopefully, have those positions adopted into legislation and regulation.

We have no fear of public opinion per se. Our basic rub with I&R is that the ideals are never achieved; that the influence of money, the influence of campaign consultants, the influence of paid signature gatherers prevent these honorable, noble questions from ever being adjudicated, or judged, by the general public.

I can give you three experiences in other states where our fellow farm organizations have been dealing with Initiative and Referendum for several years. I would like to mention, in the first instance, California. When the Big Green initiative was voted on in 1990, there were 27 other measures on the ballot that year. There was $32 million spent in that campaign, and I can assure you that the growers in that state were scared out of their minds about the outcome; their ability to continue farming in normal farming practices, had that passed.

It was interesting that the outcome was negative, that the Big Green initiative was defeated, but it took a tremendous amount of effort in that campaign. We feel the amount of money and energy that goes into these campaigns in our State, with the small number of farmers in New Jersey-- We just couldn't represent and do an adequate job in a high dollar -- high money campaign to explain our position on potential ballot questions.

In the State of Massachusetts, there was a ballot initiative that had to do with animal rights. There was no secret about the fact that this was put on the ballot and motivated and financed by a national animal rights group. We have the same fear in New Jersey, that this would not reside solely with the voters in New Jersey, but, rather, local affiliates of national organizations.

It is a fact that the top 15 environmental organizations in the country raise over $600 million each year, and the fact that they would then be able to come in and have a ballot question -- put those resources to bear in ballot questions, we think, would just be a contest of dollars, and lost in the process would be the present system we have of talking with legislators and holding them accountable for the positions taken.

Finally, the State of Washington. I would like to read you a quote from a letter I received, because I polled some of my fellow administrators in other states. The administrator in the Washington Farm Bureau-- I will read a paragraph. He said: "The biggest problem with initiative campaigns from our side is raising money. Farmers and ranchers want to participate. They have very strong feelings on many important issues. But they can't, or won't, take the time necessary to circulate petitions, and we find it very difficult to raise money enough to do any good. We are successful in this state only when we align ourselves with other business groups who raise money," and so forth and so on.

Mr. Chairman, and members of the Committee, we would like to speak for ourselves. We would hate to get into a system where we would have to find allies and colleagues to represent our point of view. For these and other reasons that I will put in writing to the Committee, we would urge your opposition to Initiative and Referendum.

Thank you very much.

ASSEMBLYMAN MARTIN: Thank you. Are there any questions of Mr. Furey? (no response) Thank you, Peter.

We have been joined by Assemblyman Kenny.

At this time, I would like to call on Mr. Franks. I understand he wants to make a few comments. It is his bill that has been the major focus of--

A S S E M B L Y M A N R O B E R T D. F R A N K S: That has been the subject of vicious attacks by Mr. Kehler and others. (laughter)

ASSEMBLYMAN MARTIN: Just for informational purposes, after Mr. Franks we will have Linda Bowker and Ed McCool. I am going straight down the list. If we pass you, we will come back to you, but I am just going in straight order. As soon as we get finished with the list straight down, we will come back to the people who may have come late, but who are on the list. Then, time permitting, we will take people who wish to testify who haven't -- who signed up here. Then, time permitting, we will take, thirdly, people who wish to be heard for a second time.

Mr. Franks, good morning.

ASSEMBLYMAN FRANKS: Mr. Chairman, thank you very, very much. I want to commend the members of the Committee for the exhaustive review they are conducting of this extremely important question before the Committee.

I am going to pass up the opportunity to read my prepared testimony in light of the few minutes I have been able to spend with you this morning. Having been intrigued, at the very least, by Mr. Kehler's testimony, I would like to make a few observations, and then, perhaps, engage in a discussion with members of the Committee about concerns they may have, or ideas they may have to enhance the viability of the Initiative and Referendum process here in New Jersey.

First off, Mr. Chairman, let me indicate that there is no perfect Initiative and Referendum bill. We have exhaustively reviewed the 23 systems of Initiative and Referendum in states across the country, and those elements of ACR-1 have sought to embody the very best of the measures that have been proven in other states. We have negated certain problems that we had viewed as having been as a result of the components of the Initiative and Referendum systems in states

like California. Our State has a unique combination of components. I believe it represents the very best of an effort to balance the rights of citizens with the rights of citizens to clearly understand the nature of the process that they would be participating in under ACR-1.

I would also say, Mr. Chairman, that in 12 years I have never seen a perfect bill on any subject work its way through either House in this Legislature.

ASSEMBLYMAN MARTIN: You haven't been following my legislation. (laughter)

ASSEMBLYMAN FRANKS: I should have known better, Mr. Chairman. But for your bills, I have not seen a perfect bill emerge from this House, nor this Committee. So I think it is important that we hold our review of this concept to a reasonable standard. No bill, ultimately, is flawless. We seek to simply work to craft the most responsible bill that will provide for a responsible and effective system of Initiative and Referendum.

I would ask that as the Committee considers possible amendments to any bill, whether it be mine or others, that hopefully the focus of your considerations will be from those ideas that have been discussed in this Committee and throughout this State for the last decade. I think it would be a mistkae at the eleventh hour for the Committee to draw upon some totally new device, one that has not had the benefit of historical debate; one that has not been the beneficiary of adequate input or scrutiny. I would not want to see a bill emerge from this Committee, or this House, that represented simply the lowest common denominator; a bill that was so tightly drawn that it would effectively preclude utilization by the citizens of this State who have, once again, in recent polling data, expressed their overwhelming support for a responsible and effective Initiative and Referendum system in New Jersey.

So I hope that as you ponder possible amendments, you will do so with a mind toward the enormous amount of debate that this issue has generated here in New Jersey, and the deep legislative history generated for over a decade.

Mr. Chairman, whether the call to support I&R comes from the sitting Democratic Governor or the current Republican State Chairman, I would ask you to do the people's will. The people have made it clear that while they have respect for the institutions of State government in New Jersey, the perception exists that we need an additional step to help build that all important relationship between the people and the government that exists to serve them. I&R is long overdue in New Jersey.

I want to say, finally, Mr. Chairman, I am a little bit troubled in terms of the issue of raising the capacity of Initiative and Referendum to do damage to minority rights, because to wave that issue tends, I'm afraid, to inflame concerns that might not be valid, and tends to raise issues that represent, perhaps, the darkest element of the human spirit.

Those of us who support I&R are deeply committed to the rights that are protected in the Federal Constitution and in the State Constitution. Too often, when you raise the specter of racism, or sexism, it tends to have a very divisive effect. You and I and the members of this Committee will remember that just two years ago the Commissioner of Education suggested that those of us who opposed the Quality Education Act may have been acting out of racist motives. Mr. Chairman, nothing was further from the truth, because in the instance of that particular legislation, it ill served the interests of all school children in New Jersey; I would argue most notably, the kids in urban systems who it was designed, theoretically, to be of assistance to.

I&R is not a device to do damage to the long-standing civil rights of any New Jerseyan, of any minority community.

While I did read Mr. Kehler's press release with great interest, many of the items he pointed to where the initiative process has been used to damage minority rights are as old as some of the issues he complains about when I talk about the number of states that have adopted Initiative and Referendum. Some of them certainly were out of an era where this country was struggling through the civil rights question, and racist elements in the South were clinging to a discredited tradition.

I have great confidence in the electorate in this State, Mr. Chairman. We are better educated; we are more sophisticated; we are more discerning. Those who say we do not have the capacity to sort through tough questions sell the voters of New Jersey short. They have proven time and time again their capacity to discern competing interests and to make wise decisions. Sometimes those have favored my party; sometimes they have favored the other party. But New Jerseyans are able to adequately and responsibly participate in this system. I believe it will bridge a growing gap between the government and the people it exists to serve.

On that, Mr. Chairman, I would be happy to answer any questions.

ASSEMBLYMAN MARTIN: I haven't discussed this with you, Bob, but let me-- One of the major issues, both in terms of generating support, as well as concerns, is the geographic issue which is addressed in your bill, too. I have been thinking about this. It struck me that another way that one might be able to do this, would be to divide the State into regions, either three or four; for example, north, central, south, or what I think might be preferable, northeast, northwest, central, and south. Break it up into about five counties each. One of the reasons for doing it that way would be to-- The concern of the south is that what has been proposed in some of the bills with the nine counties is not really the south, and you get into some issues along those

lines as to whether there is -- whether some area can be picked on unfairly.

I am not asking you for a final say, but the concept of perhaps having, for example, South Jersey, be Cape May, Atlantic, Gloucester, Cumberland, and Camden; Central being Ocean, Monmouth, Burlington, Middlesex, and Mercer; and then the North divided basically between the urban area versus the rural/suburban area, four areas-- Would that strike you as being unnecessarily harsh, as far as the system goes?

I know there are some groups that say, "Well, the more petitions you have, the more difficult it is," but if you stick to county lines and divide the State up, I think there would be more-- Even some of the State Assembly members have expressed concerns that their areas would somehow not be picked on. I think a regional approach like that might be a little more useful. Do you have any immediate reaction to that?

ASSEMBLYMAN FRANKS: Mr. Chairman, off the top of my head, I will simply indicate to you that the political culture of New Jersey is such that there are essentially, in my judgment, two areas of the State. The Division of Travel and Tourism says there are five or six areas of the State, but in terms of the political culture of New Jersey--

ASSEMBLYMAN MARTIN: Bell says there are three.

ASSEMBLYMAN FRANKS: You're right, that 908. Essentially, Mr. Chairman, I think the political, cultural differences that one discovers in South Jersey are sufficient enough, and the concerns of that area of the State, which represents a minority of the State's population, require us to give some special level of consideration to making certain that the I&R process does not minimize the participation of that region or override the people's rights who reside in that area of New Jersey.

It was for that reason that Congressman Zimmer and I structured -- I believe it is an eight-county South Jersey

region for participation in our bill. To further define regions of the State, when one considers the fact that this is still the most densely populated State in the nation--

ASSEMBLYMAN MARTIN: You're right. It picks up Burlington and Ocean. I think those are the two counties that have raised some concern as to whether that is appropriate in the south.

ASSEMBLYMAN FRANKS: Mr. Chairman, I would certainly be open to the Committee, in lieu of the new evidence from New Jersey Bell being able to discern new areas-- (laughter) I do think we ought to limit the number of regions into which we divide the State. The people in this State are renown for having a very home-rule attitude. Their local communities, the traditional jurisdiction of counties, are things that many people, arguably, relate to.

Beyond that, the only difference that I essentially have noted in New Jesey in the last 20 years is that there is a respect for the unique nature of South Jersey. I believe our bill takes responsible steps to protect and enhance the unique role of South Jersey in the political process.

ASSEMBLYMAN MARTIN: Are there any questions for Mr. Franks? John Rooney?

ASSEMBLYMAN ROONEY: I think we are getting the feeling, and the reason for I&R all along is that people feel, that the Legislature is not acting, or they are ducking certain issues. These certain issues are being bottled up in committees, either by the lobbyists or by the legislators themselves. This is the answer to it.

We get into a lot of the mechanisms. One of the things that I notice, and I have a problem with, is that the Legislature and the Governor have up to six months to address a petition's intent before the question is put on the ballot. Then we say, "If it goes to the ballot, then the I&R enactments cannot be repealed, nullified, or altered for two years, unless

by a three-quarter vote, or the next three years, unless by a three-fifths vote."

We are taking the situation -- and I can understand the logic in this-- We are saying, "Maybe some of these issues are tough issues, but maybe they are not really-- They may be frivolous, they may be something that maybe we are ducking." But then we have the opportunity to go out there and spend all the money, and then have this pass, and then it comes back, and then we still have another bite of the apple, and we can repeal it by a three-quarter vote.

I would suggest, and I would say right up front, that perhaps we should put in the section where it says, "In a general election, if substantial equivalent legislation is not enacted by the Legislature--" That means that if we just don't do anything. But let's say that we do act. Let's say that by a three-fifths vote we say no. "The Legislature says no on this particular question." You know, three-fifths is what it takes to get a constitutional amendment on the ballot that year. So, three-fifths should be the same -- you know, by the same logic, should be willing to prevent a question from going on the ballot for that year.

I think maybe this would address a lot of the fears. The Legislature would be forced to vote, or would have the opportunity to vote, and say, "No, this is a frivolous question," or, "It is really--" We would limit a lot of these things on the ballot, to address the issue here, where somebody throws in five issues to clog the ballot and to prevent something, because if we have a ballot limitation of so many issues, we will say no to those five, and put the ones-- We can say, "Okay, let's hear from the public." I think that might be a way to solve a lot of the-- Again, compromise, I think, is what happens in every piece of legislation. It's not perfect, but it is something that may draw in the

businesspeople, say, "Okay, you know, we will go along with the fact that you have to -- that you can vote, that you can get it off the ballot."

I talked to some businesspeople privately, and they have told me that this might be a sweetener.

ASSEMBLYMAN FRANKS: Mr. Chairman--

ASSEMBLYMAN MARTIN: I don't think you are going to find too many sweeteners, John. It would also be political suicide, I think, for somebody to-- At least that would be one of the issues one would have to think of if something were a strong initiative, to vote not to allow it to go to the ballot. It would be a tough vote.

ASSEMBLYMAN ROONEY: Well, that is why you have three-fifths. It would be strongly supported. It could be an issue we don't want on the ballot; that we feel is frivolous.

ASSEMBLYMAN FRANKS: Mr. Chairman, may I, just real briefly-- Assemblyman, I think there would be two forces at work within the process that would, in fact, limit the number of questions that were to appear on any ballot. I think what the Committee has to determine is whether or not we have struck the proper balance. One factor at work will be what I believe are reasonable, but stringent requirements to place a question even before the Legislature. The number of signatures required, and the geographic distribution of those signatures that are gathered, I believe, will be within the marketplace a force that will limit the number of potential questions.

The second factor at work that will limit the number of questions is the people's reaction to the quality of work that we do in the State Legislature, because if we are deemed as being responsive to the needs of this State, then people will seek to work through the legislative vehicle of government. But should we turn a deaf ear, should we be captured on some limited, narrow issue by special interests, which have considerable power in this city, if we don't do the

people's will on that type of an issue, then they are given an outlet for their expression. So, if we do our job and properly craft this measure, I think that will be a marketplace limitation on the potential number of questions.

Thirdly, to your suggestion that perhaps this is a bone that we could throw to the business community, no one, except during the period in time in which we are discussing I&R, is a bigger supporter of business in New Jersey than I am, John. But I will have to tell you, on this issue I have discovered much of what I suspect other leaders in our party have, and that is, when you talk about making a concession on any given element of the program, and you ask people, "Will that bring your organization" -- be it your trade association -- "behind us?" the answer is, "Well, no, but it would make it easier." That is the movement on the slippery slope that I warned you against. That will lead to the lowest common denominator; a worthless bill, one that does not protect the interests of the Legislature or the people of the State. It ought not be the path, in my judgment, on which this Committee should walk.

ASSEMBLYMAN MARTIN: Thank you, Bob.

ASSEMBLYMAN FRANKS: Thank you, Mr. Chairman.

ASSEMBLYMAN BAER: Mr. Chairman?

ASSEMBLYMAN MARTIN: I'm sorry. Byron has a question, first, and then Assemblywoman Haines.

ASSEMBLYMAN BAER: Through you, Mr. Chairman, in your testimony relative to the issue of how this might affect minority concerns, you spoke of how this might -- how raising this issue at this time might inflame the situation, might raise the darkest elements. I have known you for a long time, and know how thoughtful and fairminded you are, so I would like to ask you to revisit this a little, because you are aware, as we are, that these issues have been raised here by two witnesses, neither of whom is associated, and groups or

organizations which are nonpartisan organizations, which are organizations very widely respected for their concern about our State and our society. These issues were not raised in any inflammatory way, nor were they voicing any darkest elements.

I don't think you intended to suggest that those who might raise these concerns on behalf of good government, or on behalf of minorities, might not legitimately see that there could be a cause of concern, and that particularly minorities might feel a little bit less assured than others that these problems, as you speak, are in the past.

While there are current assurances in statutes for protection, you were not here when Ms. Stone spoke on behalf of the Jewish Federation of New Jersey, which is what Mr. Kehler was responding to. She was seeking some kind of protection in the bill. Her approach was a constructive one, not inflammatory, and I don't think any of us here, really, when we think it through, want to suggest that the efforts of minority representatives, or thoughtful people, to try to be always extra protective to ensure that the rights of all citizens are protected, is in any way something undesirable, unconstructive, inflammatory, or voicing anything dark whatsoever. I don't think that is what you intended, but I think your comments could be interpreted that way. So, I wanted to give you a further opportunity to clarify that.

ASSEMBLYMAN FRANKS: I appreciate that, Assemblyman. They were not, in any way, meant to disparage anyone or any organization that would come forward with the concerns that you just expressed. What I was suggesting was to indicate that the voters of New Jersey, under the Initiative and Referendum proposal that I have brought forward, to utilize it as an opportunity to trample on minority rights, I think to be fundamentally wrong and a charge that is impossible to refute, because it is prospective and unknown in terms of its application.

In raising the specter, which I think is important to raise for the Committee to hear it and understand it, I would rather rely on the proven record of New Jerseyans as they have approached the issues of human equality.

ASSEMBLYMAN BAER: Through you, Mr. Chairman, this specter, to the best of my knowledge, perhaps not first in history, but first in the relevant history of this nation, was raised, I believe, by our foremost Founding Father, in the constitutional sense, Mr. Madison, who pointed out that this type of process is one that can be destructive to minority interests, as opposed to the more mediation type, or consensus building type decisions that occur normally in the legislative process.

So I don't think raising this specter is something that is coming out of the blue, but is a matter of concern from the beginning from our Founding Fathers.

ASSEMBLYMAN MARTIN: Right here, I am--

ASSEMBLYMAN BAER: Just one last sentence, and that is: Therefore, I think a sincere effort to consider ways of excluding those types of things from a measure like this is a very serious proposal that deserves serious consideration. I know of your zeal and eagerness for your legislation in its present form, of course.

ASSEMBLYMAN MARTIN: I just want to remind the Committee, essentially what we are trying to do is gather information. I understand your point, Byron. You raised your question. Mr. Franks said he thought it was unnecessary. The issue has been addressed from your perspective.

Assemblywoman Haines?

ASSEMBLYWOMAN HAINES: John had said he wanted to-- Did you want to say anything about Byron's comment?

ASSEMBLYMAN HARTMANN: Well, actually--

ASSEMBLYMAN MARTIN: We will have an opportunity when the bill is presented to discuss the merits of the bill as it

is. What I am trying to get from the people who are testifying is what their opinions are. It is perfectly appropriate to say, should there be some kind of First Amendment or other restriction, but I don't want to debate "Federalist No. 10" at this point in time, which is what we are doing.

I appreciate it, Robert. Thank you for your--

ASSEMBLYMAN FRANKS: Mr. Chairman, if I may, for five seconds, respond to Mr. Baer-- While I may believe that the bill is adequately tailored to respond to the concerns Assemblyman Baer raises, I think it is very much within the purview and responsibility of the Committee to look at the issue.

ASSEMBLYMAN MARTIN: We will. Thank you.

ASSEMBLYMAN FRANKS: Thank you.

ASSEMBLYMAN MARTIN: Linda Bowker, National Organization for Women. Then Ed McCool, and we will come back and pick up Barbara Tomkievicz.

MR. MARGESON (Committee Aide): Mr. Chairman, Ms. Bowker is not here. Donna Paluka came to speak for her, but I think she left. However, she did leave some written testimony.

ASSEMBLYMAN MARTIN: Is Donna Paluka here? (no response) Seeing not, we will distribute her written testimony, and have Ed McCool speak.

E D M c C O O L: Thank you, Mr. Chairman.

ASSEMBLYMAN MARTIN: Good morning.

MR. McCOOL: Good morning, members of the Committee. First I want to thank you, Mr. Chairman, for giving such detailed attention to the whole concept of Initiative and Referendum, and for going outside Trenton and holding extensive and exhaustive hearings so that average people, not just paid professional lobbyists like myself, can testify and express to the Committee what their feelings and concerns are. I know it must have been a very exhaustive experience, and I thank you for your efforts in that direction.

ASSEMBLYMAN MARTIN: It's been an education.

MR. McCOOL: I'm sure of that.

I would like to just cover a few basic points. What we have is a discussion about a system. As I was listening, and have been listening over the years, quite frankly, to the critics of the concept of Initiative and Referendum, we could be holding the same type of hearings about the right of the democratic process to elect representatives, and we could have the same criticisms being made.

Democracy basically carries with it a certain amount of trust in the intelligence and integrity of all the people who make up that society. It carries with it also a high degree of risk that it can be misused, that people can be misled, and that people can be betrayed. We know we have experienced all of that with elected officials, yet we will not discuss the elimination of the concept of the direct election of our representatives. Yet we have the same criticisms being put forth about the Initiative and Referendum process. I say they stem not from the Initiative and Referendum process; they stem from the very nature of democracy, and the same criticisms will apply to how we elect all of the offices that we presently do.

What this really boils down to is, the criticisms exist regardless of whether there is any group opposed to I&R or not. It is the type of groups that are opposed to I&R that we are really seeing, that is the interest here. They are essentially groups that are familiar and have the economic resources to work the existing legislative system to their own satisfaction, relatively speaking. And they do not want to see that process changed, broadened, or widened. What they do is basically raise all the fundamental criticisms that can be made of any democratic process, and they are substantial. We need not be afraid of them; we live with them every day. We've lived with them in every election we've had. What we need to

look at is, what are the motives of the critics? Many of the criticisms are valid, and if we remedy them, or decide not to have I&R because of the validity of those criticisms, then I say we need to be logical and we need to also eliminate elections altogether, because it doesn't stem from the fact that we are having Initiative and Referendum. It stems from the nature of a democracy and a trust in the checks and balances that go into establishing a democratic system.

At the last hearing, Rob Stuart presented, in good nature, a check, and that is not what was meant by checks and balances. It is not checks made out to candidates and balances and PAC accounts. Unfortunately, that is what it has evolved into. That is primarily the struggle we see before this Committee and facing this legislative session. The proof of it is that this Committee is going to be pressured, as is the Legislature as a whole, to make serious changes in whatever gets proposed as Initiative and Referendum. Echoing Assemblyman Franks' point, the litmus test on that is, will you now endorse the bill? Will you now, in blood, sign that you will vote for the bill? You will not get it, I guarantee you. I'll stand next to any major organization that is currently opposed to I&R, that wishes to amend it to include something that will now endorse it. I don't believe that will happen.

Essentially what is happening is, criticisms fundamental to the nature of democracy are being kicked up, mainly to keep the system the way it is. It's that simple.

To the specific points that have been raised, people approve today, and vote on, Governors, Senators, Mayors, Council people, Freeholders, Assembly and Senate representatives, even Presidents. They vote on bonds; they vote on constitutional amendments; they vote on the right to have gambling, or not, all without worrying about geographic distribution. It is not a problem. All without requiring more than a simple majority. It is not a problem.

Suddenly, when we talk about extending the initiative process in the manner that exists in 23 other states, and actually in a manner that is more restrictive in many respects than what exists in the other 23 states, it is now a problem. Suddenly we cannot trust the same voters who have the intelligence to vote on bond issues. I don't know anybody who has ever crafted interesting wording for a bond issue, yet we allow people to vote on it. If it passes, it passes. By one vote-- That is all that is needed. But when it comes to a question, "Shall candidates' campaign contributions be limited to $500?" now we are going to need a higher percentage than what we trust people to float millions and millions of dollars in bonds each year.

When it comes to a question regarding-- They have the intelligence to vote on constitutional amendments to allow gambling, and probably will be asked to vote on one to allow sports betting, but they won't have the intelligence to vote on whether or not they want Initiative and Referendum, which is, again, as this Committee knows, the main task facing the Legislature. It is to put the question of I&R on the ballot. You don't have to be in favor of it to support the right of the people to decide whether they want I&R.

The criticism has been made that it cuts out the Legislature. It doesn't cut out the Legislature. This is the Legislature. It is a complement to the Legislature. It is an indirect process. The Legislature has up to six months to act. The Legislature is involved in the debate. The Legislature is involved in the campaign. It is not presumed that these questions will be on the ballot. They don't evacuate all the other elected officials in the other states when a question is on the ballot. Those officials take positions, and they campaign on those positions relative to the questions on the ballot. And, if something completely untoward and really stupid happens, the Legislature has the power to

repeal that act, and that is as it should be. In fact, the voters don't have the power to recall elected officials if something stupid really happens, and yet here this provides for the recall, in effect, of an initiative.

In the end, the real question centers on letting people, themselves, have the debate, have the campaign, whether or not they want Initiative and Referendum. Central to that, and central to any provisions in the I&R, are at least a change in the reporting requirements we presently have when it comes to filing whose funding campaigns around questions. If I&R were to go on the ballot right now, let's say for this November, and a campaign was conducted to vote yes and vote no, the voters of this State would not know who was funding that campaign until 29 days before the election. And as you know, that campaign would have already been well underway. That is under the existing Election Law Enforcement Commission's charge under the existing election law.

We think that should be changed. It should be changed separate and independent from the Initiative and Referendum package, so that when initiative does get on the ballot, the voters have a right to know the minute a group spends more than $2500, that it must file the source of its moneys every 30 days thereafter. That has proven out; that the more money that is spent, very often the worse a question does. In other states, initiatives that affect the oil industry-- The minute it was known that the oil industry was funding, to a large extent, a campaign against that initiative, they suffered. The tobacco industry experienced the same thing, and most recently, the insurance industry, the same thing, where they spent hundreds of millions of dollars on a question and lost it, because the money itself became an issue. The money itself worked against itself.

We feel that whatever initiative the Committee reports out, and whatever one the Legislature passes -- whatever

process -- it has to be user friendly. It has to observe the same principles that we now require, quite frankly, for elected candidates. It only takes 100 signatures to put a member of the Legislature's name on the ballot. Why we should suddenly have to set up phenomenally high signature requirements which basically make it unusable, because it is a question, is beyond me, quite frankly. It is inconsistent. If it would allow just a simple 100 signatures, which you can get at any county committee meeting in a matter of minutes, and that allows our representatives to be placed on the ballot-- We have to keep the signature requirement in a venue and at a level where citizens' -- true grass-roots citizens' groups can use it. If we make it too high, the process, frankly, will only be open to groups that have large amounts of money, which, interestingly enough, include many of the groups which are currently opposed to Initiative and Referendum. They would have the power and the money to go out and hire professional signature gathering firms, and basically use the process as they see fit.

The small grass-roots-- Remember, whatever signature requirement you come up with, you really have to double it as a matter of practical purposes, because, well-- Chancy is the candidate who simply gets 100 signatures on his or her petition. You know you better get an extra 25 or 30, because somebody may have missigned, thinks they are registered but they are not, etc., etc. The same is true, obviously, when you are trying to file an initiative petition. Whatever that signature requirement is, you really need at least twice that number of signatures, because their signatures are going to be checked and validated, and the throw-out rate is at least one out of every two.

ASSEMBLYMAN MARTIN: Is that true? Do you have some confirmation of that?

MR. McCOOL: The Public Interest Research Group in New Jersey has the most direct experience with that. My information is based on--

ASSEMBLYMAN MARTIN: I think we can take it as a given that--

MR. McCOOL: I don't have any direct experience with it.

ASSEMBLYMAN MARTIN: --some signatures may not be valid--

MR. McCOOL: Right.

ASSEMBLYMAN MARTIN: --but that seems amazingly high.

MR. McCOOL: I think a lot of it depends on what you are using as your guide. You can hire firms -- and there have been scandals in this area, as a matter of fact, in Mercer-- They hired firms for signature gathering, and they simply went out-- They were not very discriminating in terms of whose signatures they got. A large percentage of them were either forged or were people who were not registered. That's right.

On the other hand, if you go door-to-door using voter registration lists as your guide, obviously you don't get a 50 percent throw-out rate. But I am just speaking generally.

That's essentially it. It is really a matter facing the Legislature of allowing the people to decide whether they want Initiative and Referendum. With the signature gathering process, one eye should always be kept on the fact of how much we require for candidates' names to be put on there, and how can we now require 10 percent just because it is a question? We don't require geographic distribution for a single other elected question, quite frankly. Even though they involve people, they are still questions: Do you want this person or that person? Why are we suddenly requiring it for this, in the absence of any clear evidence that north, south, east, or west are really major factors in this State?

Once we have gotten a bill that basically meets that very simple, usable criteria, then really, let's just let the debate begin. Let's have an adequate reporting system so we

know who is financing the debate, and then let the people decide.

That's about it.

ASSEMBLYMAN BAER: Mr. Chairman?

ASSEMBLYMAN MARTIN: Mr. Baer?

ASSEMBLYMAN BAER: I have a couple of questions, through you. On your recommendations relative to the reporting system, which intrigue me -- it is a very interesting idea -- is it your thought that this would be -- that this would, in any way, be locked into the I&R legislation itself, or would this be accomplished solely by supplemental legislation which may or may not remain in effect?

MR. McCOOL: The provisions specifically are now a part of the Kamin bill and also part of the Dorsey bill. I think it is best to also introduce them as a separate piece of legislation. That system needs to be fixed now. There are county questions that go on, and voters should not be denied until 29 days before the election finding out who really is, Citizens for a Healthier XYZ County. I mean, they have a right to know that, if they are funding advertising campaigns, the minute those campaigns begin.

So, the need to change the law is now. I think it is best not to tie it to the success or possible nonsuccess of an initiative piece of legislation. I would do both things, quite frankly: I would leave it as part of the Kamin bill, or any bill that this Committee comes up with as a Committee substitute, but I would also introduce it separately, because it needs to be fixed regardless of what happens to I&R.

ASSEMBLYMAN BAER: So, in other words, you would like it to be part of a regular statute for a broader application, but you would also like it to be tied in with this so that it would have, at least so far as I&R, the same kind of permanence that a constitutionally established I&R might have?

MR. McCOOL: Yes. I mean, if it moved on its own as a separate piece of legislation, you wouldn't need it in the I&R package. Okay?

ASSEMBLYMAN BAER: Oh, okay. You are not concerned with the issue of permanence, then?

MR. McCOOL: No.

ASSEMBLYMAN BAER: Okay. Thank you, Mr. Chairman.

ASSEMBLYMAN MARTIN: Any other questions? (no response) Thank you.

MR. McCOOL: Thank you, Mr. Chairman.

ASSEMBLYMAN MARTIN: John, are you going to be back?

ASSEMBLYMAN ROONEY: I will be back this afternoon.

ASSEMBLYMAN MARTIN: Barbara Tomkievicz?

B A R B A R A T O M K I E V I C Z: Thank you, Mr. Chairman, and Assembly members. Earlier in this meeting I gave John a letter from Yvonne Balcer, which was in response to the discussion between her and Assemblyman Baer with relation to Initiative and Referendum in Jersey City. I want this to be noted particularly to Assemblyman Kenny, since he is from Hudson County.

Above and beyond that, I do have my own statement. I come to you at this point as Secretary of New Jersey Hands '91. Would you like me to pause for that? I have no--

ASSEMBLYMAN MARTIN: No, I would like you to say what you have to say.

MS. TOMKIEVICZ: Okay, fine. I come to you as Secretary of New Jersey Hands '91, a statewide organization, and Co-chairperson for Hudson Coordination, which is our Hudson County-based duplication of Hands '91 and New Jersey Hands -- Hands Across New Jersey.

Basically I would like to make two points of reference. Without insulting the Democrats on this panel, the only prejudice that I have experienced personally is the Democratic power structure in Hudson County against independent

minded people. Now, I am not black, I am not Jewish, but basically I believe that the people of New Jersey are intelligent enough to consider intelligently the predicament of farmers and minorities alike. In that respect, I would hope that all of us would have the freedom to express our views and at least test the waters to see if we have support for our beliefs.

I have sympathy for the representative of the farmers and the representative of the Jewish population and the representatives of the Afro-American population, but I feel that in today's society and with the media information that comes to all of us-- I don't think it should be a concern in relation to Initiative and Referendum. Anyone can gather petitions in order to have a proposal on Initiative and Referendum.

I have come before you to present something of a summary of our views concerning Initiative and Referendum as it should be established in New Jersey.

Your Committee members have heard many so-called leaders of various civic, professional, special interest, and PAC groups, who say they represent their members. Let us all realize, however, that the only definite indication of a person's position on any matter is through their own private registered vote. This is the major reason why our organization supports I&R. Individual voters, after being presented with the multiple sides of an issue, will have an opportunity to vote the way they wish, privately, behind a closed curtain in the voting booth.

According to recent polls and surveys, most people across the whole country have now come to believe that government is not working. I&R, even though it is not a panacea, could be one step in correcting this injustice and establishing not only a voice for the people in this

government, but also the means to enact some level of voter control over State government.

We are supposedly constitutionally assured of having a government "of the people, by the people, and for the people," but in actuality we now have government of the people, by the special interests, and for the few. A successful referendum, however, would be supported by the people, and not by the decision or for the benefit of a few self-serving individuals.

Representative government usually works well, but when the voice of the people is not heard and heeded, the safety valve of a voter friendly I&R can take over. It is the only alternative to total rebellion -- excuse the use of that word, because I composed this statement last night, before I realized there were riots going on in Los Angeles -- when people believe that the system just does not work.

There are those who fear granting the I&R benefits to the people, but no one should fear this freedom of expression by others, or anyone's right to try to correct what they believe is an injustice in our laws or our Constitution. Pursuit of this freedom was the basis on which our government was established, so that all people would be able to register to vote and participate in our governmental processes.

It seems surprising that educational organizations, which say that they represent our teachers, are afraid to let the people use their intelligence to decide issues that concern their lives and their destiny. Maybe these educators should do a better job, since they are indicating that they did not provide quality education to the voting public. If they had educated us more thoroughly, then maybe they would trust the general public with the use of I&R in New Jersey today.

The surprise lies in the fact that more and more voters are alert and informed about issues of interest to the people of New Jersey. Despite whatever shortcomings have been instilled in us by those same educators, the need for an

informed public has motivated each and every one of us to seek to know more, to understand more thoroughly, and to respond with intelligent reactions that take into account alternatives and potential results of our decisions.

We, the voting public, are issue oriented and can spend as much time as we decide is necessary to make an intelligent choice on matters that concern us. Remember, if we need help with this part-time endeavor, just as the legislators need help with their part-time jobs in Trenton, we can reach out to the Office of Legislative Services, State officials, or even the staffs of our legislators themselves, who can more efficiently and thoroughly supply information to the legislators and their constitutents on governmental matters and constitutional changes.

We must, however, be cautious to the fact that certain lobbyists, legislators, and special interest PAC groups want to keep the voters uninformed and uninvolved, so they can carry out their business-as-usual approach to government.

Initiative and Referendum is the only true example of voter participation on governmental issues. We believe:

1) Today's voters are intelligent and informed and can handle the issues that can be addressed by the people.

2) More voters will probably register and be involved when there is Initiative and Referendum in our State.

3) Yet, we may not really need to use I&R as often as some may believe, when the legislators realize we have this safety valve in place, ready to use, if necessary.

Our organization supports an indirect Initiative and Referendum where the legislators can have a six-month opportunity to address the people's concerns, yet followed by voter participation on that referendum if the legislators cannot work together and accomplish what the people are requesting. That way, where necessary, if a gridlock occurs in Trenton, the legislators will truly let the people decide.

ASSEMBLYMAN MARTIN: Questions for Ms. Tomkievicz?

ASSEMBLYMAN BAER: Yes, I have some.

ASSEMBLYMAN MARTIN: Mr. Baer?

ASSEMBLYMAN BAER: Thank you. Did you distribute this letter from your associate, Yvonne Balcer, this morning?

MS. TOMKIEVICZ: Yes. Unfortunately, I am not as attuned to that information as she. I will not be able to respond to the contents of that letter, but I wish you would--

ASSEMBLYMAN BAER: Okay.

ASSEMBLYMAN MARTIN: It came up at the first hearing. I guess you were there, Byron.

ASSEMBLYMAN BAER: Yes.

MS. TOMKIEVICZ: She was at the hearing in Morristown, and she wanted to speak last week in Trenton.

ASSEMBLYMAN BAER: Right. Well, I don't want to go into the Jersey City situation she spoke of so far as the effort there to repeal a City budget. But I would like to ask you whether it is your wish that this I&R have the capacity -- which I think it presently does -- where someone can put in a measure to repeal a State budget? Is that your intent? Would you like to see that, or would you not want to see the I&R encompass that?

MS. TOMKIEVICZ: I believe there are certain I&Rs in municipalities, probably in other states, which control the use of this procedure in relation to budgeting or taxing. I think this is a question that will have to be answered by the voting public at that time. You're asking me personally?

ASSEMBLYMAN BAER: What I am asking is, the measure that you would like to see us adopt here so that people have an I&R procedure-- Do you want that procedure to encompass within it where people can, if they wish, try to repeal a State budget as one of the initiatives -- or, referendums, actually?

MS. TOMKIEVICZ: I, personally -- if you are asking me personally -- feel this would be counterproductive to the balance of government we now have at this point. However--

ASSEMBLYMAN MARTIN: But your position is that it could-- You are not foreclosing it from at least--

MS. TOMKIEVICZ: No. It might be counterproductive, though, to the balance of government that we have right now. It is the position of the government and the Legislature to establish the budget. We hope to influence them on individual portions of it, but it is your job to pay the bills.

ASSEMBLYMAN BAER: Okay. Now, assuming that the authority for I&R to repeal the budget remains in the legislation, as it by inference does -- I don't think it is dealt with explicitly, but there is nothing that removes that-- Assuming that that remains, when, several months after a budget has been adopted, at the earliest November following late June-- We adopt the budget at the end of June; November is the earliest that this could be voted on, assuming that the Legislature doesn't stretch out and take the full six months, and everything. Even where we have there several months of operation under the budget, how is that affected, and how does the State function, from a practical point of view, when the budget is under question? How do the various responsibilities encompassed in that budget, not all of which are handled on a weekly or monthly basis, so it is as easy as turning off the spigot-- How is that handled? Is it practical to do that, I'm asking, let alone the greater period of time that might transpire if the timing of the thing were such that the Legislature's reviewing for six months were to put it, perhaps, the most immediate?

Well, that would answer itself, because the budget period would have expired by the referendum.

MS. TOMKIEVICZ: Thank you. I think you answered your own question.

ASSEMBLYMAN BAER: But the faster procedure is still possible. So, if there were great concern about a budget in

the weeks following its adoption, and the whole thing were through in time, how would that-- How could it work?

ASSEMBLYMAN MARTIN: May I-- I think from what we can determine, Byron, the timing would not be a problem. But I would ask staff-- I would ask Don to take a look at this proposal to see whether under any of those, whether the current budget in any given year could be affected by an I&R. I don't think it could. Mr. Kehler is shaking his head. I would say Ms. Tomkievicz could not answer your question as put, because it would depend on how the I&R is phrased, whether it deals with specifics or general. I think it is nonanswerable, and it may be moot.

Have you looked at that, Dave?

ASSEMBLYMAN BAER: Mr. Chairman, could you ask Don when he looks at this, to also look at this question relative to appropriation bills that are less comprehensive than a whole budget?

ASSEMBLYMAN MARTIN: Okay.

ASSEMBLYMAN BAER: Yes, supplemental appropriation measures. What kind of limbo does this put them in? If the Chairman wishes, and if it is appropriate, I am certainly interested in hearing--

ASSEMBLYMAN MARTIN: David, do you want to speak to that?

MR. KEHLER: (speaking from audience) Yes, and I will be really quick on it.

ASSEMBLYMAN MARTIN: Maybe he will help you out here. Mr. Kehler.

MR. KEHLER: Assemblyman Franks' ACR-1 has a very good provision in that direction, saying that the changes would be prospective for the next budget year. You might want to take a look at that language and tighten it up, but it is right in the constitutional amendment, as he has written it. It is a very good idea.

MS. TOMKIEVICZ: I think the time constraints of the activities of petition taking and legislative decisions over a six-month period and whatnot, would mean that people would not be able to have input on a functioning budget at that time, or any particular legislation that would involve expenditures on any particular, specific topics. Initiative and Referendum, last year, was the topic of a Hands Across New Jersey petition which many of us participated in collecting. Basically, you cannot consider this as a petition because it wasn't checked signatures, but as a general poll or survey of the people of New Jersey. They addressed not only the taxing problem, on which, of course, we have heard promises and legislation from the two Houses in our State House, at this point, on the sales tax, but also the Initiative and Referendum concept.

I believe you must keep this in mind, that there were, and there still are, almost a million people out there who supported this concept and signed on the dotted line to say so. So, no matter how many are coming forward at this point to influence the legislators, you've got your grass-roots groups, and they keep growing. You can't stop it; you can't count it.

ASSEMBLYMAN MARTIN: Any other questions for Ms. Tomkievicz?

ASSEMBLYMAN BAER: Yes, just one last question.

MS. TOMKIEVICZ: I think he likes Hudson County people.

ASSEMBLYMAN BAER: Very fine people.

MS. TOMKIEVICZ: Oh, thank you very much.

ASSEMBLYMAN BAER: Would you want an Initiative and Referendum to encompass, for instance, repealing the tolls on the Parkway and the Turnpike? This issue was raised in an editorial.

MS. TOMKIEVICZ: This is a situation beyond me. If the petitions were collected and the initiative was put on the ballot, that would be the choice of the people.

ASSEMBLYMAN BAER: How would that be dealt with, as far as the question of how? In other words, would you want an initiative that would be able to propose doing something like that, without giving the faintest hint as to how?

MS. TOMKIEVICZ: I think the voting public is smarter than you are presenting in your information right now. People realize that--

ASSEMBLYMAN BAER: I am not making any comment about the voting public.

MS. TOMKIEVICZ: Well, in my mind, I am interpreting it this way: You're saying to me, would an initiative, say, plow them all down, and where do we go from here? I don't think an Initiative and Referendum would be that precise or that idiotic. It is going to have to encompass the costs of the highways and/or prevention of the Authorities from spending abundances of money. These things are complex. You know it, I know it, and the general public knows it, no matter what the catch phrases are in today's society. The topic today is Intitiative and Referendum, not the tolls, so I don't think I can really comment any further on that topic.

ASSEMBLYMAN BAER: Thank you. Mr. Chairman, I know it is irregular, but if you would again-- I notice that Mr. Kehler seems to -- from the expression on his face or something -- have a brief comment.

ASSEMBLYMAN MARTIN: I think I would rather hear from other people at this point.

ASSEMBLYMAN BAER: Just on the factuality. Not on the desirability, but just on the factuality as to whether or not that information would need to be contained.

ASSEMBLYMAN MARTIN: Dave, if you know something, maybe you could send it to us in writing, rather than--

MS. TOMKIEVICZ: Chairman Martin, I have copies of my statement here, if I may just distribute them?

ASSEMBLYMAN MARTIN: If you hand them to Don, he will distribute them. Thank you.

MS. TOMKIEVICZ: Fine. Thank you very much. I appreciate the opportunity to speak here today.

ASSEMBLYMAN MARTIN: Dennis Bradley, Chamber of Commerce of Southern New Jersey. Then, is Mike McMorrow here? (no response) I don't see him. Bernardine Silver -- is she here? (no response) Lee Pacifico? (no response) Neil Ullman I know is here. And, Professor Rosenthal, you will be third -- third or fourth.

D E N N I S F. B R A D L E Y: Good morning, members of the Assembly State Government Committee. I am Dennis Bradley, Vice-President of the Chamber of Commerce of Southern New Jersey. The Chamber represents about 750 member firms in the southwestern, and part of the southeastern part of the State. We talked about what South Jersey is. We encompass seven counties: Burlington and the six counties south of it. Most of our members are mid-size and large organizations in the southern part of the State.

Currently before the New Jersey Legislature--

ASSEMBLYMAN MARTIN: May I ask you a question?

MR. BRADLEY: Sure.

ASSEMBLYMAN MARTIN: When you talk about the south, what do you think of -- the 609 area code?

MR. BRADLEY: What I think is Burlington County south -- Camden, Gloucester, Cumberland, all the way down to Cape May.

ASSEMBLYMAN MARTIN: Do you include Burlington?

MR. BRADLEY: Yes, we do; yes. We do not include Ocean. I don't know where you put Ocean. Where do you put it -- the east, the north, or wherever?

ASSEMBLYMAN MARTIN: I grew up there, and we always called ourselves Central New Jersey, at least from Point Pleasant. Toms River is Central.

MR. BRADLEY: There are some organizations that include--

ASSEMBLYMAN MARTIN: But directly west of it, when you get to Mount Holly, it suddenly becomes south, even though you go west.

MR. BRADLEY: That's right; exactly.

Currently before the New Jersey Legislature are several separate proposals for the implementation of an I&R system. Our Chamber strongly opposes the Initiative and Referendum process as unnecessary and contrary to our representative form of government. All individuals, groups, or organizations now have the opportunity to participate in the legislative process through equal representation and access to our elected officials, as was very keenly demonstrated, and is being keenly demonstrated here this morning.

Initiative and Referendum, in our opinion, will allow a minority of the population to place before the electorate selected issues, regardless of their impact on all the citizens of New Jersey. Such a system undermines the role of elected State representatives, who are charged with carefully evaluating the needs of all the citizens of New Jersey -- north and south -- and enacting responsible legislation to address those needs.

Many of the issues facing the Legislature today, specifically health care, education policy, and taxation, would likely be the initial measures placed as referendums. The fact that the Legislature has been struggling with these issues in the past demonstrates their complex nature. We believe that many important issues are too complex for a simple yes or no vote in a public referendum. Being from the southern part of the State, we are also concerned since we are at a demographic disadvantage.

The Chamber feels that the Legislature has not always been responsive to its particular concerns. However, the

current system does allow for comprehensive dialogue and debate of the issues. The result of an I&R system, in our opinion, would be laws enacted without the benefit of essential open debate. There would be no give and take. There would be no compromise. The Chamber strongly urges the Legislature to resist attempts to establish any Initiative and Referendum system.

On behalf of our organization, I want to thank you very much for the opportunity to present this statement on this very, very important issue. I would be glad to answer any questions, if anyone has any.

ASSEMBLYMAN MARTIN: Questions for Mr. Bradley?

ASSEMBLYMAN KENNY: Yes.

ASSEMBLYMAN MARTIN: Mr. Kenny?

ASSEMBLYMAN KENNY: Thank you. Assemblyman Franks testified here this morning--

MR. BRADLEY: Yes.

ASSEMBLYMAN KENNY: --regarding the protection that he believes is being afforded South Jersey by the signature requirements. What is your opinion about that?

MR. BRADLEY: Quite frankly, we are opposed to any I&R process at all -- any. Regardless of the protection that is afforded in his bill, that certainly was not afforded in 1988, when we opposed this legislation at that time.

ASSEMBLYMAN KENNY: Okay. Thank you.

ASSEMBLYMAN MARTIN: Thank you, Mr. Bradley.

MR. BRADLEY: Thank you, Mr. Chairman.

ASSEMBLYMAN MARTIN: Mike McMorrow? (no response) I'm sorry, he is not here. Bernardine Silver? (no response) She's not here. I went through this, but I failed to mark who-- Mike McMorrow is not here. Lee Pacifico is not here. Neil Ullman, a former colleague of mine at the County College of Morris. How are you, Mr. Ullman?

P R O F E S S O R N E I L R. U L L M A N: Very good. I didn't expect to come, but I have a--

ASSEMBLYMAN MARTIN: Welcome to South Jersey. (laughter)

PROFESSOR ULLMAN: Well, I used to come down here quite a bit, working with some people in the Department of Higher Education.

I have prepared materials which I would like to distribute and enter into the record.

I am a Professor at the County College of Morris, primarily in statistics. I have been there since it opened up. That is how I know Chairman Martin. I have been very active in the areas of quality and applied statistics and total quality management. In that regard, I would like to address a couple of issues regarding this particular whole concept. I have also had some special experience which I think is relevant to the points that I don't believe you have addressed at all yet at this juncture. And I would like to make some comments of my own as far as personal feelings with regard to interpreting information we get bombarded with, since I teach this whole area and am heavily involved in dealing with questionnaires and interpretations of information.

The first point goes to the idea of what happens when you get those signatures. In 1980, the County Clerk from Morris County had an anticipation of some 38,000 signatures that were going to be delivered on behalf of initiating a referendum to repeal the Sunday Closing Act. His responsibility was going to be to certify that those signatures were, in fact, correct. He estimated, at the time, that it was going to cost him in the neighborhood of 50 cents a signature to verify them. He also had a limited amount of time, and very little staff to deal with it. It meant checking the signature list for whether or not the person was registered, identifying the particular voting district the person was from, pulling the

book of signatures, and having someone who was qualified to verify those signatures.

He wrote to the College asking for some assistance. I, as a statistician, came in contact with him to try to give him some assistance in developing a sampling procedure. It was kind of problematic, in that what we would have liked to have had as an ideal setting was not practical. We were not looking for elegance in how to do it. We assumed there were no special patterns in the way the data was going to be coming in -- the signatures -- so I could use a kind of systematic sampling procedure, rather than going to a random number generator to come up with random values.

We were very concerned about duplicate signatures, on both of our parts, and we were fortunate in that this particular ballot -- or, this particular petition -- seemed to have very low numbers of duplicate signatures. He ended up looking at 4000 signatures, which was about his-- He had cushioned for about another 2000, we felt. He had to reach a minimum of 19,300-and-some-odd signatures before he was, according to the law that was allowing this referendum to go forward -- before he could certify that that petition was acceptable, and we only had 50 percent -- as you can see in the table (referring to table contained within his written statement) -- that were valid signatures of those -- just a fraction over 50 percent.

My suspicion is that in highly contested cases, that number would even be worse -- lower. However, that was our experience on the Sunday Closing Act. I think, if I am not mistaken, that this was probably the only time in New Jersey that such a type of sampling procedure was done. You will also see the types of signature cases you have there. In other words, there were--

ASSEMBLYMAN MARTIN: That is over on page 2, in your column?

PROFESSOR ULLMAN: On page 2 in Table 1. It shows that of the 4000, over 1400 -- or 35 percent -- were not registered voters in the County. There were a number who were out of county and illegible; there were a few "no matches"; and there were some duplicates. "No matches," as he wrote, were cases that he didn't really anticipate occurring, but they were where somebody apparently signed for somebody else, when a husband signed for a wife on the original registration form, apparently, or something to that effect -- or, on this form, rather.

ASSEMBLYMAN MARTIN: May I ask a question?

PROFESSOR ULLMAN: Yes.

ASSEMBLYMAN MARTIN: On that Table 1, you have a second listing and a third one. One says "Not Registered," and the third one says "Out of County." Does the "Not Registered" include people who are not registered out of county? See, I don't see out of county as necessarily being a major problem, but I do see "Not Registered, as being a major problem.

PROFESSOR ULLMAN: Well, it was obviously, since it was only Morris County voters who were allowed to participate in this particular ballot--

ASSEMBLYMAN MARTIN: So, "Out of County" could be registered out of county--

PROFESSOR ULLMAN: That's possible.

ASSEMBLYMAN MARTIN: --but the "Not Registered" would include both in county and out of county.

PROFESSOR ULLMAN: No. The "Not Registered" were separate. In other words, as I recall, the procedure was to first screen -- first identify the sample that was going to be examined. So they were highlighted off of the petition sheets, which contained approximately 25 signatures per sheet. The signature was then-- The individual was then looked at to see whether or not that person was a registered voter from the County, so they would have been excluded if it was illegible or

if it was not in the County; if they said they were from Livingston, and were not, obviously, a resident of Morris County.

Then, the voting district was identified on that form, so they could look it up--

ASSEMBLYMAN MARTIN: Just help me for one second. If a person was from Livingston, who was outside of your example, Morris County, because they live in Essex County, and they were not registered--

PROFESSOR ULLMAN: No, they wouldn't--

ASSEMBLYMAN MARTIN: --not registered and living in Livingston, would they appear on your fraction as being "Not Registered" or "Out of County"?

PROFESSOR ULLMAN: Out of County.

ASSEMBLYMAN MARTIN: And if they were registered and they were Out of County, which one--

PROFESSOR ULLMAN: We would have no knowledge of that, and he wasn't concerned.

Now, from what I understand, some of your proposals-- I have just gotten into this in the last couple of days, so I haven't seen much of any of the proposals, but I understand that one of the proposals calls for separate forms by county, so you would be required to sign on a Morris County sheet if, in fact, you were being petitioned on behalf of being a supporter of the initiative. That comes into play in the follow-up that I talk about underneath. This was the experience we had with a somewhat narrowly focused idea; that was, it took several weeks to carry through this process within his office, to look at the 4000 signatures. Then, I wrote a report on that and submitted it to him. He was satisfied that the estimate that I was able to provide was going to be adequate for him to go forward.

My recollection was that he had been talking about taking this to the court to be approved prior to actually

putting it on the ballot. He apparently got the approval, but he was very concerned in his original correspondence with the likelihood that he was in a no win situation. I have given you a quote there; that whichever side was going to be denied, he would end up in litigation. The check system of how you were going to argue or verify as a follow-up, I think, is a very serious concern.

I then have some ideas of something which I use. In the quality area, we talk about flow charting to look at the process of what you are going to be dealing with. I have introduced some ideas, or questions, with regard to the process you are going to follow on verification of signatures that are going to be received, or what you define as a registered voter. If there is a one-year period, what happens if somebody signed in tomorrow and moves, or dies, between the time they are counted? Do they remain as a person who is counted? I think these are issues that you do need to look at up front.

The idea of the six-month, or any other legislative time period-- Is that going to be initiated at the time that-- Does the clock begin to tick at the time the petitions arrive at the office here? What do you do when these come into the office? If they are separated by county and distributed to the individual counties-- To my understanding, there is no central collection of signatures. As we have heard very clearly in some of the other testimony, people will tend to sign incorrect signatures if we are out there trying to drum up business.

I think you are going to be obligated to have the signatures verified. There is going to be a real cost to that. My guess is at least about a dollar per signature. You are going to need, probably, at least double. If you call for 50,000 or 60,000 signatures, you are going to need double that to be able to satisfy a requirement of having a minimum. And if you don't start legislative review until the signatures are

looked at, you may have, I would guess, a month to two months before you are going to get all of this back and certified.

Another question I put up was: How is a judicial review going to take place, if any, and how will challenges be embedded in the process? Who gets the opportunity to say, "I don't think there are valid signatures," or not? I make some other comments in regard to that.

The other area that I talk about here is the area of interpreting information and wording. Obviously, you have heard a lot about the media situation. I have made some comments about that myself. However, one of the real things that has been interesting from my experience, is that I give a questionnaire at the beginning of my semester each year. That questionnaire is trying to obtain a variety of different kinds of ideas out of students, to get them to begin to think about what they are faced with. In the late 1970s, when the abortion question was being attempted to be put up as a constitutional amendment, there was a recognition that the idea of arguing for a prohibition of abortion was having difficulty in being accepted. So people floated another idea by saying, "Let's talk about protecting the life of the unborn child." That then led to a debate on whether or not one way of wording an amendment would be more satisfactory to the general public than another way.

There were Gallup Polls that looked at both of those questions. Ever since then, I have introduced two separate questions on my ballot -- or, questionnaire, at the beginning of the semester -- one being, "Do you favor a constitutional amendment prohibiting abortion?" Yes, No, Undecided. The second: "Do you believe there should be an amendment to the Constitution protecting the life of an unborn child?" Yes, No, Undecided. These have been streamlined from the original wording the Gallup Poll had, which had an even more difficult thing, because it had an added statement, something like, "or

not?" which helped to cause confusion when people read the question. But that was the original way it was worded.

On page 4, I just went back and looked at several of the last semesters and compiled about 225 of the responses. The situation is pretty consistent. What happens is, these questions which are on the same questionnaire, by the same student, show a tendency of about a 25 percent to 30 percent shift automatically from the "No" to an "Undecided;" from an "Undecided" to a "Yes" vote; from a "No" vote to a "Yes" vote, in terms of their favoring the constitutional amendment of protecting the life. The way in which you word a referendum, the way in which you word a ballot, is going to have a strong influence on the way people will answer that ballot, and whether they support it or they don't support it.

I think that is a real serious concern. It is not something that is easily overcome, and I don't think you can do too much by legislative action to avoid or prohibit that sort of thing from happening. But with today's media campaigning, I guess emotionally I have a strong supportive feeling for the concept of I&R.

I think at one time it was a real idea that would have been very, very powerful. I think you probably saw the article in January in The New York Times on how the sound bites have decreased in length for the campaigning over the last 20 years from 1968 to '88; the article about using the "Friends, Romans, Countrymen" speech, which decreased down to just today's media speeches of "Friends, Romans, Countrymen." This sort of thing-- I can envision, "The Parkway toll, get rid of it," repeatedly. There will be a whole collection of these kinds of things. I think the only ones who will really benefit are going to be the advertising and marketing people and the commercials and the TV and radio people who put them out.

One other comment, and part of that, is, we talk about two regions, or three regions within New Jersey, but there is

an interesting book I read which is called, "Clustering of America," which you may be familiar with. It talks about a thing called the "PRIZM" system -- the Potential Rating Index for Zip Markets. He talks about 40 subgroups, and says, "Tell me someone's zip code, and I can predict what they eat, drink, drive, and think." That says that we are subdivided into many, many subgroups within the State. There are people out there who have the resources to be able to help pinpoint where I am going to get the supporters within a particular voting or census track region. I think we will be seeing a whole new collection of lobbyists who will not be lobbying you people, but who will be lobbying the public, and making a lot of money on it.

My last comment on this is: If, however, you choose to go the I&R route, I offer suggestions with things such as this way of looking at the substance of the bills -- whether it is this bill or some other bills that you also talk about -- and an idea of getting quality into the -- design quality into the process that it envisions in the future. I would be glad to help and support in that way, and I know others who would, as well, from the TQM movement that is out there right now.

ASSEMBLYMAN MARTIN: Questions for Professor Ullman? (no response) I really do appreciate your coming down, Neil. I know you had called our office, and I wasn't quite aware of what you would have to say, but you touched on some issues that have not been addressed in this -- some of the more technical ones about the signatures, the time frames, and how they are validated. These are things that we are at least going to have to pay some attention to, particularly if there is a geographical distribution, and trying to determine how we can validate them without making it cost prohibitive, among other problems as well. I do appreciate your testimony.

PROFESSOR ULLMAN: There are some comments in there about specific issues, when you talk about sampling or no

sampling and how you may go about dealing with it. One of the things, I guess, is, there is a Pandora's box there. That means it is a pretty heavy task to go about making sure that everybody is satisfied.

ASSEMBLYMAN MARTIN: Thank you.

Professor Rosenthal, Director, Engleton Institute of Politics. After Professor Rosenthal, Pat Tansey, and Frank Haines. That will complete our list. Then we will take it from there.

P R O F E S S O R A L A N R O S E N T H A L: Thank you for permitting me to appear. I want to apologize for a cold, so I will be even fuzzier than I usually am. I am going to be brief and direct. I am not going to cover all of my objections to I&R, because you have been through so many of them already. I hope I can add a little more light. This will be based upon the fact that I have been studying and working with Legislatures for 25 years. I must frankly admit to a bias. I like Legislatures, and I even like legislators, and I have a high regard for representative democracy and for the legislative process. Therefore, that is where I am coming from in these remarks about I&R and about representative democracy.

I think I&R rests on two fallacious assumptions. The first assumption is that there is no way in a representative democracy for citizens to be heard. I think that is patently false, particularly today when all sorts of groups are organized. Not only the so-called special interest groups, but all sorts of groups have the opportunity to organize and mobilize and, indeed, they do. All sorts of groups bring pressure on legislators for one thing or another; again, not only the business community.

The citizenry makes known its views as groups or as a citizenry at large through public opinion polls which are regularly taken on various kinds of issues. And, most important, the citizenry makes known its views biannually, in

the case of members of the Assembly, quadrennially in the case of members of the Senate or the Governor, and makes a decision. Certainly, the last statewide election was a decision made by the citizens of New Jersey. When they feel strongly about a particular issue, they know quite well how to act. So I think the assumption that citizens don't have any input is just a mistaken assumption.

The second mistaken assumption is that the Legislature is not responsive. Very often, the Legislature doesn't respond on a particular issue because there is such deep division within the Legislature and outside the Legislature, that the issue cannot successfully be handled. Sometimes the Legislature does not respond on an issue because most legislators just don't think a response is called for; that the issue is not one that should be dealt with by the Legislature at that time. Indeed, sometimes the Legislature will duck a tough issue. I think legislators are human, just like university professors.

So, it seems to me that these two assumptions that the Legislature is not responsive-- It is responsive. They are constantly looking to know what people in their districts and people statewide are thinking, and which way the wind, or even the breeze is blowing, and the citizens do have input. So these two assumptions, I think, are rather weak.

Now, based on these assumptions, there is the feeling that I&R is the answer to the problems that beset lawmakers and lawmaking. Just from the point of view of the legislative process, let me comment-- I mean, the initiative, the ballot, is the way to give people the choice of yes or no, black or white, up or down. I'm sure I don't have to sit here even for a few moments to tell you that problems are much more complicated than that. Very rarely does something come into the Legislature where it is yes or no. The legislative process is one of deliberation and discussion. You can have discussion

on the outside, and I ask you to compare the discussion in party caucus, or in this Committee hearing room as you listen to testimony and ask questions-- I ask you to compare that to the discussion you would find in California or in any other state on an initiative campaign, where the discussion is, you know, 10, 20 seconds, and appealing pictures on television. It is a very different kind of a discussion.

Secondly, once a proposition is on the ballot, there is no possibility of modifying it, and yet the legislative process is one in which deliberation leads to negotiation, leads to modification, leads to compromise. And it leads to kind of developing a consensus, at its best, and support for a proposal, for a policy, for a change. You can't do that outside. It is either yes or no; there are winners and losers.

I think one of the benefits of the legislative process is, there may be losers, but they may not lose too much, and they may, indeed, get support for something that requires support. So, the whole process is very different. It seems to me that the initiative, the ballot, treats issues in isolation of other issues, and they never can be treated in isolation. There is a linkage of many issues, if not all issues, from policy to appropriations. For most laws, there has to be funding. And at least in the Legislature, when it is operating as it should be operating, and when members are responsible, there is a relationship they make in their minds between passing a law, making a commitment, and being able to fund that in the budget, whether it means raising taxes or cutting State employees.

Indeed, in the legislative process, there should also be a sense of, and a responsibility for the administration, the implementation of the law, policy, or proposal. That isn't going to be made when people vote on an initiative. There should be, and I think often there is in the legislative process, a commitment by members not only to enacting a policy

-- a new policy -- but to making it work afterwards. If the Legislature enacts legislation, there is a commitment to making it work. I do not think that the electorate in an initiative campaign will have that kind of commitment. It is not their business to commit themselves.

I think the legislative process and representative democracy is far from perfect. It should be improved, but I think I&R is a step toward discarding the legislative process and representative democracy.

Now, I'm sure that Assemblyman Franks and other sponsors of Initiative and Referendum amendments to the Constitution try to limit the dangers from I&R. I think that no matter what safeguards are built in, the dangers are there. There is the danger that with the ballot out there, the Legislature will pass the buck, when it shouldn't pass the buck, it should take the responsibility. This has happened in Oregon. There is the danger that conflict will be intensified, and I think there is plenty of conflict to go around now. There is the danger that campaigns in the media and editorial boards will increase in importance. There is the danger that we will be spending valuable and limited energy addressing some of the wrong problems.

Now, there are safeguards. One of the safeguards that I think most of the legislation introduced here includes is the indirect initiative. I ask you, though, about the indirect initiative, and I have just scanned some of the bills, and I may be uninformed, and you may have anticipated a problem. The indirect initiative provides that a petition is circulated, gets the required number of signatures, and the Legislature has six months, or a year, or whatever the time period is, to address the problem and to enact the law, or what have you. Who decides whether that problem is really addressed, or whether the legislative enactment really attends to what the

petition specifies? Does it mean that the Legislature has to take exactly the working of the petition and enact that law?

ASSEMBLYMAN MARTIN: It doesn't in most of them. It talks about substantially equivalent. Then there is a--

PROFESSOR ROSENTHAL: Who decides?

ASSEMBLYMAN MARTIN: Well, there would be a court proceeding.

PROFESSOR ROSENTHAL: So everyone goes to court and the court will decide in every case whether--

ASSEMBLYMAN MARTIN: In the Franks bill, the original petitioners who originally form the ballot question would make the determination whether it was substantially equivalent, I think.

PROFESSOR ROSENTHAL: Well, I think the original petitioners would have little reason to decide that it substantially conforms, unless it exactly conforms. In any case, I think there are loopholes that we have not thought about that will come out in practice. The metaphor was used just previously by the witness of "opening up Pandora's box." I think it is more than just opening up Pandora's box. I think it is like playing Russian roulette. And I think the only question is, how many chambers are loaded?

In California, they are adventuresome. They load five out of six chambers, you know, in their system. I think you people are conservative and cautious, and you will only load one out of six chambers. So I think the danger is that only on one out of six initiatives will you be blowing your head off. (laughter)

I apologize if I may have been too wishy-washy in this testimony, but I haven't quite made up my mind. Thank you.

ASSEMBLYMAN MARTIN: Are we only blowing our heads off, or the whole State's?

PROFESSOR ROSENTHAL: Those are the, you know, directed remarks.

ASSEMBLYMAN MARTIN: Any questions for Professor Rosenthal? (no response) Let me just ask you one thing: I am not proposing this, so don't-- Do you see any merit in a most simple form of I&R whereby if you collect enough signatures the Legislature would have to vote on an issue, whether voting up or down, to avoid the ducking question?

PROFESSOR ROSENTHAL: I see scant merit, but, you know, it is on the basis of principle, I must say.

ASSEMBLYMAN MARTIN: You get more chambers--

PROFESSOR ROSENTHAL: I think there is a principle having to do with the legislative process and representative democracy, and I think there is great access to the Legislature. I think, quite honestly, that if an issue is ducked, usually -- usually, not always -- there is a good reason why the issue is ducked.

I am comfortable in letting the Legislature, along with the Governor, along with the Feds, along with special interests, along with nonspecial interests, set the agenda. And that is the way it happens here. I have no concern about the fact that legislators know what is needed and know what people are thinking. Very often, the difficulty is to address all of the needs, or to pay for all of the needs, or the trade-offs, or what have you. So I kind of like the process, you know, as imperfect as it is now, and I am just very reluctant to get into what I think is something that can go in a very wrong direction.

ASSEMBLYMAN MARTIN: Thank you.

PROFESSOR ROSENTHAL: Thanks.

ASSEMBLYMAN MARTIN: Pat Tansey, Fire Fighters Association of New Jersey.

P A T R I C K T A N S E Y: Thank you, Mr. Chairman, and members of the Committee. I have a short statement to read, and then questions, if you would.

I would like to thank you, Mr. Chairman, and members of the Committee, on behalf of myself and the Fire Fighters Association of New Jersey, AFL-CIO, for the opportunity to speak against Initiative and Referendum proposals presently pending in the Legislature and before this Committee.

Proponents of I&R contend that passage of Initiative and Referendum legislation will give the citizens of New Jersey more involvement in the way their taxes are spent, how their State is governed, and, in general, the legislative power to mandate, or repeal, laws for all citizens of our State. This, the advocates argue, will, in turn, serve to place more power and input than they presently have in the lawmaking process and lead to a greater State for all of us. If this were true, we might possibly have to adjust our position on I&R. The truth of the matter, however, is that this is not the case.

We can more realistically look forward to the situation that exists in many states which presently have I&R and see initiatives being put on the ballot by self-serving groups with large sums of money to spend, which will be able to advertise their point of view and get their initiatives approved by the voting public. It has happened elsewhere, so how can we assume the same problems will not plague New Jersey?

I&R will lead to initiatives being passed without the benefit of public debate and input, such as what is going on in this Committee today. Currently, any bill must go through the scrutiny of several committees, be passed by both Houses of the Legislature by a majority vote, and then be approved by the Governor. There is debate and an opportunity for any person to have input in these hearings.

I&R will lead to initiatives being passed without the chance for any amendment or compromise. It becomes a more or less "take it or leave it" method of running government.

This so-called "direct democracy" method can lead to chaos as far as funding of public safety programs is

concerned. Initiatives limiting government spending may look very good to the voting public, but in reality could lead to almost total destruction of fire departments, police departments, and other critical emergency services. Initiatives to limit spending on these essential services could be passed without the general public actually being aware of the true consequences of such actions. The persons who suffer from such a system in the end are the very citizens who oftentimes are misled into believing tax saving initiatives are in their best interests, and then as a result they are left with reduced services that they didn't realize came as a part of the package.

Complex issues are oftentimes very difficult to understand when in the ballot form. Many times when issues are on a ballot they are not fully understood by the public. I&R assumes that the voters will have enough time, information, expertise, knowledge, and desire to reach sound decisions on complex proposals. That is not to say that the voting public is not intelligent enough to understand issues, but we have all read some pieces of legislation many times to ascertain their true impact. Will the voting public have this opportunity or be led by the most effective public relations campaign?

Initiatives could be approved by voters that will require many hours of legal deliberations as to their constitutionality or conflict with other statutes.

The people we elect to serve in the State House are representatives of many diverse interests that have been elected to come together in order to approve legislation and efficiently and responsibly serve the citizenry. We, the people, elect these representatives to serve as our voice in the governing of the State. This is true representation by the people and not representation by well-financed groups which often confuse or misrepresent issues to their own benefit.

The present system of representative democracy has served us well in New Jersey and will continue to do so. Everyone will not be happy with all that transpires here in Trenton. There are many times when we would like to see things go differently, but regardless of the end result, the opportunity for input is always there for everyone. This will not be the case if Initiative and Referendum legislation is passed into law.

On behalf of the Fire Fighters Association of New Jersey, I urge you to reject, for the reasons I have stated and numerous others, any and all Initiative and Referendum proposals that are brought before this Committee for consideration.

Thank you very much.

ASSEMBLYMAN MARTIN: Questions?

ASSEMBLYMAN BAER: So the Fire Fighters are putting cold water on it?

MR. TANSEY: They are putting cold water on it. They are putting a lot of cold water on the fires in L.A., too, I understand.

ASSEMBLYMAN BAER: Yes.

ASSEMBLYMAN MARTIN: Thank you, Pat.

MR. TANSEY: Thank you.

ASSEMBLYMAN MARTIN: Frank Haines -- is he here? (affirmative response from audience)

F R A N K W. H A I N E S, JR.: Good morning, Mr. Chairman--

ASSEMBLYMAN MARTIN: Good morning, Frank.

MR. HAINES: --ladies and gentlemen of the Committee. My name is Frank Haines, Jr. I am a private citizen, a resident of Ewing Township. I should indicate that I am a retiree from daily employment, and for the most part, I guess I qualify as a volunteer these days.

I thank you very much, Mr. Chairman, for the opportunity to speak today. I apologize for not having a written statement, but I don't have the privilege of having a secretary anymore.

Sitting here today is, as Yogi Berra said, "Deja vu all over again." Between 1975 and 1985, I was involved in legislative efforts on this very same subject, then as Executive Director of the former New Jersey Taxpayers Association, which was the predecessor of the organization which David Kehler now heads. I would just like to make a few suggestions today, and hopefully I will not be duplicating things that have been gone over.

I think that before this question goes on the ballot, assuming that it will, in some form--

ASSEMBLYMAN MARTIN: I don't think you can make that assumption.

MR. HAINES: All right, I won't make that assumption then. In other words, if it should, there should be a package which I think the Legislature should put together for citizen consumption before the ballot question. What I am talking about first is the constitutional amendment itself.

Secondly, the implementing statute, which will largely be the changes in the election law, or the additions to the election law, which, in most cases, would appear to duplicate much of the language in the Constitution. I agree with Ed McCool's suggestion that election law financing probably needs to be modified -- the law needs to be modified, if you expand into this area.

And finally, I think there should be a public information document, something which New Jersey has not had, but I think you have had some examples from California and some other states where they have such a document; a document which will explain the ballot questions, list them, explain them, and then provide pros and cons on the subjects. This should cover

both questions initiated by the voters and by the Legislature. That is what is comprehended in the booklet that comes from at least California, and a number of other states. Congressman Zimmer provided for such a pamphlet in a bill which I think I recall seeing in 1985, and we discussed that with him at that time. I find that Initiative and Referendum is a highly technical, complicated subject which, at this point, has a tendency to be largely oversimplified in terms of public consumption. For that reason, I think the voter information document becomes extremely important.

Just to narrate a little experience I had a couple of weeks ago, I serve on the Senior Citizens' Council in Ewing Township, a small group of people nominated by the Township Committee to look at senior citizen problems, and so on. The Chairman asked me if I would do a brief orientation on the subject of Initiative and Referendum to the members of the group. I think we had about 20 people that day. I started out by asking the question, "If Initiative and Referendum were on the ballot today, how many of you would approve it?" Four hands went up. "How many would be against it?" and another four hands went up. Then I asked, "How many of you feel that you don't know enough to vote intelligently on the question?" and the rest of the hands went up. This is what, at this point, concerns me. There is a need for a tremendous amount of public education, and my view has not changed on that since 1985.

There are a couple of aspects of this subject which I think need special consideration by the Committee. Both of them may have been brought up, particularly one this morning, which I will address second. One is the capabilities and limitations of the present voting machinery in New Jersey. The Secretary of State, I think, alluded to this possibly, but I am not sure that anyone raised the question of, "What is the maximum number of questions that the present voting machinery

in New Jersey could handle?" We do not have a uniform system of voting. We have voting machines in some places. We have the punch-out ballots, as I recall, in other places, and there may be still other voting techniques that are used.

If you had, say, 10, 15, 20, or 25 questions, such as you have in California, and occasionally in some other states, would the present voting machinery handle them, or would you have to do away with voting machines and go to a punch card system, which I understand is much more expandable than voting machines? Granted, however, if you have the voting pamphlet, you may be able to do away with the brief explanatory statement on the machine, because you have provided much more information than that brief explanatory statement, which is now customary. So I suggest that if this does become a fact, before anything happens on it, we ought to know whether the system we have now can take care of it.

Secondly, a subject which was brought up earlier this morning; that is the question on limitations on subject matter for both Initiative and Referendum. Should there be any? Should they be more extensive than those in Assemblyman Franks' bill, which as I recall are two, one which is the present prohibition on the Legislature, which is in the Constitution, most of which relates to the Legislature involving itself in the specifics of an individual municipality, although there are a number of others in some 20-odd limitations? That is embraced in it, as I recall. Also, the question which involves the situs of some installation in one of the colonies -- one area of the State. I think those are the only basic prohibitions, as I recall from reading the Franks' amendment.

So, should they be more extensive? Should they be the same for both Initiative and Referendum? Should they be the same, or should there be broader limitations on one versus the other? I view this exception as a real major aspect of this situation which merits extensive research and evaluation in

light of what is, I think, probably a significant experience in a number of the states. My recollection is that if you take the 15 states that now have both Initiative and Referendum, a majority of them at least have various types of limitations.

As an example from two of the most recent state Constitutions which have Initiative and Referendum-- I would just like permission, if I may, to read from the Constitution of one of those states, because they are almost identical. I am looking at Alaska, 1959, and Wyoming, 1968, two of four post-war Constitutions which involve adoption of Initiative and Referendum.

First, they are only initiative for statute -- Initiative and Referendum for statute. Those two states do not include initiative for constitutional amendment. I suspect that since Alaska adopted this section first, that Wyoming, looking for it, decided to copy it. So, I will read the Wyoming. My recollection is that they are almost verbatim; as I say, almost identical. Bear in mind that this is on initiative as it relates to statute, and I am quoting:

"The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, enact local or special legislation" -- which is what I referred to that already exists in our Constitution -- "or enact that prohibited by the constitution for enactment by the legislature. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety."

There is one other question which relates to this exception that I just want to refer to. I don't have the statistics with me so I can cite the extent of it. I think the Legislature needs to consider whether there needs to be a specific exception on whether the present Constitution

adequately embraces emergency situations. Just consider it. Should emergency situations be handled by an extraordinary vote, or should they be prohibited through either -- particularly referendum? This is a provision that can possibly be abused. If you want to see a state which has had some real problems with emergency situations, where the legislature can declare an emergency and therefore it is not subject to local Initiative and Referendum-- Massachusetts has had some extensive litigation on that as it relates to appropriations. Enactment of appropriations-- Say it is an emergency. Accordingly it cannot be used, and so on.

Those are just a few examples, I think, of this area, which can be extremely comprehensive or have nothing at all that relates to it. But in view of the New Jersey Constitution situation, I think it does merit a rather extensive evaluation before the final determination of the form under which you may release this amendment from Committee.

Thank you very much, Mr. Chairman, for the opportunity to address these remarks to you today.

ASSEMBLYMAN MARTIN: Any questions for Mr. Haines?

ASSEMBLYMAN BAER: Only if there is any possibility-- Do you have any of that in writing?

MR. HAINES: No, sir, but I can cite a number of sources -- what remains of my library at home, and what I found at the State Library, some specific articles, and just summaries in studies which cover a review of those exceptions.

ASSEMBLYMAN BAER: It would be helpful if you could provide that.

MR. HAINES: I'll see that Don gets it.

ASSEMBLYMAN BAER: Thank you.

MR. HAINES: Thank you again.

ASSEMBLYMAN MARTIN: To the best of my knowledge-- Was there anyone on the list who came in late? We are not going to have time for people to speak twice.

L A R R Y H A V E R L Y: (speaking from audience) I think a lot of people have spoken twice. If you recall in my testimony in Morristown, I said that I would only talk about my reasons for supporting Initiative and Referendum, and that I would reserve my comments about the details of it until this hearing here. So I only gave, basically, half of my talk. I announced that at the time.

ASSEMBLYMAN MARTIN: Okay. Have a seat, and let me find out who these other gentlemen are.

S T E V E N M. N A P O L I E L L O: (speaking from audience) Steve Napoliello, New Jersey Hands '91.

ASSEMBLYMAN MARTIN: Yes, I have you, sir, as the only person who is not on our list who has not spoken. Is there anyone else who claims to have been on the list last week, or anyone who has signed one of these forms at this time? (no response) Then we will hear from Mr. Napoliello and then Mr. Haverly.

MR. NAPOLIELLO: Thank you, Mr. Chairman, and associates, for allowing me-- When I walked into the room, I was appalled to find out that racism has been invoked in the desires of the citizens to have I&R. I don't wish to spend much time on that, but I think it is a red herring, a pseudo-intellectual ruse to tie us up into endless, specious argument.

I can't see where I&R would, in any way, upset the balance of power. All we are talking about in I&R is an adjunct to the representative Legislature. We are not talking about unbalancing the balance of power. We still have ample civil rights legislation on the books. We still have courts. These laws will be tested against the Constitution, just as well as your laws will be. So, that is a false argument, in my opinion. That is all I wish to-- That is all the time that this deserves, really.

I find it amusing that this fireman, or this representative of the Fire Fighters Association, opposed I&R, when the fire commissions of this State are creatures of I&R. You people created enabling legislation in 1972 establishing I&Rs for the creation of fire commissions; 5 percent of the votes cast in the previous Governor's election. You get those signatures, and you get a fire commission. And you can get the reverse the same way. So them opposing I&R is ridiculous, because they are creatures of I&R in the local towns.

Let me get to the real reasons -- what I think are the real reasons -- why so many people want I&R in this State. What we have in Trenton is representative government out of control, which reached its high water mark in 1990. You talk about I&R blowing the heads off of citizens. I would say that the Legislature of 1990 blew their heads off with that $2.8 billion tax package. I can, for the Professor's sake-- I can remind him of some history where many Legislatures have blown their heads off, as well as Governors.

Certainly the citizens, through their own Initiative and Referendum, can do no worse than what we have had here in Trenton. What we have had is tax, spend, tax, spend, and tax, spend, without end. Worst of all, nothing is ever solved. Taxes lead to more taxes because you hire more bureaucrats who think of more ways to raise more taxes. More than 70 percent of this State want I&R because they are sick and tired of the public lying by politicians. More than 50 percent of the voters are turned off with the business-as-usual present day political culture and do not show up at the polls. We are seeing more and more examples of this, particularly during these presidential primaries. And, of course, "Read my lips." We get more of the same no matter who is elected here in Trenton.

In 1963, with Richard Hughes, we got the New Jersey property tax reform package. We got our first broad-based 3

percent sales tax to relieve -- to "relieve local real estate taxes by helping with school costs." In 1965, they raised it to 5 percent. The people responded by saying, "Our taxes have gone higher. They have not gone down as promised." Politicians responded, in those days, by saying that they would have gone even higher had we not invoked the sales tax. In 1966, Hughes and his Legislature were lining up their ducks for a broader based income tax, which raised a lot of political stress, and the Democrats were thrown out in 1967. Again, they blew their heads off.

In 1968, liberal Republican, Bill Cahill, was heard to say, after being elected, "We need a broader based tax, an income tax to support our schools in a more equitable manner and give local real estate tax relief." There it is again. His Republican legislators voted it down, and Cahill was defeated in the 1971 primary. There was a Governor blowing his head off.

In 1971, it was Brendan Byrne who was heard to say, "There will be no income tax in the foreseeable future." Remember that famous quote? Soon after being elected and before taking office, he was huddling with the Legislature to put together an income tax package. There was a lot of political stress, and the battle raged until 1975, when the Thorough and Efficient Education Law -- T&E, remember that? -- an income tax of 2 percent to 2 1/2 percent was passed. That was to be a two-year, self-destruct law. Another lie. That law was designed to relieve local real estate taxes. Do we remember that?

ASSEMBLYMAN MARTIN: Yeah, and somehow Governor Bryne escaped with his head. (laughter)

MR. NAPOLIELLO: Very true. In 1981, the campaign of Tom Kean, a Reagan Republican. I still have his letter, his primary, handwritten letter. He promised to cut everything, but instead, in early 1983, he raised the sales tax from 5

percent to 6 percent, and the income tax from 2 1/2 percent to 3 1/2 percent for those making over $50,000 in 1986. In 1988, he added two cents to the gas tax and doubled the State payroll. Another guy who should have blown his head off.

In 1989, the campaign of Florio. He said, "I don't know that the citizens of New Jersey are undertaxed. If I am elected Governor, the first thing I will do will be to conduct an audit to see that we are prudently spending the revenues we have to effect cuts in waste, to set spending priorities. I have a sense that moneys are being wasted." The understatement of the century.

Well, we are still waiting for that audit to be completed. And before any auditing was started, we got the $2.8 billion tax package, the largest in the State's history. We have had the greatest spending binge in the State's history since Florio has come to office. He's outdoing Kean a little bit.

We have urban school districts awash in so much money that they don't know where to put it -- to spend it. In 1991, Florio expanded the Tax Rebate Program from $175 million to $700 million, and we will spend $30 million in interest for the amount borrowed, and $4 million to administer it. He sold highways in 1991 to meet the budget cap. What's next? Broad-based taxing has never reduced real estate taxes in this State. Mine has risen 712 percent since the advent of broad-based taxes. Broad-based taxes, themselves, have increased just as dramatically since their inception.

We feel that representative government has been failing us on a colossal scale. I&R can be a supplement to representative democracy, acting as a safety valve, and giving citizens better access to the arena of competing ideas. In these times, we are becoming a reverse oligarchy, where the vested interests who live off the taxpayers are deathly afraid that the citizen taxpayers might gain sufficient power to

decide how much government they want and how much they are willing to pay for it. And above all, it is far more difficult to buy the entire citizenry with PAC money than it is to buy the Legislature. These are the new aristocrats who look down their noses at the working stiffs who complain about taxes. Gentlemen, we are fed up. We have had it. We want I&R; we want it now; and we shall have it.

Thank you.

ASSEMBLYMAN MARTIN: Last will be Larry Haverly, to complete his testimony.

MR. HAVERLY: Last Thursday, the insiders, the paid lobbyists, were able to dominate the hearing -- all of the speaking slots, or almost all of them.

ASSEMBLYMAN MARTIN: That's not so.

MR. HAVERLY: Well, I want to commend the Chairman, and the Committee, for scheduling -- for having an extra hearing so that the public could be heard, and everyone who wanted to speak would have the opportunity. I also want to commend the Chairman, and the Committee, for holding hearings outside of Trenton, where the citizens have a much better opportunity to have their voices heard than they do in Trenton.

ASSEMBLYMAN MARTIN: What I tried to do last Thursday, as well as today, was go straight down the list, which I did. The list, to the best of my knowledge, was on a first come, first served basis. It may be that some lobbyists called in first, but also, if you check the list, you will see that there was a pretty good sprinkling of people pro and con throughout most of the hearings on a protracted basis. In Toms River that was true, and I thought it was true in Morristown, as well. In fact, Morristown started off-- It seemed to be mostly toward the I&R process initially, so if anything, I think it has been even. It might have been slightly tilted toward the pros, in my view. But that is one person's perception. I have tried to--

MR. HAVERLY: Well, I didn't mean to claim that it was tilted pro or con, except that I will say last week's hearing was. One of the few people on our side who got a chance to speak-- I said, "How did you do it?" and he said, "Well, I was smart. I knew the process. I knew that if I spoke anywhere else I would not get a chance to speak here." So obviously, the lobbyists didn't bother to go to Morristown or Toms River, and they were able to come on as first speakers. Anyway, I didn't want to make a-- I do want to commend you, because I think it was very nice that you scheduled an extra hearing.

Also, I have sat through three of the hearings now, and I want to commend the Committee for the attention they have given to all of the different views which have been expressed. As a member of the audience, I appreciate it. That is not always easy, when you hear the arguments -- some of the same arguments over and over again.

I made my arguments in favor of I&R at Morristown, and I certainly will not take the time of the Committee to repeat them. I would like to take my time to address some of the arguments and claims that have been made by the opponents, but I think that has already been done by other speakers, and I would not want to go into that.

I will say that I have listened to all of the opponents of I&R with an open mind. I am more than ever convinced that I&R is something that is needed by New Jersey, and would be a healthy, desirable thing for New Jersey.

I want to spend my time addressing some of the details of it. For example, I would like to go through some of the measures, if I have a few minutes. I will try to do it quickly. I do have written material, a summary.

First of all, on the indirect initiative: I have not heard anyone speak against that. Our group is fully supportive of the idea of indirect initiative. On subject matter: We believe Initiative and Referendum should be able to address a

broad range of subject matters, and we think that the three resolutions that are before the Committee are correct in that matter.

I would second Bob Franks' argument that the Committee should choose among those things which have been presented through the three resolutions. Basically, our own group feels that within that framework that has already been presented and debated, with arguments pro and con, we could live with the measure that came out including the best of the three provisions.

One of the matters, signature percentage-- We think that this is a major item of great importance in the final resolution of Initiative and Referendum. There is disagreement among even the supporters of Initiative and Referendum and among the three resolutions. Our own group favors the 8 and 12 of ACR-33 and ACR-1 as being the maximum that should even be considered. Having collected signatures, having been out on the street dealing with people, I know it would be extremely hard, probably almost impossible, for any group to achieve anything more than that. It would be sufficiently hard just to achieve that. Only a few issues would ever gain the support that that high level of signature collection would do. A higher requirement would simply make I&R essentially unusable.

ASSEMBLYMAN MARTIN: I don't think anyone has suggested going higher than 8 to 12.

MR. HAVERLY: Okay, good.

ASSEMBLYMAN MARTIN: For those who support it, it seems to fall within the framework of 3 and 5 as a floor, and 8 to 12 as a ceiling.

MR. HAVERLY: Okay. Our own group -- just to jump ahead then -- would say that we favor somewhere in the 6 percent to 8 percent range for Initiative and Referendum, and somewhere in the 9 to 12 range for constitutional amendments.

That is more or less in line with other states, and I have attached, on the last page -- and I won't take the time to go over it -- a chart which shows that the average of all states with initiative is about 7.4 percent -- that is for legislative initiative -- and it is just under 9 percent for constitutional initiative. So our recommendation of somewhere around 6 to 8 and 9 to 12 falls within the average of all the states in the United States -- the ones that have initiative, the 23 states basically that have it.

Geographic distribution is a matter of concern. Our own group favors, really, the absence of geographic restrictions. We think this is trying to solve a problem that does not exist. Rob Stuart testified last week about the experience in California, which has a strong north/south division. It has never come up in practice that there would be the north against the south, or vice versa. My own feeling is that this would not come up in New Jersey either. The North Jersey people have supported South Jersey issues; for example, gambling in the casinos in Atlantic City. So the limited experience has been that the people of this State look at the State as a whole, and, therefore, they do not see themselves as being north against south, or south against north, or anything.

We could live with the provisions of ACR-1, if that, in the Committee's judgment, is what it is. It is not our preference, but it is acceptable. The higher the percentage, though, the less requirement for geographic distribution, it would seem to me. With a low percentage, there might be more need -- or more argument in favor of geographic distribution than if the percentages are high.

The time in the Legislature-- We favor the six months. It is spelled out in ACR-1 and ACR-57, and we believe that should be part of the resolution; that it should spell out what the maximum time is, and not leave that for subsequent legislation. The time after it is rejected, assuming it is

rejected by the Legislature -- the time after that-- Both ACR-1 and ACR-57 specify that the matter would be on the ballot of the next general election, more than 120 days later. For other similar matters in the State Constitution, the time is specified as three months. We believe that three months would be a more proper amount of time after the Legislature has had time to act, before it can then appear on the ballot.

I would just respond to one of the earlier speakers, just off the subject slightly. As we understand it, the groups, themselves, would have a chance to decide whether the legislation was substantially similar. Speaking for a group that could conceivably be initiating an initiative some day, I would say that our feeling would be that if the Legislature comes up with improvements to it, that would certainly be desirable and acceptable. If the Legislature comes up with something that is radically different, then we would oppose it, and say, "Let it go to the ballot."

But, there is a middle ground in which there would be room for a compromise. If the Legislature says, "We will pass a bill which is almost like what you want, but it has this extra feature," or, "it lacks this feature," I think the group would have to sit back and say, "Well, will you take what you can get now for sure, or will you just refuse it and go to the ballot, and perhaps see the measure go down to defeat, and also incur a lot of effort and expense on your part to try to present your views to the voters?" So I think, in fact, the process, as contemplated, has room for compromise, and would lead to compromise between the group proposing an initiative and a Legislature that might want to suggest changes to that process. So there is a middle ground that has not been addressed.

Time to collect signatures, one year. I think that is a desirable, reasonable period, and it is in the bills. When does it become self-executing? The bill says it will not

become self-executing for a year. I really think that is an excessive time, and we favor reducing the time before it becomes self-executing during which the Legislature can pass the enabling legislation, to something more like six months.

We strongly agree, and it is in all three resolutions, that the Governor should not have veto power over an initiative matter. We strongly agree, as in ACR-1 and ACR-57, that a matter approved by the voters cannot later be challenged. Let the challenge occur before it goes on the ballot, but once it has been passed by the voters, then it should not be subject to challenge. So we agree with that.

We strongly agree, as in ACR-1 and ACR-57, that measures passed by the voters cannot be amended, repealed, or reenacted without a three-fourths vote for two years, and a three-fifths vote for an additional year. We think that a permanent three-fifths is unduly strenuous, so we favor something like what is in the Franks bill.

We agree just mildly, as in ACR-1 and ACR-57, that a measure rejected at the polls could not appear again until the third general election. That struck us as being not an unreasonable provision.

We agree as to the desirability of disclosure of expenditures. We do tend to favor that being included in the enabling legislation, so they could more easily be modified or improved by the normal legislative process, rather than trying to include it as part of the resolution, and hence part of the constitutional amendment.

We are somewhat opposed to delaying the effect of any tax or expenditure changes until the beginning of the next fiscal year. I think that Assemblyman Baer expressed concern that, "What if they repeal the whole budget? Won't that throw the State into chaos?" First of all, I doubt whether you could get a measure like that through the initiative process or even approved by the voters. But in any case, the Legislature would

have had warning for a year-and-a-half anyway before the matter happened. I think it is a long time if the voters approve something in November, to say, "Well, this measure simply cannot take effect until the following July." So we tend to be somewhat opposed to that -- not adamantly opposed or anything, but somewhat opposed -- and think it would be less desirable.

We strongly agree, as in all three resolutions, to having self-executing clauses, as I mentioned before.

On new matters, we are undecided about the desirability of a requirement of a fiscal note. This is one that was mentioned at one of the hearings -- the Morristown hearing. It sounds good, but we do have some concerns that, in fact, this might not be good. We think that a measure that will be up for public scrutiny -- that there will be plenty of opportunity for proponents and opponents to indicate what they think the fiscal impact of it would be.

We suggest that the enabling legislation allow for groups to request the use of State facilities, such as the drafting of the final wording, and possibly using State facilities and the mechanism for holding a public hearing. I know our own group, if we were involved in the initiative process, would want it to be thoroughly aired before we began the process. We would want to make sure it was worded properly. We would certainly invite opponents of the measures to tell us why they thought it was bad, or how it might be improved. I can't guarantee you that all groups would feel that way, but I know our group would feel that way. We would welcome any small help the State might provide in the form of drafting or, you know, a space facility, or allowing notices to be posted, that sort of thing.

We realize that much of the action on hearings has to take place in Trenton, because that is where the focus of the State is.

On conclusion, we find that ACR-57 would most closely adhere to our views of what the resolution should be, provided two critical changes were made to that: One is that the percentage of signatures required be changed from 3, to 6 to 8, which we favor, and from 5, to 9 to 12, and that delays for appearing on the general ballot be changed from 120 days to three months.

ASSEMBLYMAN MARTIN: Just on that last point, you heard Professor Ullman say that in order to verify the signatures it would take a month. I don't know whether three months is giving the Legislature much of a chance for a reaction.

MR. HAVERLY: I would assume that the verification of signatures would not occur after the Legislature had failed to act and when it went on the ballot, but would occur at the time the signatures were submitted to the Legislature.

ASSEMBLYMAN MARTIN: I thought you were talking about the six months that the Legislature had to act. No? Are we talking about the same thing?

MR. HAVERLY: Maybe not. I'm sorry.

ASSEMBLYMAN MARTIN: The Legislature has a six-month period in which to act after the--

MR. HAVERLY: No, that is not what I was addressing in that last part. I was addressing the time from when the Legislature--

ASSEMBLYMAN MARTIN: Okay.

MR. HAVERLY: Let's say the Legislature considers the measure, votes no, and then it will go on the ballot. The question is, what length of time should there be between when the Legislature votes no, or fails to vote at the end of the six months and the time it goes on? I think 120 days seemed long to us. Three months is more in keeping with other things in the State Constitution.

ASSEMBLYMAN MARTIN: Any questions for Mr. Haverly?

ASSEMBLYMAN BAER: Yes.

ASSEMBLYMAN MARTIN: Byron?

ASSEMBLYMAN BAER: When in the legislative process here we have proponents and opponents of measures who give wildly varying estimates on the financial impacts and it is useful to have a nonpartisan source of information in the form of a fiscal note, why are you -- although you indicated "mildly" -- opposed to that information being required to be made available to the public on Initiative and Referendum?

MR. HAVERLY: I think our mild opposition is more a matter that we have not thought of all the consequences. It may be a good thing. I am not saying we are really that strongly against it. Until we have a little better chance, or have heard more of the pros and cons on that particular point, we would lean on the side of not supporting it.

ASSEMBLYMAN MARTIN: I would think, knowing your past history and some of your lobbying and interests through Morris County, that that would be something that you would be highly supportive of, not so much for your initiatives, but for potential initiatives of other organizations that may have costly repercussions to the State.

MR. HAVERLY: Maybe if we thought a little more about it we would be more supportive.

ASSEMBLYMAN BAER: The other question I want to ask is about the use of sampling techniques. How do you feel about that? On the one hand, it could save a great deal of expense if there were a provision that subsequently the enabling legislation would provide some mechanism so that these would not have to be torturously expensive and time-consuming to be counted. I assume on the other hand that it might raise, in somebody's mind, a question about the integrity of the person doing the sampling. How do you feel about that?

MR. HAVERLY: My profession is somewhat in that direction. I would accept, you know, a valid sampling as being

a desirable and a more cost-effective way to verify-- I would agree with some of the previous speakers that in practice, anyone collecting signatures better plan to collect almost twice as many actual signatures, so it could withstand a certain number of challenges of people who are not registered, shouldn't have signed, illegible, all sorts of reasons. You may have, you know, 100,000 signatures, but maybe-- But if they can, by sampling, determine, "Well, who can say whether we got exactly 100, but it is somewhere between 90 and 100, which is well in excess of what we need--" Certainly we would favor that very much. It would save money and it would achieve the same results.

ASSEMBLYMAN BAER: That is all my questions. Thank you.

ASSEMBLYMAN MARTIN: Thank you.

That concludes the public hearings on I&R. As I said before, in the next couple of weeks, I will be attempting, with staff, to present the Committee with an Assembly Committee substitute. I welcome further discussions among Committee members, individually with myself and interested persons. Please don't call my house. (laughter) Give me a couple of days off. Let me just think about what I have before any additional thoughts, and then I will be glad to at least hear you out; present it, the Committee can talk about it, and then we will see where we go from there.

(HEARING CONCLUDED)

APPENDIX

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INITIATIVES AND BIAS ISSUES

On April 23, testimony was presented to the State government Committee by a witness who expressed concern about the potential impact of an initiative system upon minority rights. Few specifics were provided, but some background is in order.

In considering minority rights issues, it is important to recall that, in countless ways, legislatures in this country in years past enacted laws in various states that were racist, antagonistic toward women, bigoted against religious minorities, and otherwise abhorrent. The use of state powers for such purposes is an indelible stain on our heritage.

Certainly, in the early days of the initiative, the device was used to expand liberty: women's suffrage was enacted by initiative in such states as Arizona, Colorado, and Oregon. Indeed, some Progressive Era reformers and feminists advocated the adoption of initiative systems specifically in order to win women's voting rights. The initiative was crucial in winning worker rights such as the eight hour day and child labor laws in many states. This explains why many labor organizations favored the adoption of initiative procedures: this history is well known.

Some commentators have minimized (Colorado College Professor Thomas E. Cronin in his book **Direct Democracy)** or glossed over (David D. Schmidt in his 1989 book **Citizen Lawmakers**) initiative attacks on minority rights. Bias initiatives have been a small share of the total number of ballot questions over the years, but, at times, bigots have been able to use initiatives as an agenda-setting device.

Anti-minority initiatives occasionally appeared on ballots as early as the first quarter of the century. In California, voters approved Proposition 1 in 1920 to restrict Japanese people's purchase of land. A few years later, during a wave of anti-Catholic hysteria, Oregon voters adopted an initiative to prohibit private schools. In 1956, in the midst of the confrontation between President Eisenhower and racist Governor Orval Faubus over the integration of Little Rock Central High School, Arkansas voters approved an initiative instructing the legislature to use any constitutional means to preserve school segregation. Utimately, the schools of Arkansas were integrated. In 1964,

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California voters approved Proposition 14 striking down the state's newly enacted fair housing law. Although this initiative was later invalidated in a court challenge, its passage led to a loss of popularity in California of the use of the initiative process which lasted until 1972. In the 1970s, anti busing initiatives were adopted by voters in California, Colorado, Washington, with the later measure ultimately ruled unconstitutional. Native Americans' fishing rights were targeted by Initiative 456 in Washington in 1984, as voters approved a measure to request that Congress abrogate initiatives providing for commercialized steelhead fishing by native Americans. While this question may seem murky to New Jerseyans, opponents of the initiative claimed in their ballot pamphlet statement that "456 would destroy the basic culture and heritage of native Americans...." Federal elected officials also were petitioned by California voters in 1984, as the electorate approved Proposition 38 requesting repeal of a 1975 federal law providing for multi-lingual ballots. The opposition to this initiative was led by Latino-American and Asian-American members of Congress who argued that multi-lingual ballots encourage assimilation through political participation. Proposition 38 was sponsored by a Michigan headquartered organization called U. S. English. U. S. English seems to concentrate its initiative activities in states where there is growing Latino political power, sponsoring initiatives to declare English the official language in Arizona (1988), Colorado (1988), Florida (1988), and California (1986). All four measures were approved by the voters, although their actual impact has been unclear.

In recent years, as more people of color have been elected to state legislatures across the country, these institutions have become much stronger forces for equal treatment of all citizens. It is unlikely that New Jersey voters, if provided with initiative procedures, would adopt bias measures. However, these procedures have been used elsewhere to exacerbate conflict.

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QUALIFICATION OF A CONSTITUTIONAL AMENDMENT INITIATIVE: CALIFORNIA LAW VS. ACR1

	California	New Jersey
Valid signatures	8% of prior gubernatorial vote	12% of prior gubernatorial vote
Period to collect signatures	150 days	Minimum of 365 days
Definition of valid signature	Provided by law	Never included in any NJ I&R bill
Geographic distribution	None	Provided
% of registered voters to qualify	4.6%	7.4%
1990 registered voters per square mile	86.2	497.8
1990 registered voters	13,478,027	3,717,536

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FAX: (609) 452-1788

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INITIATIVES AND INTRASTATE REGIONAL ISSUES

On April 23, testimony was presented to the State Government Committee regarding the use of initiatives in other states in a fashion which may affect particular regions of the state. The witness said that initiatives in other states have not addressed regional issues. In fact, they have.

California has a long tradition of the use of initiatives to reapportion the state's congressional delegation and/or the state legislature. Nine such measures appeared on the California ballot between 1926 and 1984:

Measure	Year	Result
Proposition 28	1926	Approved
Proposition 1	1928	Approved
Proposition 13	1948	Rejected
Proposition 15	1960	Rejected
Proposition 23	1962	Rejected
Proposition 10	1982	Rejected
Proposition 11	1982	Rejected
Proposition 12	1982	Rejected
Proposition 39	1984	Rejected

In **Massachusetts**, in 1990, voters approved an initiative to change the formula for the distribution of state government aid to municipalities to place greater emphasis on size of population as a formula factor.

In **Oklahoma**, in 1982, an initiative to reapportion congressional districts was rejected by the voters.

In **Oregon**, in 1990, an initiative was approved to restructure welfare benefits for recipients in six counties. This was promoted as a demonstration project.

In **Arkansas** and **Ohio**, in the 1980s, initiatives were on the ballot to permit gaming in particular jurisdictions within the state.

It is important for the legislature to have accurate information about initiative matters in order to make the best decision on proposed legislation. The initiative is clearly used from time to time in other states to address issues of regional concern.

INITIATIVES ON ABORTION ISSUES

On April 23, testimony was presented to the State Government Committee regarding initiative activity in other states germane to abortion issues. A member of the committee asked a witness if any initiatives have restricted abortion in other states. The answer to that question is: yes. In 1984, an initiative was approved in **Colorado** banning the use of state government funds for abortions. In 1988, pro choice advocates such as the National Organization for Women put an initiative on the ballot to end the ban on state government funding for abortion; this measure was overwhelmingly defeated, 809,078 to 534,070. Also, in 1988, an initiative to restrict abortion was passed in **Arkansas.**

Initiatives to limit abortions in some fashion have appeared on the ballot but were defeated at the polls in the following states: Alaska (1982), Arkansas (1986), Oregon (1986 and twice in 1990).

The 1984 Colorado abortion vote is a classic example of the problems voters face with complex measures. As Colorado College Professor Thomas E. Cronin wrote in his 1988 book **Direct Democracy** on that measure, "confused wording may have aided its passage: 26 percent of voters in a statewide survey immediately after the election said they wished they had more information on the initiative; and 10 percent were mistaken about whether a yes vote was for the anti-abortion or the pro-choice side."

As for the 1988 Colorado initiative on state government funding of abortion, perhaps the manner in which it was phrased on the ballot was not completely understandable. The initiative was as follows:

> Shall there be an amendment to repeal Article V, section 50 of the Colorado Constitution and to provide instead that the state and its agencies, institutions, and political subdivisions shall not prohibit the use of public funds for medical services for a woman solely because of her choice of whether or not to continue her pregnancy.

TESTIMONY BEFORE THE ASSEMBLY STATE GOVERNMENT COMMITTEE
April 30, 1992

Neil R. Ullman
7 Ripplewood Drive
Randolph NJ

SS# 140-34-6162
201-989-8365

It is a pleasure for me to appear before this committee. Thank you for the opportunity to share with you some of my experiences, ideas, and concerns regarding the pending bills related to the concepts of Initiative and Referendum.

I have been a Professor at the County College of Morris since its inception and for the past 12 years have been primarily teaching statistics. I also have had the pleasure of consulting in the fields of statistics, quality and engineering. I am involved with a number of state and national groups interested in the general issues of Total Quality Management, statistics, and standards. I come to you to share some specific concerns with the pending legislation.

I will speak to the following issues:

1. The process of verification of signatures on the main petition, including statistical sampling.
2. Some examples of the problems of media and especially the tailoring of wording to create confusion.
3. Some concerns regarding the future, including personal comments.

SUNDAY CLOSING ACT

In 1980 a law was passed permitting individuals to petition counties to ballot a Referendum to repeal the Sunday Closing Law. In August of that year the Morris County Deputy County Clerk wrote the County College requesting assistance. He stated that his office was faced with the problem "that we must verify signatures until we are assured that the minimum number as required by law are registered voters of the County of Morris."

He explained that 19,371 valid signatures were required. At the time he expected that the Petitions would contain in excess of 38,000 signatures." In fact over 46,000 signatures were ultimately received.

He recognized that many signatures would be illegible, that there might be many duplicates and non-registered voters as well as other reasons to disqualify signatures.

He explained that: "Unfortunately, the mechanics of checking the signatures is highly complex and extremely expensive and time consuming. Further, there is a strong possibility that the Clerk's Office is in a 'no win' situation - that is, if we approve the Petitions, we will probably be sued by opponents to the proposition and if we disapprove the Petitions, we will probably be sued by the proponents.

"In the event of litigation, it will be necessary for the County Clerk's Office to defend its final position in Court and with the necessary proof.

He went on to estimate it would cost about $2500 to check 5 to 6 thousand signatures (about 50 cents per signature) and he did not have the resources either in money, staff, OR time (today this would probably cost more than double--about $1 per signature). The process involved reading the signature and the address to determine the voting district and Register Book that the signature would be found in. The individual book with the registration forms would be pulled for each registered voter and the signature checked. A tic mark was also to be placed in the book to check for duplication. He sought assistance in doing a sampling, which is where I came in.

My consultation resulted in developing a systematic sampling procedure. His office examined approximately 4000 of the first 22000 signatures received. As you can see in Table 1, only 50% were valid acceptable signatures. I do not believe he felt we would have such a small percentage of valid signatures.

TABLE 1 -- Results of Petitions

REASON	Number	Percent
Registered	2055	50.4
Not Registered	1455	35.7
Out of County	287	7.0
Illegible	146	3.6
Printed Not Signed	52	1.3
Duplicate	42	1.0
No Match	37	0.9
Total	4074	

I was able to provide an estimate giving adequate assurance that he had more than the minimum required number of signatures. One mutual concern had been the possibility of a large number of duplicate signatures, and we were both pleased that the number of duplicates was so small. However, in more highly contested or emotional campaigns the duplicate problem could be more real and seriously complicate the estimation effort.

The Clerk's Office accepted the Petitions and moved the referendum forward. No litigation took place, although we did have capability to review some additional names if necessary.

THE CURRENT PROPOSAL

I have not seen the specific proposals but, from some discussions and presentations I have heard, I have a general idea of the intended procedures. I would like to suggest that one useful tool for examining processes, a flowchart, be utilized to describe the specific steps. I think you will also then be in a position to anticipate and consider some of the potential problems. We are arguing in the quality and engineering areas that it pays to put more effort into good design rather than trying to fix it later.

As I understand the proposals we have the following:
First phase:

Some questions at this point:

What is to be defined as a registered voter?

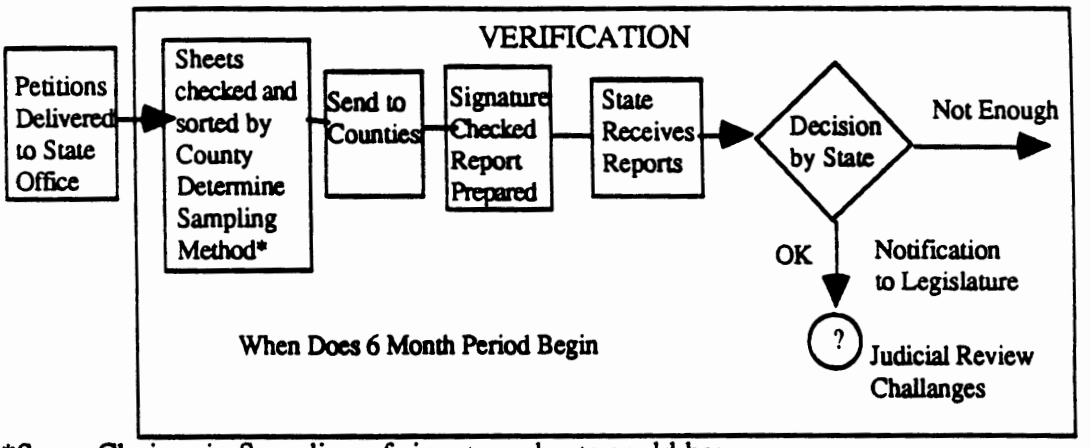
Since there is one full year to obtain signatures, will a person be considered registered only if they were registered on the date they signed -- this requires a date on the Petition, and the further checking of the signature against the dates of registration.

What if a voter dies or moves?

What if they register after signing?

Will the Petitioner be required to file ALL Petitions at one time?

After Petitions are obtained I assume the validity of the signatures must be checked by the State and Counties. I am assuming that the only place the signatures exist are in the counties, and therefore the signature sheets will need to be sent to the counties to be checked.
One possible scenario would be as follows:



*Some Choices in Sampling of signature sheets could be:
a. No sampling -- all signatures are checked
b. Sample pages are picked -- all signatures on those pages
c. Sample each page or some fraction of each page.

Some Additional Questions regarding the Verification Process:
a. Will the State Office have a limited time to certify the Petitions
b. Will the State check the overall Petitions for registrations (is there a state list).
c. How would deadlines be placed on Counties for checking signatures.
d. Does the Judiciary review or approve the certification
e. What is the mechanism for challenge and what does this do to the 6 month period
f. If there are not enough signatures, but the year was not used up, does the group get more time?
A very important point is the question of when the period for legislative action begins -- at the time of submission of signatures, or after Verification? If the legislature must wait for verification, then that will appreciably cut into any fixed period.

If sampling is to be considered you may need to vary the procedure from time to time. In the Morris County Sunday Closing Petitions we were fortunate in being able to assume that there would not necessarily have been any pattern of people signing the forms. We also had a very small percent of duplicates, although I would expect that to increase with a larger sampling (I had hoped to be able to watch the duplicate status as we increased the sample, but this was not within the capability of the staff.) Simplicity of procedures rather than statistical elegance is necessary to prevent errors, and this often leads to other problems related to how good the estimate might be.

MEDIA AND WORDING PROBLEMS

As a statistician I am always concerned with the need for objectivity in presenting questions or issues to people. Although a questionnaire or ballot item should be neutral in its form, it is well known that the wording can strongly influence the outcome. I would like to provide an interesting illustration of the problem.

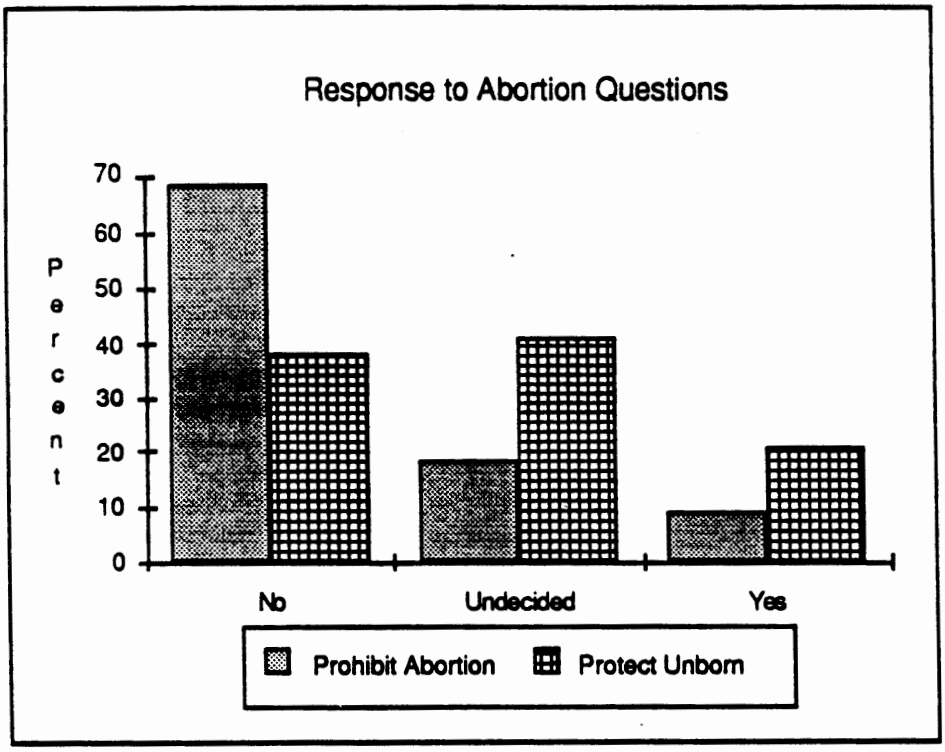
For about 15 years I have been conducting a survey at the beginning of my first statistics class. Among the questions posed are several related to the controversial issue of abortion. Two of them relate back to the late 1970's when a constitutional amendment banning abortion was the topic of a national effort. The pro amendment people were interested in finding wording which would be easier to generate public support, and two of the possible choices were to offer amendments which either "prohibit abortion" or "protect the life of the unborn child". Gallop polls were conducted to see the difference in how people responded to these two approaches. Ever since that time I have included two questions on my form asking opinions on these amendments. I also ask for a general expression of opinion on abortion. The three questions are:

What is your feeling on abortion: use a scale of 0 (against) to 10 (in favor).
Do you favor a constitutional amendment prohibiting abortions? (Yes, No, Undecided).
Do you believe there should be an amendment to the constitution protecting the life of the unborn child? (Yes, No, Undecided)

The two amendment questions are separated from each other by about 10 other questions. I have summarized the results of these last two questions for several semesters of responses (constituting about 224 students). As you can see in Table 2 and the Figure, there are definite differences in the proportions of individuals responding to these two questions. As would be expected, there is a shift in individuals favoring the protection of the unborn over the prohibition of abortion, in spite of the fact that there is no way you can accomplish the second amendment without prohibiting abortions.

TABLE 2
Number of responses out of 224 students

	Yes	Undecided	No
Prohibit Abortion	20 (9%)	41(18%)	153 (68%)
Protect Unborn	46 (21%)	92 (41%)	86 (38%)



The point I am making is not that there cannot be appropriate presentation and discussion of vital topics. The problem is that as we move into the emotionally charged issues such as abortion, gun control, "excessive" taxation, and so on, the efforts all too often become simply rhetoric and distortion. I don't know how you could ever establish guidelines to prevent such actions.

As a follow-up of the direction that media campaigns have been taking I would refer you to a front page article in the Jan. 23, 1992 New York Times titled "Sound Bites Become Smaller Mouthfuls." John Tierney described how the 43 second average TV campaign speeches of 1968 had by 1988 shrunken to 8.9 seconds. He illustrated this with the famous "Friends, Romans, Countrymen, lend me your ears" speech. In 1968 this continued through "I come to bury Caesar, not to praise him. The evil that men do lives after them; the good is oft interred with their bones." The 1988 speech included just the first three words ("Friends, Romans, Countrymen"). My point is that media campaigns do not stress intelligent dialogue and information--but rather involve concise, repetitive, highly selected statements.

I suspect that what you will get as a result of I&R will be highly targeted and focused efforts by well funded interest groups using strategic marketing organizations -- groups which utililize databases organized by population demographics according to census or zip code designations. An excellent treatment describing such efforts and results is a 1988 book called Clustering Of America by Michael Weiss (Harper & Row) which describes the use of systems such as PRIZM (Potential Rating Index for ZIP Markets). A quote from the book is particularly telling: "Tell me someone's zip code, and I can predict what they eat, drink, drive -- even think." Although this is not new, it is certainly becoming an increasingly dominant way of dealing with the public.

In closing, a few personal comments.

Emotionally I support the concept of I&R. I believe deeply in the need for greater public involvement in the legislative process. Safety values are needed. But safeguards are also critical. I am concerned that with I&R we may trade the deliberate, sometimes slow, legislative procedure for emotional often slanted media campaigns. There now is an argument of whether organizations having paid lobbyists have too large an influence on the Legislature (notwithstanding that groups such as the League of Women Voters and Common Cause which support I&R also have paid lobbyists). I suspect that I&R will create a whole new collection of lobbyists with large spending agendas -- perhaps not lobbying the legislature, but instead bombarding the public with their often slanted and very selective messages. It isn't hard to look at the newspapers and see the fleeting issues -- Sunday it was repeal the tolls on the Parkway and Turnpike (if you don't), another day I heard messages about the Homestead Rebate, who knows what will be next.

Unfortunately those that will probably benefit the most will be the marketing and advertising groups that design and produce the campaigns and commercials and the TV and radio companies which broadcast them.

If, however, you choose to go the I&R route, then I offer my suggestions to help insure we develop a quality legislative act and I would be pleased to be of further service in a non-partisan way. Thank you for the opportunity to address you.

4/26/85

Frank W. Haime
16 Kinney Drive
Trenton, NJ 08618

§ 51. Filling of vacancies.

When vacancies shall occur in the membership of either house of the legislature of the State of Wyoming through death, resignation or other cause, such vacanies shall be filled in such manner as may be prescribed by law, notwithstanding the provisions of section 4 of article III of the constitution which is by this section repealed. (As added by Laws 1947, House Joint Resolution No. 5, p. 249.)

Cross references. — As to when governor may fill vacancies in office, see art. 4, § 7, Wyo. Const. As to vacancies in elective state offices, see § 22-18-111.

Section added. — This section was added by a constitutional amendment proposed by Laws 1947, House Joint Resolution No. 5, p. 249, adopted by a vote of the people at the general election held November 2, 1948, and proclaimed in effect December 1, 1948.

Initiative and Referendum

§ 52. Initiative and referendum.

(a) The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.

(b) An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred (100) qualified voters as sponsors, and shall be filed with the secretary of state. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review.

(c) After certification of the application, a petition containing a summary of the subject matter shall be prepared by the secretary of state for circulation by the sponsors. If signed by qualified voters, equal in number to fifteen per cent (15%) of those who voted in the preceding general election and resident in at least two-thirds ($^2/_3$) of the counties of the state, if may be filed with the secretary of state.

(d) An initiative petition may be filed at any time except that one may not be filed for a measure substantially the same as that defeated by an initiative election within the preceding (5) years. The secretary of state shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty (120) days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

(e) A referendum petition may be filed only within ninety (90) days after adjournment of the legislative session at which the act was passed, except that a referendum petition respecting any act previously passed by the legislature may be filed within six months after the power of referendum is adopted. The secretary of state shall prepare a ballot title and proposition summarizing the act and shall place them on the ballot for the first statewide election held more than one hundred eighty (180) days after adjournment of that session.

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(f) If votes in an amount in excess of fifty per cent (50%) of those voting in the preceding general election are cast in favor of adoption of an initiated measure, the measure is enacted; if votes in an amount in excess of fifty per cent (50%) of those voted in the preceding general election are cast in favor of rejection of an act referred, it is rejected. The secretary of state shall certify the election returns. An initiated law becomes effective ninety (90) days after certification, is not subject to veto, and may not be repealed by the legislature within two (2) years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty (30) days after certification. Additional procedures for the initiative and referendum may be prescribed by law.

LIMITATIONS

(g) The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, enact local or special legislation, or enact that prohibited by the constitution for enactment by the legislature. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety. (As added by Laws 1967, Senate Joint Resolution No. 3, p. 729.)

Cross reference. — See also §§ 22-24-101 to 22-24-123.

Section added. — This section was added by a constitutional amendment proposed by Laws 1967, Senate Joint Resolution No. 3, p. 729, adopted by a vote of the people at the general election held November 5, 1968, and proclaimed in effect December 9, 1968.

ARTICLE 4. EXECUTIVE DEPARTMENT

§ 1. Executive power vested in governor; term of governor.

The executive power shall be vested in a governor, who shall hold his office for the term of four (4) years and until his successor is elected and duly qualified.

Cross references. — For provision that legislature shall meet in special session when convened by the governor, see art. 3, § 7, Wyo. Const. As to administration of government generally, see title 9. As to term of office of governor, see § 22-2-105.

Effect of neglect to send appointee's name to senate. — The fact that the governor neglected to send the name of an appointee to the senate did not deprive him thereafter of the power to appoint. People v. Shawver, 30 Wyo. 366, 222 P. 11 (1924).

Quoted in State ex rel. Chatterton v. Grant, 12 Wyo. 1, 73 P. 470 (1903).

Cited in State ex rel. Miller v. Barber, 4 Wyo. 409, 34 P. 1028 (1893); State ex rel. Murane v. Jack, 52 Wyo. 173, 70 P.2d 888, rehearing denied, 71 P.2d 917 (1937); Brinegar v. Clark, 371 P.2d 62 (Wyo. 1962).

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Intoxicating Liquors

§ 10. Intoxicating liquors.

On and after the first day of March, 1935, the manufacture, sale and keeping for sale of malt, vinous or spirituous liquors, wine, ale, porter, beer or any intoxicating drink, mixture or preparation of like nature may be permitted in the State of Wyoming under such regulation as the legislature may prescribe. (As added by Laws 1917, ch. 2; as amended by Laws 1933, Senate Joint Resolution No. 3, p. 178.)

Cross reference. — As to regulation of alcoholic beverages generally, see title 12.

Section added. — Laws 1917, ch. 2, authorized the submission of a proposed amendment to the constitution adding to this article a section under the head of "Intoxicating Liquors," to be known as § 1. It was the prohibition amendment. The amendment was adopted by vote of the people at the general election held November 4, 1918, and was proclaimed in effect December 3, 1918.

Amendment. — Laws 1933, Senate Joint Resolution No. 3, p. 178, authorized the submission of a proposed amendment to take the place of the new section added in 1918. This amendment, which repealed prohibition, was adopted by vote of the people at the general election held November 6, 1934, and was proclaimed in effect December 1, 1934.

ARTICLE 20. AMENDMENTS

Sec.
1. How amendments proposed by legislature and submitted to people.
2. How two or more amendments voted on.
3. Constitutional convention.
4. Constitution adopted by convention to be submitted to people.

Cross references. — As to amendments to constitution of United States, see §§ 8-4-101 to 8-4-110. As to amendments to constitution of Wyoming, see §§ 22-20-101 to 22-20-109.

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§ 1. How amendments proposed by legislature and submitted to people.

Any amendment or amendments to this constitution may be proposed in either branch of the legislature, and, if the same shall be agreed to by two-thirds of all the members of each of the two houses, voting separately, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and it shall be the duty of the legislature to submit such amendment or amendments to the electors of the state at the next general election, and cause the same to be published without delay for at least twelve (12) consecutive weeks, prior to said election, in at least one newspaper of general circulation, published in each county, and if a majority of the electors

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shall ratify the same, such amendment or amendments shall become a part of this constitution.

Meaning of "electors". — Word "electors" as used in this section is taken to mean those persons actually voting at the general election. School Dists. Numbers 2, 3, 6, 9 & 10 v. Cook, 424 P.2d 751 (Wyo. 1967).

The word "electors" in this section means the number of electors who actually voted in the election. State ex rel. White v. Hathaway, 478 P.2d 56 (Wyo. 1970).

"Electors" in this section should not mean a person entitled to vote at an election, since until a person qualified to exercise the privilege of voting actually takes advantage of his franchise, he does not become an elector. State ex rel. White v. Hathaway, 478 P.2d 56 (Wyo. 1970).

Majority required by section. — This section, requiring "a majority of the electors" to ratify an amendment to the constitution, requires a majority of the electors to adopt an amendment, and not merely a majority of those actually voting thereon. State ex rel. Blair v. Brooks, 17 Wyo. 344, 99 P. 874 (1909).

This section requires a majority of the electors voting in the election to adopt an amendment, and not merely a majority of those voting thereon. State ex rel. White v. Hathaway, 478 P.2d 56 (Wyo. 1970).

§ 2. How two or more amendments voted on.

If two or more amendments are proposed, they shall be submitted in such manner that the electors shall vote for or against each of them separately.

§ 3. Constitutional convention.

Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to call a convention to revise or amend this constitution, they shall recommend to the electors to vote at the next general election for or against a convention, and if a majority of all the electors voting at such election shall have voted for a convention, the legislature shall at the next session provide by law for calling the same; and such convention shall consist of a number of members, not less than double that of the most numerous branch of the legislature.

§ 4. Constitution adopted by convention to be submitted to people.

Any constitution adopted by such convention shall have no validity until it has been submitted to and adopted by the people.

ARTICLE 21. SCHEDULE

Sec.

1. Acquired rights continue.
2. Territorial property vested in state.
3. Territorial laws become state laws.
4. Accrued fines go to state.
5. State to sue on bonds and prosecute crimes.
6. Territorial officers to hold over.
7. Submission of constitution.
8. When constitution takes effect.
9. First state election; time of holding; proclamation.
10. Same; duty of county commissioners; who may vote; conduct of election.
11. Same; board of canvassers.
12. When officers shall qualify; oaths; bonds.

Article XI

Initiative, Referendum, and Recall

Section 1. Initiative and Referendum. The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.

General Consideration.
Initiative
Referendum.

I. GENERAL CONSIDERATION.

General construction. — In matters of initiative and referendum, the people are exercising a power reserved to them by the constitution and laws of the state, and the constitutional and statutory provisions under which they proceed should be liberally construed. Municipality of Anchorage v. Frohne, Sup. Ct. Op. No. 1835 (File Nos. 3050, 3104), 568 P.2d 3

The right of initiative and referendum, sometimes referred to as direct legislation, is to be liberally construed to permit exercise of that right. Thomas v. Bailey, Sup. Ct. Op. No. 1835 (File Nos. 4204, 4205), 595 P.2d 1 (1979).

Section does not apply to appropriations. — The Alaska constitution withdraws from the people the right to initiative and referendum with respect to appropriations. Municipality of Anchorage v. Frohne, Sup. Ct. Op. No. 1477 (File Nos. 3050, 3104), 560 P.2d 1 (1977).

II. INITIATIVE.

The right to propose and enact laws by the initiative is reserved to the people of the state of Alaska by this section. Boucher v. Engstrom, Sup. Ct. Op. No. 2232 (File No. 2232), 528 P.2d 456

The initiative may be used only to enact laws. Starr v. Hagglund, Sup. Ct. Op. No. 98 (File No. 246), 374 P.2d 316

And not for the purpose of constitutional amendment. — See Starr v. Hagglund, Sup. Ct. Op. No. 98 (File No. 246), 374 P.2d 316 (1962).

The subject of the initiative must be such legislation as the legislative body to which it is directed has the power to enact. Municipality of Anchorage v. Frohne, Sup. Ct. Op. No. 1835 (File Nos. 3050, 3104), 568 P.2d 3

An initiative may be used to repeal a law since to read this section so as to sever the power to repeal from the initiative, thus eliminating popular votes on previous initiatives, on statutes not subject to referendum, i.e., those for which the time limit has passed, and on parts of statutes as opposed to an entire enactment, is illogical given the very intent, subject to express exceptions, to vest the voting public with legislative power equal to the legislature's power. April 14, 1975, Op. Att'y Gen.

In the context of this article, the referendum has a restricted scope of operation: First, a referendum may only reject "acts of the legislature" and not acts by initiative; second, a referendum may address only acts passed by an immediately preceding legislative session; and third, a referendum may reject only entire acts of the legislature and not sections thereof. Thus, unless a law sought to be rejected falls within the ambit of the "acts" described, a referendum is unavailable. April 14, 1975, Op. Att'y Gen.

III. REFERENDUM.

The referendum is a veto power. — 1963 Op. Att'y Gen., No. 18.

It is analogous to the veto power vested in the governor by art. II, § 15, of the Alaska Constitution. 1963 Op. Att'y Gen., No. 18.

The referendum and the veto power serve similar functions in legislative process. 1963 Op. Att'y Gen., No. 18.

Hence, the limitations of one apply to the other except as distinctions are specified in the constitution. 1963 Op. Att'y Gen., No. 18.

The purpose of the veto is to prevent the adoption of the undesirable legislation. 1963 Op. Att'y Gen., No. 18.

And nature. — The veto power is not a power to change the effect of proposed laws or to do anything concerning them except to approve or disapprove them as a whole. 1963 Op. Att'y Gen., No. 18.

"Act" refers to entire act of legislature. — The word "act," as used in the referendum provisions of this article, refers to an entire act of the legislature and not to sections of acts. 1963 Op. Att'y Gen., No. 18.

The veto power may be exercised only against entire bills. 1963 Op. Att'y Gen., No. 18.

And it may not be exercised upon sections of bills. 1963 Op. Att'y Gen., No. 18.

Were the referendum interpreted as extending to sections of act, its avowed purpose to approve or disapprove acts would be frustrated. It would in many cases result in exactly that which it is not intended to do. It would change the effect of a proposed law, and frustrate the legislative purpose. 1963 Op. Att'y Gen., No. 18.

Except in the case of appropriation bills. — See 1963 Op. Att'y Gen., No. 18.

Referendum does not suspend effect of act. — The natural import of the provisions of this article and art. II of the Alaska Constitution is that the filing of a referendum petition does not suspend the effect or operation of the act referred. Walters v. Cease, Sup. Ct. Op. No. 182 (File No. 447), 388 P.2d 263 (1964).

Hence, if rejected, act remains in effect for thirty days after certification of election returns. — If an act is rejected by the people in a referendum election it nevertheless remains in full force and effect until thirty days after certification of the election returns by the secretary of state [now lieutenant governor]. Walters v. Cease, Sup. Ct. Op. No. 182 (File No. 447), 388 P.2d 263 (1964).

Applied in Walters v. Cease, Sup. Ct. Op. No. 235 (File No. 518), 394 P.2d 675 (1964).

Section 2. Application. An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred qualified voters as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review. [Amendment approved August 25, 1970]

Effect of amendment. — The amendment, approved August 25, 1970 (6th Legislature's SJR 2), substituted "lieutenant governor" for "secretary of state" in the second sentence.

The intent of this section is obviously to insure that the proposed initiative or referendum has some substantial support before the state is subjected to the expense involved in printing of formal petitions regarding the measure. 1963 Op. Att'y Gen., No. 17.

This article is rather unique in that it provides for two separate stages in the preparing of an initiative or referendum for submission to the electorate. Before circulating a petition, the proponents of an initiative or referendum must first circulate an application "containing the bill to be initiated or the act to be referred" and obtain the signatures of not less than one hundred qualified voters as sponsors of the application. 1963 Op. Att'y Gen., No. 17.

Section implemented by AS 15.45.270. — The state legislature has interpreted and implemented this section by passing a statute (AS 15.45.270) requiring the application for a referendum petition to include the act to be referred. 1963 Op. Att'y Gen., No. 17.

Summary not permitted. — The constitution does not permit a summary of an act to be substituted for a copy of the act in the application. 1963 Op. Att'y Gen., No. 17.

The word "form" is the antithesis of the word "substance." Substance is that which is essential in content and goes to the merits of the issue. Substance pertains to matters which affect the basic rights of parties. 1959 Op. Att'y Gen., No. 35

Alaska Const., art. II, § 13 applies to form of initiative. — The requirement that the lieutenant governor certify as to the form of the application under this section would be meaningless if the general provisions of Alaska Const. art. II, § 13 did not apply. There would be nothing to certify to since the article on initiative sets out no particular form of an initiative. 1959 Op. Att'y Gen., No. 35

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The lieutenant governor acts in a ministerial capacity. 1959 Op. Att'y Gen., No. 35.

He may investigate voting qualifications of signers. — The lieutenant governor can make such inquiry and investigation as to the voting qualifications of individual signers of an initiative application as appears reasonably necessary in his discretion. 1959 Op. Att'y Gen., No. 35.

But he may look only at form and not substance of application. — 1959 Op. Att'y Gen., No. 35. But see Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974), cited below.

The legislature expanded the scope of the lieutenant governor's review of the initiative application in enacting AS 15.45.040, which requires that a determination be made as to whether unconstitutional subjects were included. Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

Improper form. — The application for referendum petition submitted was not in proper form and it was necessary for the proponents of the measure to prepare an application containing the text of ch. 52, SLA 1963, and secure the necessary number of signatures to this application before they could validly prepare a petition for circulation under Alaska Const., art. XI, § 3. 1963 Op. Att'y Gen., No. 17.

Where ch. 52, SLA 1963, contained seven sections affecting many different sections of the Alaska Statutes, it was not adequately described by the words "legislation enacted by the last legislative assembly pertaining to the formation of mandatory boroughs in the State of Alaska." 1963 Op. Att'y Gen., No. 17.

Quoted in Walters v. Cease, Sup. Ct. Op. No. 182 (File No. 447), 388 P.2d 263 (1964).

Section 3. Petition. After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the election districts of the State, it may be filed with the lieutenant governor. [Amendment approved August 25, 1970]

Cross reference. — See note to Alaska Const., art. XI, § 2.

Effect of amendment. — The amendment, approved August 25, 1970 (the legislature's SJR 2), substituted "lieutenant governor" for "secretary of state" in the first and second sentences.

Quoted in Walters v. Cease, Sup. Ct. Op. No. 182 (File No. 447), 388 P.2d 263 (1964).

Section 4. Initiative Election. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void. [Amendment approved August 25, 1970]

Effect of amendment. — The amendment, approved August 25, 1970 (the legislature's SJR 2), substituted "lieutenant governor" for "secretary of state" in the second sentence.

This section must be interpreted liberally and not narrowly as to the scope of legislative power. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

Purpose of amending section prior to its adoption. — As originally introduced, this section provided that laws proposed by the initiative shall be submitted to the voters "at an election not later than 180 days after the adjournment of the legislative session following the filing of the petition." This proposal was

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amended before adoption to read as it does now. The purpose of the amendment, as explained by one of its sponsors, was to do away with the high costs of special elections for such matters (estimated at $40,000), by requiring that the initiative proposition go on the ballot at a statewide election, whether it be primary or a general election or a special election called for some other purpose. Starr v. Hagglund, Sup. Ct. Op. No. 98 (File No. 246), 374 P.2d 316 (1962).

An initiative proposition may be placed on the ballot for the first available statewide election held more than 120 days after adjournment of the legislative session following its filing because of special circumstances. Starr v. Hagglund, Sup. Ct. Op. No. 98 (File No. 246), 374 P.2d 316 (1962).

This section was not designed with the objective of depriving the people of the right to vote if by reason of circumstances, such as an injunction preventing the secretary of state [now lieutenant governor] from placing an initiative proposition on the ballot, it became impossible to submit the proposition at the "first" statewide election held within the prescribed time. Starr v. Hagglund, Sup. Ct. Op. No. 98 (File No. 246), 374 P.2d 316 (1962).

The words "substantial" or "substantially" are relative, inexact terms. Their meaning is quite elusive. The meaning of such terms can be derived only by reference to all the circumstances surrounding the context in which they are used. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

The term "substantially the same measure" must be viewed against the total structure contemplated in this article in the matter of direct legislation. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

When substantial similarity exists. — If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

Legislative discretion. — It [illegible] that the legislative act need not [illegible] the initiative in all respects, and that [illegible] framers intended that the legislature should have some discretion in determining how far the legislative act should differ from the provisions of the initiative. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

Legislature may vary terms of initiative by amendment. — The constitution vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

And by enactment covering same subject as initiative. — If the legislature has broad power of amendment, it follows that it has broad power to change an initiative by an enactment covering the same subject as the initiated measure. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

This section does not expressly confer on any branch or agency the power to determine whether an act and an initiative are "substantially the same." Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

Power of legislature to enact measure for such determination. — This section and Alaska Const., art. V, § 3, and art. XII, § 11, when read in harmony, give the legislature the power to enact a measure determining whether an act and an initiative are "substantially the same" as used in this section. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

AS 15.45.210 enacted to effectuate this section. — Alaska Statute 15.45.210 delegating authority to the lieutenant governor to determine whether an act and an initiative are substantially the same was enacted to effectuate this section. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

The delegation of power in 15.45.210 is both reasonable and constitutional. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

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...n to the lieutenant governor of ...ity to determine whether an act ... initiative are substantially the ... based on sound, practical ...sations, is not a logical ...mental officer and definitionally narrow. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

Cited in Walters v. Cease, Sup. Ct. Op. No. 182 (File No. 447), 388 P.2d 263 (1964).

Section 5. Referendum Election. A referendum petition may be ... only within ninety days after adjournment of the legislative ... at which the act was passed. The lieutenant governor shall ... a ballot title and proposition summarizing the act and shall ... them on the ballot for the first statewide election held more than ... hundred eighty days after adjournment of that session. [Amendment approved August 25, 1970]

Effect of amendment. — The ...ment, approved August 25, 1970 ... Legislature's SJR 1, substituted "lieutenant governor" for "secretary of ... year the beginning of the second ...

Act may be effective several months prior to commencement of 90-day period. — An act of the legislature with an immediate effective date could conceivably be signed into law early in a legislative session, and would be in actual operative effect for several months prior to the commencement of the 90-day period in which a petition for referendum may be filed under this section. Walters v. Cease, Sup. Ct. Op. No. 182 (File No. 447), 388 P.2d 263 (1964).

Section 6. Enactment. If a majority of the votes cast on the ...sition favor its adoption, the initiated measure is enacted. If a ...ity of the votes cast on the proposition favor the rejection of an act ...ed, it is rejected. The lieutenant governor shall certify the ...ion returns. An initiated law becomes effective ninety days after ...fication, is not subject to veto, and may not be repealed by the ...ature within two years of its effective date. It may be amended at ... time. An act rejected by referendum is void thirty days after ...ification. Additional procedures for the initiative and referendum ... be prescribed by law. [Amendment approved August 25, 1970]

Effect of amendment. — The ...ment approved August 25, 1970 ... Legislature's SJR 1, substituted "lieutenant governor" for "secretary of ... year the beginning of the third ...

No constitutional specification as to ... date is plain on its face. An ... becomes effective 90 days after ... on which the lieutenant governor ... the election returns approving it. ... 3, 1975, Op. Att'y Gen.

Any repeal is prohibited by the state ...tion, not amendments. August ... Op. Att'y Gen.

Legislature may vary terms of ... by amendment. — The ... vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

The legislature is vested with broad authority to amend laws enacted by the people through the initiative process. Warren v. Thomas, Sup. Ct. Op. No. 1484 (File No. 2919), 568 P.2d 400 (1977).

And by enactment covering same subject as initiative. — If the legislature has broad power of amendment, it follows that it has broad power to change an initiative by an enactment covering the same subject matter as the initiated

measure Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

The legislature could amend the capital move initiative, Initiative No. 1, at any time to alter or delete: (1) the requirement that the capital site contain no less than 100 square miles of state land or lands available to the state at no cost and (2) the requirement that the site selected be more than 30 miles from Anchorage or Fairbanks. August 19, 1975, Op. Att'y Gen.

What constitutes repeal. — Amendments to an initiated law that only reduced the penalties for violation of the law and clarified some of the language did not constitute a repeal of the initiated law. Warren v. Thomas, Sup. Ct. Op. No. 1484 (File No. 2919), 568 P.2d 400 (1977).

AS 15.45.440 adopted almost verbatim the language of this section for establishing the time when an act rejected by referendum shall [illegible] Walters v. Cease, Sup. Ct. [illegible] (File No. 447), 388 P.2d 263 [illegible]

Act not suspended between effective date and its rejection by referendum. — In the light of the wording of this section and Alaska Const. art. II, §§ 17 and 18, the framers of the constitution and the people who adopted it intended that the effectiveness of an act passed by the legislature should not be suspended during the period between its effective date and its rejection by referendum. If they had intended otherwise they would have expressly provided in the constitution. Walters v. Cease, Sup. Ct. Op. No. 182 (File No. [illegible]), 388 P.2d 263 (1964).

As to procedures enacted pursuant to this section for placement of initiative on election ballot, see Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

Section 7. Restrictions. The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedicated revenues, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health or safety.

I. General Consideration.
II. Appropriations.
III. Local or Special Legislation.

I. GENERAL CONSIDERATION.

Liberal construction. — In reviewing an initiative prior to submission to the people, the requirements of the constitutional and statutory provisions pertaining to the use of initiatives should be liberally construed. Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

The subject of the initiative must constitute such legislation as the legislative body to which it is directed has the power to enact. Municipality of Anchorage v. Frohne, Sup. Ct. Op. No. 1477 (File Nos. 3050, 3104), 568 P.2d 3 (1977).

AS 15.45.010 embodies a statutory restatement of the constitutional restriction found in this section. Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

As to scope of lieutenant governor's review of initiative application to determine that it is not local or special legislation, see Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

Initiative and referendum restricted to ordinances. — The power of initiative and referendum is restricted to legislative ordinances, and does not extend to administrative measures. Wolf v. Alaska State Hous. Auth., Sup. Ct. Op. No. 937 (File No. 1708), 514 P.2d 233 (1973).

Matter subject to review is also subject for initiative. — If the subject matter of an ordinance were properly subject to popular review, then it also would be a proper subject for popular initiative. Wolf v. Alaska State Hous. Auth., Sup. Ct. Op. No. 937 (File No. 1708), 514 P.2d 233 (1973).

Applied in Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

...d in Walters v. Cease, Sup. Ct. ... File No. 447), 388 P.2d 263 ... Abrams v. State, Sup. Ct. Op. No. ... No. 2407), 534 P.2d 91 (1975). ... Thomas v. Bailey, Sup. Ct. Op. ... File No. 4204), P.2d

II. APPROPRIATIONS.

The language of this section ... initiatives for the purpose of ... appropriations. Thomas v. ... Sup. Ct. Op. No. 1835 (File Nos. ... 595 P.2d 1 (1979).

...eral wording of appropriation ... statute. — Though most state ... ...ns with referendum and ... provisions have some limitation ... to appropriations, Alaska's ... limitation is worded more ... than that of most other states. ... Bailey, Sup. Ct. Op. No. 1835 ... 4204, 4220), 595 P.2d 1 (1979).

...e term "appropriations," this ... prohibits an initiative whose ... object is to require the outflow of ... assets in the form of land as well as ... Thomas v. Bailey, Sup. Ct. Op. No. ... Nos. 4204, 4220), 595 P.2d 1 ...

**...propriations" includes statutes that ... a specific amount of lands and ... given away in the manner ... a 1978 initiative, entitled "The ...mestead Act," which gave away ...dent of three or more years who ... a survey, file two papers, ... a nominal filing fee public assets ... form of state land, and which ... obligations on the applicant ... the received the land. Thomas ... Sup. Ct. Op. No. 1835 (File Nos. ..., 595 P.2d 1 (1979).

Alaska Homestead Act held ...propriations initiative. — The law ... by a 1978 initiative entitled "The ... Homestead Act" was, for purposes ... section, a law making an ... and, therefore, an ... subject for initiative. Thomas ... Sup. Ct. Op. No. 1835 (File Nos. ..., 595 P.2d 1 (1979).

... initiative entitled "The Alaska ... Act" would have substantially ... the state government of valuable ... as surely as an initiative ... residents of specified years ... of money. In the same manner, ... an appropriation and hence ... be enacted by initiative. Thomas ... Sup. Ct. Op. No. 1835 (File Nos. ..., 595 P.2d 1 (1979).

The fact that a survey might be costly did not change the essential nature of a 1978 initiative entitled "The Alaska Homestead Act" as an appropriations initiative. The applicant would have paid the surveyor; no compensation or service was rendered to the state. The stated purpose and effect of the initiative on the state treasury would still be an expenditure of state assets in the form of public lands. Thomas v. Bailey, Sup. Ct. Op. No. 1835 (File Nos. 4204, 4220), 595 P.2d 1 (1979).

Authorizing school service areas to submit their budgets to the people by referendum would violate this section. 1961 Op. Att'y Gen., No. 24.

III. LOCAL OR SPECIAL LEGISLATION.

This section expressly exempts "local or special legislation" from both the initiative and the referendum. Wolf v. Alaska State Hous. Auth., Sup. Ct. Op. No. 937 (File No. 1708), 514 P.2d 233 (1973).

This section specifically precludes use of the initiative to enact "local or special legislation." Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

What constitutes local or special legislation. — See Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

Description of local legislation in Walters v. Cease, Sup. Ct. Op. No. 235 (File No. 518), 394 P.2d 670 (1964), disapproved. — See Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

A law does not cease to be general because it operates only in certain subdivisions of the state. Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

Critical element is whether rational basis for classification exists. — Legislation, whether enacted by the legislature or by the initiative, need not operate evenly on all parts of the state to avoid being classified as local or special. The critical element is whether there is a rational basis for the particular classification. Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

The classification must bear a reasonable and proper relationship to the purposes of the act and the problem sought to be remedied. Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

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Initiative for relocating state capital held not unconstitutional. — Exclusion of Anchorage and Fairbanks as potential sites for the new capital did not render an initiative for relocating the state capital unconstitutional under this section, which prohibits use of the initiative to enact local or special legislation. Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

The question of the location of Alaska's capital has obvious statewide interest and impact. Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

The initiative's exclusion of Anchorage and Fairbanks was not arbitrary, but was premised on the view that the new capital should be a planned capital and one that should not be located in the relatively heavily urbanized areas of Anchorage and Fairbanks. Boucher v. Engstrom, Sup. Op. No. 1097 (File No. 2232), 528 P.2d (1974).

Mandatory Borough Act not subject to referendum. — Being local and legislation, ch. 52, SLA 1963 (Mandatory Borough Act), is not subject to the referendum provision of this section. Walters v. Cease, Sup. Ct. Op. No. (File No. 518), 394 P.2d 670 (1964).

Chapter 52, SLA 1963 (Mandatory Borough Act), is both local and special legislation because it applies only to a limited number of geographical areas rather than being widespread in its operation throughout the state and because its method for incorporating organized boroughs is peculiar to the selected localities where it is applicable. Walters v. Cease, Sup. Ct. Op. No. (File No. 518), 394 P.2d 670 (1964).

Section 8. Recall. All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.

Article XII

General Provisions

Section 1. State Boundaries. The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, included in the Territory of Alaska upon the date of ratification of this constitution by the people of Alaska.

Section 2. Intergovernmental Relations. The State and its political subdivisions may cooperate with the United States and its territories, and with other states and their political subdivisions, in matters of common interest. The respective legislative bodies may make appropriations for this purpose.

Section 3. Office of Profit. Service in the armed forces of the United States or of the State is not an office or position of profit as the term is used in this constitution.

Meaning of phrase "position of profit". — See Begich v. Jefferson, Sup. Ct. Op. No. 481 (File No. 894), 441 P.2d (1968).

Section 4. Disqualification for Disloyalty. No person who advocates, or who aids or belongs to any party or organization or association which advocates, the overthrow by force or violence of the government of the United States or of the State shall be qualified to hold any public office of trust or profit under this constitution.

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OIS LEGISLATIVE COUNCIL

NOVEMBER 1982

Frank W. Haines
16 Kinney Drive
Trenton, NJ 08618

LAWMAKING BY INITIATIVE

ILLINOIS LEGISLATIVE COUNCIL
107 Stratton Building, Springfield, Illinois 62706

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File 9-264
November 1982

Lawmaking by Initiative

Illinois Legislative Council
Springfield, Illinois

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LAWMAKING BY INITIATIVE

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LAWMAKING BY INITIATIVE

The initiative, a method of making laws or constitutional amendments by petition and approval at the polls, is available in some form in 23 states. The Illinois Constitution allows amendments by initiative to "structural and procedural subjects" in its legislative article. The "Illinois Initiative" which was proposed in 1982 sought to add to the Illinois Constitution a power to make ordinary laws by initiative, but was held invalid under the "structural and procedural" provision in the Constitution.

Most initiative provisions in other state constitutions date from the progressive era near the turn of the 20th century. Only four states have added initiative provisions since 1920, and only a handful of western states have used the procedure consistently.

In spite of widespread publicity about a few controversial propositions, initiatives have experienced only a modest upturn in use recently. There were 27 statutory initiatives on the ballot in 1978 and 26 in 1980. Legislatures place more proposals on the ballot than do voters. In California, for example, there was only one initiative measure on the ballot in 1980; the legislature placed the other 10 ballot propositions before the voters.

Over half of the 53 statutory initiative measures on the ballot in 1978 and 1980 addressed government policy matters, taxes, or nuclear power. In many instances voters in one state rejected measures similar to those approved by voters in other states. For example, tax reduction proposals were adopted in four states (Missouri, Montana, Idaho, North Dakota), but were rejected in four other states (Massachusetts, Michigan, Ohio, Utah).

The initiative is defended as allowing the direct expression of popular preferences. Critics contend it is not "the people" who use the initiative, but well-financed special interest groups who reduce complex problems to simple slogans, thus undercutting the deliberation, compromise, and attention to detail provided by the legislative process.

Karen A. Fahrion

Karen A. Fahrion
Research Associate

David R. Miller

David R. Miller
Staff Attorney

KAF:DRM:lam

LAWMAKING BY INITIATIVE

Initiative is a procedure for voters to propose state laws or state constitutional amendments by petition and enact them by a direct vote of the majority of the electorate. Twenty-one states have initiative provisions for state legislation, and 17 states have initiative provisions for state constitutional amendments.[1]

This issue paper outlines existing provisions in state constitutions allowing the making of laws and constitutional amendments by initiative; summarizes the Coalition for Political Honesty's attempted Illinois Initiative in 1982; and discusses the unconstitutionality of that proposal under the Illinois Constitution. The last sections of the paper give details about use of the initiative in states that allow it, and discuss the advantages and disadvantages of the initiative.

History of Initiative

Initiative as an American institution was imported from Switzerland by political reformers at the turn of the 20th century. The procedure was part of the agrarian revolt against economic and political conditions in the Midwest and West. This revolt was a sort of Jacksonian attack on the power of the railroads, trusts, eastern bankers, and others which President Theodore Roosevelt called the "malefactors of great wealth." By asserting the right of the people to take legislative power into their own hands, the reformers believed the corrupting forces of these large enterprises could be curtailed and the interests of the general public protected.

During the 20-year period from 1898 to 1918, 19 states adopted the initiative. All but four of these (Michigan, Ohio, Massachusetts, Maine) were west of the Mississippi River. Since that time, only two states have adopted initiative to pass laws--Alaska when it became a state in 1959, and Wyoming in 1968. In addition to these, Florida in 1972 adopted a provision allowing initiative limited to constitutional amendments, and the Illinois Constitution of 1970 allows constitutional amendment by initiative limited to "structural and procedural" subjects in its legislative article.

Lawmaking by Initiative

The spread of the initiative stopped about 60 years ago with the end of the Progressive Era.

Initiative in Illinois

The voters of Illinois can amend the legislative article of the Illinois Constitution by initiative, begun by petition signed by a number of persons equal to 8 percent of the total gubernatorial vote in the last election. Such an amendment must be limited to "structural and procedural" subjects dealt with in the legislative article.[2] In addition, referenda can be used as an alternative to the three-fifths majority in each house which is required to approve new long-term state debt.[3]

The local government article of the Illinois Constitution requires referenda to change county boundaries, move county seats, determine township organization, and determine some tax and home-rule questions. By statute these referenda may be initiated by petition.[4]

Illinois Initiative Proposed in 1982

The "Illinois Initiative" which was intended to be put on the ballot in November 1982 would have amended the legislative article of the Illinois Constitution to allow the proposal by petition, and, if the General Assembly failed to act, passage by the voters, of statutes which would have had the same force as ones passed by the General Assembly.

The Illinois Initiative was proposed under the Illinois Constitution, art. 14, sec. 3:

> Amendments to Article IV of this Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election. Amendments shall be limited to structural and procedural subjects contained in Article IV. A petition shall contain the text of the proposed amendment and

> the date of the general election at which the proposed amendment is to be submitted, shall have been signed by the petitioning electors not more than twenty-four months preceding that general election and shall be filed with the Secretary of State at least six months before that general election. The procedure for determining the validity and sufficiency of the petition shall be provided by law. If the petition is valid and sufficient, the proposed amendment shall be submitted to the electors at that general election and shall become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election.

The crucial part of this section is its second sentence: "Amendments shall be limited to structural and procedural subjects contained in Article IV" (the legislative article). The Illinois Supreme Court considered the meaning of this sentence in two cases, one in 1976 and the other in 1980, both called Coalition for Political Honesty v. State Board of Elections.[5,6] The 1976 case involved a proposed amendment to the Constitution by petition which would have (1) prohibited legislators from receiving compensation for employment by other government entities during their terms, (2) required legislators with conflicts of interest relating to a bill to disclose them and not to vote, and (3) prohibited legislators from receiving salary in advance. The Illinois Supreme Court held that none of the proposed amendments complied with the constitutional provision quoted above. The court interpreted the provision in the Constitution quoted above as requiring that any proposed amendment by initiative must suggest both structural and procedural changes in the General Assembly.[7]

It can be argued that the court abandoned this requirement in the 1980 case approving placement on the ballot of the "Legislative Cutback Amendment" reducing the size of the House, since that amendment apparently did nothing to affect the procedures of the House. But the court in that case did not state that it was abandoning the earlier test requiring both structural and procedural changes.

In 1982 the proposed Illinois Initiative was challenged and held to be an invalid attempt to amend

the Illinois Constitution. The Illinois Appellate Court held that the proposed amendment did not comply with the "structural and procedural" limitation. The court implied that what "structural and procedural" really means is that an amendment may affect the details of the General Assembly's operations, but may not take away or otherwise affect the powers of the General Assembly by giving some of them to the voters. The Illinois Supreme Court refused to review the Appellate Court decision, letting it stand as the highest adjudication of this issue.[8]

Initiative in Other States

Initiative provisions of one kind or another are found in the constitutions of 23 states. In 15 of these, voters are permitted to amend the state constitution or make state laws by initiative. In 2 states the initiative may be used only to amend the constitution; in the remaining 6 the initiative may be employed only to make laws. All these states and the years they adopted the initiative are shown in Table 1 and Figure 1.

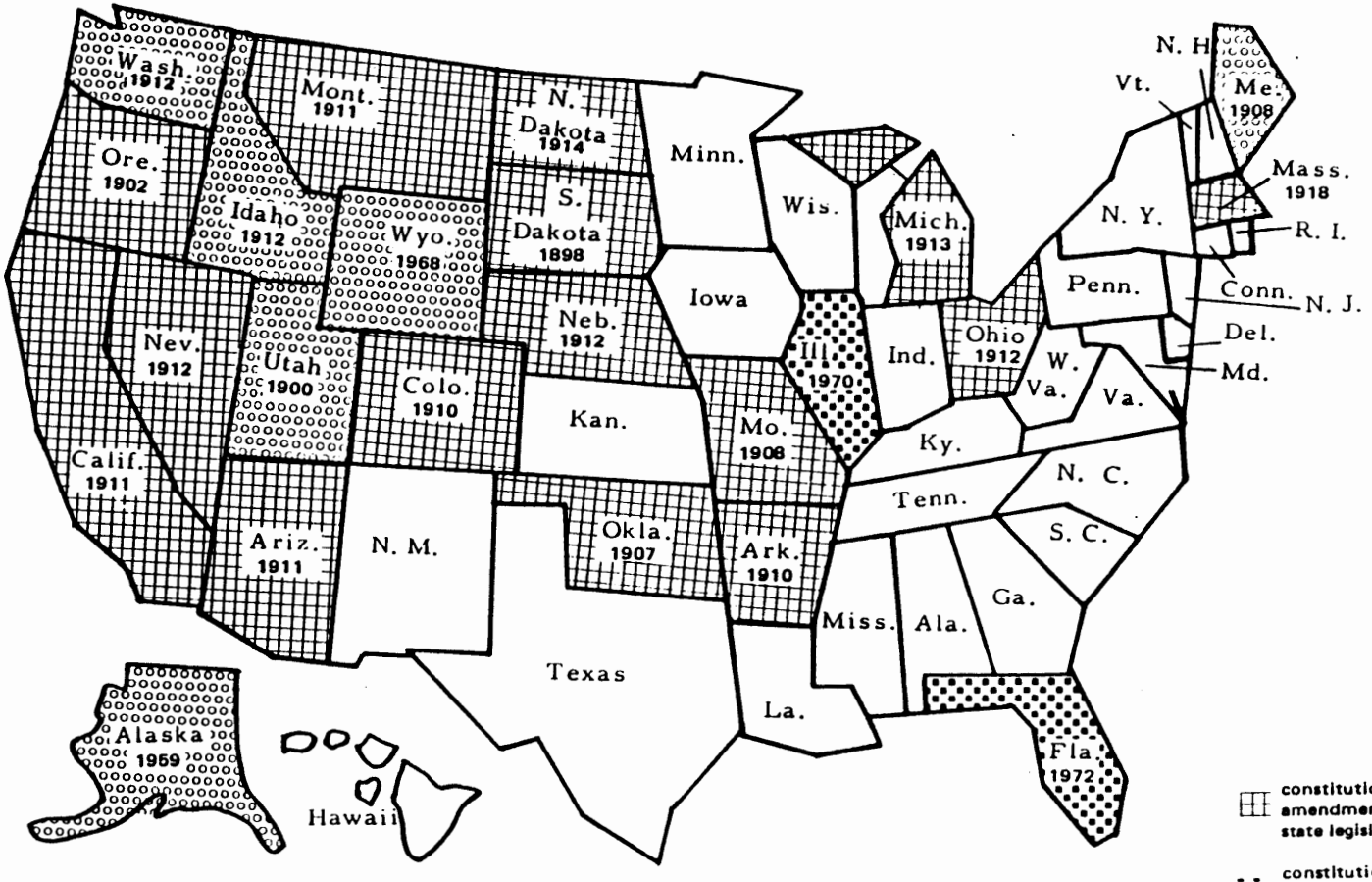
Initiative provisions are often classified as "indirect" or "direct." In an indirect initiative, a proposed law is first sent to the legislature to give it a chance to pass the measure. It is put on the ballot only if the legislature refuses (as the Illinois Initiative proposed). In a direct initiative, the proposed law is put on the ballot if enough valid signatures are gathered, without being sent to the legislature.

Provisions for Amending State Constitutions

State constitutions may be amended by the initiative procedure in 17 states: Arizona, Arkansas, California, Colorado, Florida, Illinois (legislative article only), Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota. Only one of these states, Massachusetts, requires the use of the indirect initiative for constitutional amendments, and before a measure can be submitted to the electorate for ratification, it

FIGURE 1

STATE INITIATIVE PROVISIONS AND DATES ADOPTED



Source: Compiled by the Legislative Council from Library of Congress, Congressional Research Service, "Initiative, Referendum and Recall: A Resume of State Provisions" (Feb. 1977), and various state constitutions.

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Table 1

Type of State Initiative Provisions and Dates Adopted

State	Year adopted	Type of Initiative Procedure to Propose: Constitutional amendment	Type of Initiative Procedure to Propose: State legislation
Alaska	1959	---	Direct
Arizona	1911	Direct	Direct
Arkansas	1910	Direct	Direct
California[a/]	1911	Direct	Direct
Colorado	1910	Direct	Direct
Florida	1972	Direct	---
Idaho	1912	---	Direct
ILLINOIS[b/]	1970	Direct	---
Maine	1908	---	Indirect
Massachusetts	1918	Indirect	Indirect
Michigan	1913	Direct	Indirect
Missouri	1908	Direct	Direct
Montana	1911	Direct	Direct
Nebraska	1912	Direct	Direct
Nevada	1912	Direct	Indirect
North Dakota[c/]	1914	Direct	Direct
Ohio	1912	Direct	Indirect
Oklahoma	1907	Direct	Direct
Oregon	1902	Direct	Direct
South Dakota	1898	Direct	Indirect
Utah	1900	---	Both
Washington	1912	---	Both
Wyoming	1968	---	Direct

[a/] California had both the indirect and direct statutory initiative until the indirect procedure was repealed in 1966.

[b/] Applies only to structural and procedural matters in the legislative article.

[c/] North Dakota replaced the indirect constitutional amendment initiative adopted in 1914 with the direct procedure in 1918.

Source: Compiled by the Legislative Council from Library of Congress, Congressional Research Service, "Initiative, Referendum and Recall: A Resume of State Provisions" (Feb. 1977), and various state constitutions. For specific state constitutional citations, see footnote number 1 at the end of this memorandum.

must be approved by at least one-fourth of all members elected, sitting in joint session in two successive sessions of the legislature.

Provisions for Passing State Laws

There are 21 states which permit voters to use the initiative procedure to enact state laws. Direct initiatives are found in 13 of these states: Alaska, Arizona, Arkansas, California, Colorado, Idaho, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, and Wyoming. Indirect intiatives are available in 6 states: Maine, Massachusetts, Michigan, Nevada, Ohio, and South Dakota. In the remaining 2 states, Utah and Washington, both direct and indirect procedures are permitted. California dropped the indirect initiative in 1966.

Procedural Details

Constitutional provisions describing how the initiative procedure is used vary considerably in length and detail. Most contain six basic features: (1) the number of signatures required on initiative petitions, (2) the deadline for filing petitions, (3) the vote total required to adopt a proposal, (4) the effective date of approved measures, (5) the method for repealing or amending a measure adopted by initiative, and (6) restrictions concerning proposal subject matter.

If these subjects are not addressed by a state's constitution, they are usually covered by state statutes.[9] In addition, statutes generally contain provisions requiring the text of an initiative measure to be published in at least one newspaper before the balloting and sometimes require petition sponsors to pre-file with the secretary of state before collecting petition signatures.[10] (Basic provisions are briefly covered in the next few paragraphs, and each state's specific requirements are detailed in Appendix A.)

Stringent petition signature and filing requirements do not decrease the number of initiatives, according to political scientist Charles M. Price, who concluded, "Indeed, if anything, the results seem to go in the other direction; i.e., the tougher a state's qualifying procedures, the more initiatives that tend to get qualified."[11]

Signature Requirements. Petition signature requirements are based on a percentage of the electorate voting at the last general election or the percentage voting for a particular statewide office, usually governor. Requirements vary among the states from 3 percent (Massachusetts and Ohio) to 15 percent (Wyoming). Half of the state statutory initiative provisions require 8 to 10 percent of the vote for governor and three-fourths of the constitutional amendment provisions fall in that range. Geographical distribution of signatures is required in 10 states (Alaska, Arkansas, Florida, Massachusetts, Missouri, Montana, Nebraska, Nevada, Ohio, Wyoming). This is to assure that proposed statutes or constitutional amendments are founded on more than mere local interest.

Additional signatures must be gathered before indirect initiative measures can be submitted to voters following a legislature's failure to enact them as follows: Massachusetts, 1/2 of 1 percent of the number of votes cast for governor at the preceding election; Ohio, 3 percent of the electorate; and Utah, 10 percent of all votes cast for governor at the preceding election. In South Dakota statutory initiative measures must be approved by the legislature.[12]

Filing Deadlines. Most states require petitions to be filed 3 to 4 months before the election. Earlier filing deadlines for constitutional amendment proposals than statutory initiative measures are provided in 5 states (Michigan, Montana, Nevada, Ohio, South Dakota).

Required Vote for Passage. To enact an initiative measure, most states require that it receive a majority of votes cast on the question.

Effective Date. Common effective dates for approved initiative measures are: 30 days after the election, 90 days after the election, or when the governor issues a proclamation.

Repeal or Amendment. The legislature can repeal or amend initiated statutes any time after passage in most states. Four states (Alaska, Nevada, Washington, Wyoming) have 2- or 3-year waiting periods before permitting amendment or repeal.

Restrictions. Initiative measures are limited to subjects the legislature governs. Subjects frequently prohibited from being addressed by initiative measures include: revenue, appropriations, religion, judiciary

matters, local or special legislation, or laws necessary for the immediate preservation of public peace, health, or safety.

Use of the Initiative Procedure

Initiatives are used to propose and adopt more laws than constitutional amendments. A total of 727 laws and 562 constitutional amendments have been on the ballot since the initiative became available in 1898.[13] Over the years voters have approved slightly over one-third of the initiative proposals, with remarkable consistency. They adopted 280 (38 percent) of the proposed statutes and 198 (35 percent) of the constitutional amendment proposals.

The direct initiative is used more frequently than the indirect method. Only 13 percent of the laws and 5 percent of the constitutional amendments were adopted by indirect initiatives. However, voters ratified all 11 of the constitutional amendments proposed by the indirect procedure. Further details are displayed in Table 2, and each state's initiative data used to compile this and the other tables in this section is located in Appendix B.

Table 2

Total Number of Initiative Proposals, 1898 through 1980

Type of initiative procedure	Total number proposed	Total number adopted	Percent adopted
STATUTES			
Direct	625	243	39%
Indirect	102	37	36
Total	727	280	38
CONSTITUTIONAL AMENDMENTS			
Direct	551	187	34
Indirect	11	11	100
Total	562	198	35

Sources: Compiled by the Legislative Council from: Library of Congress, Congressional Research Service, "A compilation of Statewide Initiative Proposals Appearing on Ballots Through 1976," Virginia Graham, Jan. 12, 1978; Commerce Clearing House, Inc., "Results of the General Election, Nov. 7, 1978," and "General Election, Nov. 4, 1980, Constitutional Amendments, Initiatives, and Referendums."

Lawmaking by Initiative

About two-thirds of all successful statutory initiatives and over 70 percent of the constitutional amendment initiatives ratified were approved before 1949. Only 102 state laws and 56 constitutional amendments have been adopted during the past 30 years. At first glance these numbers may seem formidable, but when they are averaged over the years they amount to the passage of only 2 laws and 1 constitutional amendment per state per decade. Only 18 percent of the laws and 6 percent of the constitutional amendments enacted between 1950 and 1980 were indirect initiatives. These data are detailed in Table 3.

Table 3

Number and Type of Initiatives Used from 1898 through 1980

Type of initiative procedure	Number adopted 1898-1949	1950-1980	Total
STATUTES			
Direct	159	84	243
Indirect	19	18	37
Total	178	102	280
CONSTITUTIONAL AMENDMENTS			
Direct	134	53	187
Indirect	8	3	11
Total	142	56	198

Sources: Compiled by the Legislative Council from: Library of Congress, Congressional Research Service, "A compilation of Statewide Initiative Proposals Appearing on Ballots Through 1976," Virginia Graham Jan. 12, 1978; Commerce Clearing House, Inc., "Results of the General Election, Nov. 7, 1978," and "General Election, Nov. 4, 1980, Constitutional Amendments, Initiatives, and Referendums."

A handful of western states are the only frequent and consistent users of initiatives. In these states the procedure has become a common feature of the political process because it took hold when statehood was first granted before traditional political institutions had time to develop. The few states east of the Mississippi that allow initiatives use them infrequently. Legislatures

place many more propositions on the ballot than do voters. In California, for example, there was only one proposed statutory initiative on the ballot in 1980 and it failed. The legislature placed the other 10 ballot propositions before the voters and six were adopted.

In every state, interest in initiatives declined sharply between 1950 and 1969, and never increased until the late 1970's. More laws were proposed and adopted by initiative between 1970 and 1980 than in the two previous decades combined. The number of constitutional amendments ratified barely increased although the number proposed almost doubled. Even with the increases, the number of initiative measures recently proposed and adopted is still well below those occurring before 1950.

Statutory Initiatives

The combined number of direct statutory initiatives adopted in seven western states accounts for 77 percent of all 243 directly initiated statutes in the past eight decades. The 188 direct statutory initiatives enacted in these states are as follows: North Dakota, 49; Washington, 33; Oregon, 42; Arizona, 24; Colorado, 22; and California, 18. Almost all of the Arizona and Colorado measures were adopted before 1950, but statutes enacted by the remaining five states accounted for 60 percent of the direct statutory initiatives adopted between 1970 an 1980. In addition, Alaska also adopted several measures during the period.

Wyoming has never adopted an initiative statute, Nebraska has not adopted one since 1930, and Utah has adopted only two.

Only 11 state laws have been enacted by the indirect statutory initiative during the last decade. Utah and Washington voters can use the direct or indirect procedure, but it has never been used in Utah and Washington voters adopted only three such measures between 1970 and 1980 compared to the 12 direct initiatives adopted during the same period. Ohio and Nevada voters have not adopted an indirect statutory initiative since 1949 and 1952, respectively.

The number of direct and indirect statutory initiatives adopted by state are detailed by time period in Table 4.

Table 4

Statutory Initiatives Adopted by State, 1898 through 1980

State/Type of Initiative	Number of Proposals Adopted 1898-1949	1950-1959	1960-1969	1970-1980	Total
DIRECT					
Alaska[a]	--	0	0	5	5
Arizona	17	3	2	3	25
Arkansas	5	2	0	1	8
California	12	0	2	4	18
Colorado	18	0	1	3	22
Idaho	2	1	0	3	6
Missouri	3	0	0	3	6
Montana	12	1	0	7	20
Nebraska	1	0	0	0	1
North Dakota	34	4	4	7	49
Oklahoma	6	0	0	1	7
Oregon	32	4	0	6	42
Utah[d]	0	0	1	1	2
Washington	17	4	7	5	33
Wyoming[b]	--	--	0	0	0
SUBTOTAL	159	19	17	48	243
INDIRECT					
California[c]	1	0	0	--	1
Maine	2	0	0	2	4
Massachusetts	7	1	2	1	11
Michigan	0	1	0	3	4
Nevada	4	1	0	0	5
Ohio	2	0	0	0	2
South Dakota	2	0	0	2	4
Utah[d]	0	0	0	0	0
Washington[d]	1	1	1	3	6
SUBTOTAL	19	4	3	11	37
GRAND TOTAL	178	23	20	59	280

[a] Alaska did not adopt the statutory initiative until 1959.
[b] Wyoming did not adopt the statutory initiative until 1968.
[c] California repealed the indirect procedure in 1966.
[d] Utah and Washington have both direct and indirect statutory initiative procedures.

Sources: Compiled by the Legislative Council from: Library of Congress, Congressional Research Service, "A Compilation of Statewide Initiative Proposals Appearing on Ballots Through 1976," Virginia Graham, Jan. 12, 1978; Commerce Clearing House, Inc. "Results of the General Election, Nov. 7, 1978," and "General Election - Nov. 4, 1980 - Constitutional Amendments, Initiatives, and Referendums."

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Constitutional Amendment Initiatives

Five states account for 66 percent of the 188 direct constitutional amendment initiatives ratified between 1898 and 1980. The 124 amendments ratified by states during that period are as follows: Arkansas, 30; Oregon, 28; California, 26; Colorado, 21; and Arizona, 19. South Dakota, the first state to adopt the initiative, has never ratified a proposed amendment, and Ohio and Oklahoma have not ratified an amendment since 1949. Montana voters have ratified only one since the procedure was adopted in 1911.

Unlike direct statutory initiatives, the number of proposals ratified has not increased significantly between 1970 and 1980. Only 20 proposals were ratified during that period, five of them in Colorado, three in Michigan and Nevada, two in California and Oregon, and one in Arizona, Florida, Illinois, Missouri, and Montana. Voters rejected all 16 constitutional amendments proposed by the direct initiative in six states, including nine proposals on the Ohio ballot.

In Massachusetts, the only state with the indirect constitutional initiative, voters ratified all three proposals on the ballot between 1970 and 1980, but no other such initiatives have been ratified there except for one in 1938. North Dakota, which adopted the indirect constitutional initiative in 1914 used the procedure to ratify all seven of the amendments proposed by the procedure in 1918, including one which replaced the indirect procedure with the direct method.

The number of direct and indirect constitutional amendment initiatives adopted are detailed by state and time period in Table 5.

Subjects of Recent Statutory Initiatives

Over half of the 53 initiatives on the ballot during the 1978 and 1980 elections addressed government organization and policy matters, taxes, or nuclear power. Other measures dealt with education, public utilities, refundable bottle deposits, capital punishment, or obscenity laws. About 20 percent of the proposals covered miscellaneous subjects. In many instances voters in one state rejected measures similar to those approved by voters in other states. The number of measures proposed by subject is shown on page 17.

Table 5

Constitutional Amendment Initiatives Adopted by State, 1898 through 1980

State/Type of Initiative	Number of Proposals Adopted 1898-1949	1950-1959	1960-1969	1970-1980	Total
DIRECT					
Arizona	13	0	5	1	19
Arkansas	23	4	3	0	30
California	21	2	1	2	26
Colorado	12	3	1	5	21
Florida[a]	--	--	--	1	1
ILLINOIS[b]	--	--	--	1	1
Michigan	7	0	1	3	11
Missouri	6	0	0	1	7
Montana	0	0	0	1	1
Nebraska	4	2	1	0	7
Nevada	0	1	1	3	5
North Dakota	7	1	4	0	12
Ohio	8	0	0	0	8
Oklahoma	11	0	0	0	10
Oregon	23	3	0	2	28
South Dakota	0	0	0	0	0
SUBTOTAL	135	16	17	20	187
INDIRECT					
Massachusetts	1	0	0	3	4
North Dakota[c]	7	--	--	--	7
SUBTOTAL	8	0	0	3	11
GRAND TOTAL	142	16	17	23	198

[a] Florida did not adopt the direct constitutional initiative until 1972.

[b] Illinois adopted the direct initiative in 1970 limited to changing the legislature's structure and procedure. The initiative was used in 1980 to reduce the number of state representatives and eliminate cumulative voting for state representatives.

[c] North Dakota replaced the indirect procedure adopted in 1914 with the direct procedure in 1918.

Sources: Compiled by the Illinois Legislative Council from: Library of Congress, Congressional Research Service, "A Compilation of Statewide Initiative Proposals Appearing on Ballots Through 1976," Virginia Graham, Jan. 12, 1978; Commerce Clearing House, Inc. "Results of the General Election, Nov. 7, 1978," and "General Election, Nov. 4, 1980, Constitutional Amendments, Initiatives, and Referendums."

Subject (1978 & 1980)	Number proposed	Percent proposed
Government organization and policy matters	13	25%
Taxes	10	19
Nuclear power	6	11
Education	4	8
Public utilities	3	5
Refundable bottle deposits	3	5
Capital punishment	2	4
Obscenity	2	4
Miscellaneous	10	19
Total	53	100%

Only 11 (21 percent) of these measures were proposed by the indirect procedure. No initiatives were proposed in three states which allow them: Wyoming (direct) and Maine and Nevada (indirect). Only direct initiatives were proposed in Utah and Washington, although both states also allow the indirect procedure.

	Total propositions, 1978 & 1980	Total adopted	Percent adopted
Direct	42	24	57%
Indirect	11	3	27
Total	53	27	51%

Government Organization and Policy

Only a few of the government organization and policy measures appear controversial. These include measures to ban the use of state funds for abortion (Oregon); to authorize the state to set maximum health care rates (North Dakota), and to increase the salaries of state legislators and constitutional officers (Massachusetts). Voters rejected all three of these proposals. A South Dakota measure to eliminate state laws establishing milk and dairy product prices was adopted, and a Montana proposal requiring lobbyists to disclose spending designed to influence state officials and requiring officials to file economic interest statements was adopted. Seven of the remaining eight

proposals in this category were adopted, but they dealt with more mundane or local matters such as: motor vehicle registration and licensing by mail (Oklahoma), homesteading on state-owned lands (Alaska), codification of probate laws (Michigan), revenue sharing (North Dakota), state regulation of denture sales (Oregon), Game and Fish Department appropriations (North Dakota), and regional transportation election districts (Colorado).

Taxes

Tax reduction proposals were adopted by voters in four states (Missouri, Montana, Idaho, North Dakota), but voters in four other states rejected such proposals (Massachusetts, Michigan, Ohio, Utah).

Nuclear Power

Voters adopted proposals to prohibit new nuclear plants until permanent waste disposal can be developed (Oregon), to prohibit the storage of nuclear waste in the state (Washington), and to require voter approval of nuclear power plant sites (Montana). Voters in Missouri and South Dakota rejected similar proposals. Although Montana voters adopted the nuclear plant site proposal, they rejected a measure to prohibit nuclear waste disposal in the state.

Other Proposals

In three states refundable bottle deposit proposals were defeated (Alaska, Montana, and Nebraska). Tougher capital punishment laws were adopted by initiative in Oregon and California. Montana voters approved a proposal permitting local governments to adopt obscenity ordinances which are more restrictive than state laws, but South Dakota voters rejected a proposal requiring the state to adopt obscenity legislation. California voters defeated proposals banning smoking in certain areas in 1978 and again in 1980. "Miscellaneous" measures ranged from proposals to establish a state lottery (Arizona) and permit statewide branch banking (Colorado) to measures allowing hunting mourning doves (South Dakota), permitting drug stores and grocery stores to sell wine (Montana), and prohibiting certain animal hunting traps (Oregon). All 1978 and 1980 proposals are listed by subject in Table 6.

Table 6

Statutory Initiative Measures on the Ballot by Subject, 1978 and 1980

Subject of State Proposals	Outcome	Year
Government Organization and Policy (13)		
Alaska		
Permits homesteading on vacant state-owned lands.	Adopted	1978
Colorado		
Establishes or changes election districts for the regional transportation authority.	Adopted	1980
Massachusetts*		
Increases salary for state legislators and constitutional officers.	Failed	1980
Michigan*		
Revises and codifies laws relating to probationers and probation officers.	Adopted	1978
Montana		
Requires disclosure of money spent to influence state officials, and requires officials to disclose business interests.	Adopted	1980
North Dakota		
Requires state revenue sharing with local governments.	Adopted	1978
Authorizes state to set maximum health care rates.	Failed	1978
Requires all State Game and Fish Department income and interest on income to be used only by that agency.	Adopted	1978
Oklahoma		
Allows issuance by mail of motor vehicle registrations and licenses.	Adopted	1978
Oregon		
Authorizes and regulates sale of dentures.	Adopted	1978
Repeals state land use planning goals and requires local governments to adopt comprehensive plans.	Failed	1978
Bans use of state funds for abortion.	Failed	1978
South Dakota*		
Eliminates state law establishing milk and dairy product prices.	Adopted	1978
Taxation (10)		
Idaho		
Restricts government ability to change property values or taxes.	Adopted	1978
Massachusetts*		
Limits taxes and increases local education aid.	Failed	1980
Michigan*		
Reduces taxes, prohibits new taxes; changes state school aid funding, etc.	Failed	1980

Table 6 (cont'd)

Subject of State Proposals	Outcome	Year
Taxation (10) (cont'd)		
Missouri		
Limits state tax assessments and requires referendum for local tax increase.	Adopted	1980
Montana		
Requires state income indexation for inflation.	Adopted	1980
North Dakota		
Creates oil severance tax.	Adopted	1980
Reduces personal income tax and raises corporate tax.	Adopted	1978
Ohio*		
Restructures business and personal taxation.	Failed	1980
Utah		
Eliminate sales tax on food.	Failed	1980
Limits taxes.	Failed	1980
Nuclear Power (6)		
Missouri		
Prohibit nuclear plants.	Failed	1980
Montana		
Requires voter approval of nuclear power plant site.	Adopted	1978
Prohibits disposal of most kinds of radioactive waste in state.	Failed	1980
Oregon		
Prohibits new nuclear plants until permanent waste disposal exists.	Adopted	1980
South Dakota*		
Regulates uranium mining, nuclear plant construction, and nuclear waste disposal.	Failed	1980
Washington		
Prohibits storage of radioactive waste in state.	Adopted	1980
Others		
Education (4)		
Arkansas		
Adopts Equal Education Act.	Failed	1980
California		
Provides for filing charges against teachers and other education personnel for homosexual activity.	Failed	1978
Michigan*		
Increases school board responsibility for local programs, reduces property taxes, requires state to equalize pupil funding.	Failed	1980
Washington		
Requires pupil assignment to nearest or next-to-nearest school.	Adopted	1978

Table 6 (cont'd)

Subject of State Proposals	Outcome	Year
Public Utilities (3)		
Oregon		
Prohibits public utilities from including construction and acquisition costs in the rate base.	Adopted	1978
Shortens time required to form public utility districts.	Failed	1978
South Dakota*		
Authorizes utility lifeline rate changes and energy conservation.	Failed	1978
Bottle Refunds (3)		
Alaska		
Requires beer and carbonated beverage bottles to have at least a 10 cent refund value.	Failed	1978
Montana		
Requires refundable deposits on drink containers; prohibit nonresuable containers, detachable can tabs.	Failed	1980
Nebraska		
Require refundable deposits on certain beverage containers.	Failed	1978
Obscenity (2)		
Montana		
Allows local governments to adopt obscenity ordinances which are more restrictive than state law.	Adopted	1978
South Dakota*		
Authorizes state to adopt obscenity legislation.	Failed	1978
Capital Punishment (2)		
California		
Extends crimes punishable by death penalty or confinement without parole.	Adopted	1978
Oregon		
Establishes death penalty for certain violent crimes.	Adopted	1978
Miscellaneous (10)		
Alaska		
Requires voter approval of bond issues for capital relocation.	Adopted	1978
Dealt with general stock ownership of corporations.	Failed	1980
Arizona		
Establishes state lottery.	Adopted	1980
California		
Requires smoking, no-smoking sections in some enclosed places.	Failed	1980
Bans smoking in designated areas.	Failed	1978
Colorado		
Permits branch banking throughout state.	Failed	1980

Table 6 (cont'd)

Subject of State Proposals	Outcome	Year
Miscellaneous (10) (cont'd)		
Montana		
Permits drug stores and grocery stores to sell wine.	Adopted	1978
North Dakota		
Allows use of tax-exempt revenue bonds to finance house purchases.	Adopted	1980
Oregon		
Prohibits sale or use of snare or leghold traps, with exceptions.	Failed	1980
South Dakota*		
Allows hunting of mourning doves.	Adopted	1980

*Indicates indirect initiative.

Sources: Compiled by the Illinois Legislative Council from: Commerce Clearing House, Inc. "Results of the General Election, Nov. 7, 1978," and "General Election - Nov. 4, 1980 - Constitutional Amendments, Initiatives, and Referendums."

Pros and Cons of the Initiative

Proponents of the initiative base their support on the belief that voters should be able to bypass the legislature and governor and make laws themselves because lobbyists and public officials often reject measures the voters want or shape public policy to benefit themselves. Proponents believe that given the chance, voters will propose innovative measures to solve public policy problems, carefully study the merits of proposals, and eagerly go to the polls to adopt or reject initiatives.

Opponents say it is generally not "the people" who use the initiative, but well-financed special interest groups who reduce complex problems to slogans with which they bombard voters by radio and television in hopes that their pet project will become public policy. Critics say that most initiative proposals are too complex to decide in a "yes" or "no" manner and contend that laws should be made with the deliberation, compromise, and attention to detail the legislative process was designed to provide. Instead of laws being shaped in open committee meetings, during floor debates, and with gubernatorial approval, they fear that too many statutes will be conceived in the back rooms of special interest offices and will be difficult or impossible to amend after passage.

The rather infrequent use of the initiative in states where it is allowed suggests that neither the hopes of its supporters nor the fears of its opponents are completely justified. In states where numerous initiated propositions are circulated, especially California, there is some evidence that the public has developed psychological resistance to initiatives. However, they may be useful as a safety valve allowing the public to express dissatisfaction with existing conditions. Probably the basic question in evaluating the merits of the initiative is whether this advantage is outweighed by the prospect of having to fight, in the mass media on a regular basis, other propositions that are ill-conceived or unfair although attractive on the surface.

Notes

1. The citations to the constitutional provisions in the 23 states with initiative procedures are as follows.

State	State constitution
Alaska	Art. XI, sec. 1
Arizona	Art. 4, pt. 1, sec. 1(1)
Arkansas	Amendment 7
California	Art. II, secs. 8 and 9
Colorado	Art. V, sec. 1
Florida	Art. XI, sec. 8
Idaho	Art. III, sec. 1
ILLINOIS	Art. XIV, sec. 3
Maine	Art. IV, pt. 3, secs. 17 and 18
Massachusetts	Amend. art. 48, pt. 1
Michigan	Art. 12, sec. 2 and Art. 2, sec. 9
Missouri	Art. 3, sec. 49
Montana	Art. 14, sec. 9(1) and Art. 3, secs. 4(1) and 5(1)
Nebraska	Art. III, secs. 2 and 3
Nevada	Art. XIX, secs. 1(1), and 2(1)
North Dakota	Art. III, sec. 1
Ohio	Art. II, sec. 1
Oklahoma	Art. V, sec. 1
Oregon	Art. IV, secs. 1(1), 1(2)(a), and 1(3)(a)
South Dakota	Art. XXIII, sec. 1 and Art. III, sec. 1
Utah	Art. VI, sec. 1
Washington	Art. II, sec. 1, amend. 7
Wyoming	Art. 3, sec. 52(a)

2. Ill. Const., 1970, art. XIV, sec. 3.
3. Ill. Const., 1970, art. 9, sec. 9(b).
4. Ill. Rev. Stat. 1981, ch. 46, sec. 28-4.
5. Coalition for Political Honesty v. State Board of Elections, 65 Ill. 2d 453, 359 N.E.2d 138 (1980).
6. Coalition for Political Honesty v. State Board of Elections, 83 Ill. 2d 236, 415 N.E.2d 368 (1980).
7. Same as note 5.

8. Lousin v. State Board of Elections, 108 Ill. App. 3d 496, 438 N.E.2d 1241 (1982), leave to appeal denied ___ Ill. 2d _____, _____ N.E.2d _____ (1982).

9. Library of Congress, Congressional Research Service, "Initiative, Referendum and Recall: A Resume of State Provisions," (Feb. 1977).

10. Same as note 9.

11. Charles M. Price, "The Initiative: A Comparative State Analysis and Reassessment of a Western Phenomenon," Western Political Quarterly, (June 1975), p. 249.

12. S.D. Constitution, 1975, art. III, sec. 1; S. Dak. Compiled Laws Ann., sec. 2-1-1.

13. Library of Congress, Congressional Research Service, "A Compilation of Statewide Initiative Proposals Appearing on Ballots Through 1976," Virginia Graham, Jan. 12, 1978; Commerce Clearinghouse Inc., "Results of the General Election, Nov. 7, 1978," and "General Election, Nov. 4, 1980, Constitutional Amendments, Initiatives, and Referendums."

Appendix A: Table 1

Type of Initiative, Petition Signature and Filing Requirements for State Legislation

State	Type of initiative	Petition signature and filing requirements
Alaska	direct	10 percent of those voting in last general election and resident in at least 2/3 of election districts. An initiative petition may be filed at any time. The lieutenant governor places petition on ballot for the first statewide election held more than 120 days after adjournment of legislative session following filing. If substantially the same measure was passed by legislature, the petition is void.
Arizona	direct	10 percent of qualified electors. Initiative petitions must be filed with the secretary of state not less than 4 months preceding the election at which the proposed measures are to be voted upon.
Arkansas	direct	8 percent of those voting in last general election for governor. Initiative petitions for statewide measures must be filed with secretary of state not less than 4 months prior to the election at which they are to be voted on.
California	direct	5 percent of votes cast in the last general election for governor. Secretary of state must submit an initiative measure at the next general election at least 131 days after the measure qualifies or at any special statewide election held prior to that general election. The governor may call a special statewide election for the measure.
Colorado	direct	8 percent of votes cast in the last general election for secretary of state. Initiative petitions for state legislation must be filed with the secretary of state at least 4 months prior to the election at which they are to be voted on.
Idaho	direct	10 percent of votes cast in last general election for governor. Initiative petitions must be filed with the secretary of state not less than 4 months prior to the election.

Table 1 (cont'd)

State	Type of initiative	Petition signature and filing requirements
Maine	indirect	10 percent of votes cast in last general election for governor. The electorate may propose to the legislature for consideration, any bill or resolution but not a state constitutional amendment. Petitions filed with the secretary of state or presented to either legislative chamber within 45 days after the convening of the legilature in regular session. If initiated measure is passed by the legislature without change, it shall not go to a public vote.
Massachusetts	indirect	3 percent of votes cast in last general election for governor. Initiative petitions filed with the secretary of state by first Wednesday in December.
Michigan	indirect	8 percent of votes cast in last general election for governor. Initiative petitions filed with secretary of state not less than 10 days before legislative session begins.
Missouri	direct	5 percent of voters in each of 2/3 of congressional districts. Initiative petitions filed with secretary of state at least 4 months prior to election.
Montana	direct	5 percent of qualified electors in each of at least 1/3 of legislative representative districts; total amount must equal 5 percent of total qualified electors. Initiative petitions filed with secretary of state at least 3 months prior to election.
Nebraska	direct	7 percent of votes cast in last general election for governor. Filed with secretary of state at least 4 months prior to election.
Nevada	indirect	10 percent of voters in last general election filed not less than 30 days with the secretary of state. The petition takes precedence over all other measures except appropriation bills. The petition must be enacted or rejected by the legislature without amendment within 40 days. If passed by the legislature, the initiative

Table 1 (cont'd)

State	Type of initiative	Petition signature and filing requirements
Nevada (cont'd)		measure is subject to referendum. If rejected by legislature or no action taken within 40 days, measure is automatically submitted to the electorate.
North Dakota	direct	10,000 electors. Initiative petition filed with secretary of state not less than 90 days prior to election.
Ohio	indirect	3 percent of electors. Initiative petitions filed with secretary of state any time up to not less than 10 days prior to any general assembly session. If measure is passed by legislature, it is still subject to referendum. If measure is rejected, or no action is taken within 4 months it is submitted to the electorate for their consideration at next general election.
Oklahoma	direct	8 percent of total vote for state office receiving largest number of votes in last general election. Initiative petition filed with secretary of state 90 days from date petition was opened for signatures.
Oregon	direct	6 percent of total votes cast in last general election for governor. Initiative petitions filed with secretary of state not less than 4 months before election for signature vertification. Signatures not vertified within the 15-day period after the last day on which the petition may be filed will not be counted.
South Dakota	indirect	5 percent of votes cast in last general election for governor. Initiative petitions filed with secretary of state (no time limit specified).
Utah	direct/ indirect	10 percent of electors (direct); 5 percent from majority of counties (i direct). These requirements are established by law. Initiative petitions filed prior to session of legislature with secretary of state not less than 10 days before any regular session of the legislature. Prior to election--not less than 4 months prior to election filed with secretary of state.

Table 1 (cont'd)

State	Type of initiative	Petition signature and filing requirements
Washington	direct/ indirect	8 percent of votes cast in last general election for governor. Initiative petitions can be filed with the secretary of state not less than 4 months prior to the election at which they are to be voted upon, or not less than 10 days prior to any regular session of the legislature. If filed 4 months before election, secretary of state submits measure to the electorate for their consideration. If filed not less than 10 days prior to the regular legislative session, the secretary of state must submit it to the legislature; taking precedence over all measures except appropriation bills. If measure is approved by the legislature, it is still subject to referendum. If it is rejected or no action is taken by the end of the regular session, the measure is placed on the ballot for electorate approval or disapproval.
Wyoming	direct	15 percent of voters in last general election ~~and~~ resident in at least 2/3 of the state's counties. Initiative petition filed with secretary of state any time, except that one may not be filed for a measure which is substantially the same as that defeated by an initiative held within the last 5 years. Measures must be placed on the ballot for the first statewide election held more than 120 days after adjournment of the legislative session following the filing. If substantially the same measure has been enacted by the legislature, the petition is void.

Sources: Wisconsin Legislative Reference Bureau, "Initiative and Referendum: Its Status in Wisconsin and Experiences in Selected States" (Aug. 1976); Library of Congress, Congressional Research Service, "Initiative, Referendum and Recall: A Resume of State Provisions" (Feb. 1977); various state constitutions.

Appendix A: Table 2

Prefiling, Publication Requirements, and Vote for Adoption of State Legislation

State	Preliminary filing required before collecting signatures	Publication requirements	Vote necessary for adoption
Alaska	yes	proposal displayed in voting facilities	majority of votes cast on proposal
Arizona	formal filing	secretary of state prepares publicity pamphlet with proposal text and pros and cons which are distributed in precincts and at voter registration offices	majority of votes cast on proposal
Arkansas	yes, with attorney general	proposals posted at polling places, press publication	majority of votes cast on proposal
California	yes, with attorney general	proposal text and pros and cons mailed to all voters	majority of votes cast on proposal
Colorado	yes	publication of proposal in two issues of every legal newspaper	majority of votes cast on proposal
Idaho	yes, with secretary of state	proposal and pros and cons distributed to voters	majority of aggregate vote cast for the office of governor at last gubernatorial election
Maine	no	proposal published in newspapers, posted at polling places	majority of those voting
Massachusetts	yes, with attorney general	proposal, synopsis of legislation action, pros and cons sent to all voters	majority of votes cast on proposal, must equal at least 30 percent of total number of ballots cast at election

Table 2 (cont'd)

State	Preliminary filing required before collecting signatures	Publication requirements	Vote necessary for adoption
Michigan	no	proposal published in newspapers	majority of votes cast on proposal
Missouri	no	publication in newspapers	majority of votes cast on proposal
Montana	no	proposal and other information mailed to voters	majority of votes cast on proposal
Nebraska	no	proposal text and pros and cons	majority of votes cast on proposal, and at least 35 percent of total votes cast in the election
Nevada	no	proposal published	majority of votes cast on proposal
North Dakota	no	proposal published in newpapers and posted at polls	majority of votes cast on proposal
Ohio	yes, with attorney general	proposal text and pros and cons mailed to voters	majority of votes cast on proposal
Oklahoma	yes, with secretary of state	proposal and explanation in newspapers	majority of votes cast on proposal
Oregon	yes, with secretary of state	voters pamphlet with proposal and pros and cons mailed to all voters	majority of votes cast on proposal
South Dakota	no	proposal in newspapers	majority of votes cast on proposal
Utah	no	proposal and pros and cons in newspapers and mailed to voters	majority of votes cast on proposal

Table 2 (cont'd)

State	Preliminary filing required before collecting signatures	Publication requirements	Vote necessary for adoption
Washington	no	proposal, explanation, pros and cons mailed to all voters	majority of votes cast on proposal, must equal 1/3 of votes cast in election
Wyoming	yes, with secretary of state	sample ballots published in newspapers	over 50 percent of those voting in preceding general election

Source: Library of Congress, Congressional Research Service, "Initiative, Referendum and Recall: A Resume of State Provisions" (Feb. 1977).

Appendix A: Table 3

Effective Date, Legislative Power to Amend, and Other Restrictions for State Legislation

State	Effective date of law	Legislative amendment or repeal allowed after voters approve measures	Restrictions
Alaska	90 days after certification of vote result by lieutenant governor	no repeal within 2 years of effective date, amendment at any time	no revenue measures, appropriations, acts affecting the judiciary, local or special legislation, or laws necessary for the immediate preservation of public peace, health, or safety
Arizona	upon governor's proclamation	yes, unless approval is by a majority of qualified, eligible voters	none
Arkansas	30 days after election upon proclamation of governor	amend or repeal only by 2/3 of members of each legislative chamber	none
California	day after election unless measure provides otherwise	only by statutes that become effective when approved by voters, unless measure specifies differently	proposal must relate to only one subject
Colorado	upon governor's proclamation, but not later than 30 days after vote is counted	yes	none
Idaho	upon governor's proclamation	yes	none

Table 3 (cont'd)

State	Effective date of law	Legislative amendment or repeal allowed after voters approve measures	Restrictions
Maine	30 days after governor's proclamation	yes	measures calling for spending in excess of appropriations are inoperative until 45 days after next convening of legislature in regular session, unless measure provides funds
Massachusetts	30 days after election or as law provides	yes	no revenue measures, religious, local, or special legislation, or matters relating to judiciary
Michigan	10 days after official vote declaration	can amend with 3/4 vote of members of each legislative chamber, or if proposal specifies	initiative applies only to laws which legislature may enact
Missouri	upon governor's proclamation	yes	no appropriations or measures prohibited by constitution
Montana	upon governor's proclamation or as measure provides	yes	no appropriations or special or local legislation, only laws which legislature may enact
Nebraska	upon governor's proclamation, within 10 days of vote count		limited to matters legislature can deal with; same measure can't be initiated more than once in three years
Nevada	upon final vote count	no repeal or amendment within 3 years of effective date	no appropriation without providing a tax to fund measure

60X

Table 3 (cont'd)

State	Effective date of law	Legislative amendment or repeal allowed after voters approve measures	Restrictions
North Dakota	30th day after election	amend or repeal by 2/3 vote of members of each chamber	none
Ohio	30 days after election	yes	limited to areas legislature can deal with, not allowed on some tax measures
Oklahoma	upon governor's proclamation	yes	rejected measure can't be proposed for three years by less than 25 percent of legal voters
Oregon	30 days after election	yes	none
South Dakota	on completion of vote count by State Canvassing Board	yes	none
Utah	5 days after governor's proclamation	may amend	none
Washington	30 days after election	no amendment or repeal within 2 years after approval by voters, unless by a 2/3 vote of each chamber	none

Table 3 (cont'd)

State	Effective date of law	Legislative amendment or repeal allowed after voters approve measures	Restrictions
Wyoming	90 days after certification	amend any time, no repeal within two years of effective date	cannot make or repeal appropriations, create courts and prescribe their rules, enact local or special laws, or handle any measure the legislature is prohibited from dealing with

Source: Library of Congress, Congressional Research Service, "Initiative, Referendum and Recall: A Resume of State Provisions" (Feb. 1977).

Appendix A: Table 4

Procedures for Amending State Constitutions by Initiative

State	Number of signatures required on initiative petition	Distribution of signatures
Arizona	15% of total votes cast for all candidates for governor at last election	none specified
Arkansas	10% of voters for governor at last election	must include 5% of voters for governor in each of 15 counties
California	8% of total voters for all candidates for governor at last election	none specified
Colorado	8% of legal voters for Secretary of State at last election	none specified
Florida	8% of total votes cast in the state in the last election for presidential electors	8% of total votes cast in each of 1/2 of the congressional districts
ILLINOIS[a/]	8% of total votes cast for candidates for governor at last election	none specified
Massachusetts[b/]	3% of total vote for governor at last election	no more than 1/4 from one county
Michigan	10% of total voters for governor at last election	none specified
Missouri	8% of legal voters for all candidates for governor at last election	the 8% must be in each of 2/3 of the congressional districts in the state
Montana	10% of qualified electors, the number of qualified electors to be determined by number of votes cast for governor in preceding general election	the 10% to include at least 10% of qualified electors in each of 2/5 of the legislative districts
Nebraska	10% of total votes for governor at last election	the 10% must include 5% in each of 2/5 of the counties

Table 4 (cont'd)

State	Number of signatures required on initiative petition	Distribution of signatures
Nevada	10% of voters who voted in entire state in last general election	10% of total voters who voted in each of 75% of the counties
North Dakota	20,000 electors	none specified
Ohio	10% of total number of electors who voted for governor in last election	at least 5% of qualified electors in each of 1/2 of counties in the state
Oklahoma	15% of legal voters for state office receiving highest number of votes at last general state election	none specified
Oregon	8% of total votes for all candidates for governor elected for 4-year term at last election	none specified
South Dakota	10% of total votes for governor in last election	none specified

a/ Only article IV, The Legislature, may be amended by initiative petition, and only structural and procedural questions may be considered.

b/ Before being submitted to the electorate for ratification, initiative measures must be approved by two sessions of the legislature by not less than 1/4 of all members elected, sitting in joint session.

Source: The Council of State Governments, "1978-79 Book of the States," p. 210.

Appendix B: Table 1

Number of Statutory Initiatives Proposed and Adopted, by State, 1898 through 1980

State	No. proposed 1898-1976	1978	1980	No. adopted 1898-1976	1978	1980	Percent adopted 1898 - 1980
Alaska	6	3	1	3	2	0	50%
Arizona	66	0	1	23	0	1	36
Arkansas	17	0	1	8	0	0	44
California[a] (D)	62	3	1	17	1	0	27
(I)	4	-	-	1	-	-	25
Colorado	48	0	2	21	0	1	44
Idaho	11	1	0	5	1	0	50
Maine (I)	12	0	0	4	0	0	33
Massachusetts (I)	26	0	2	11	0	0	39
Michigan (I)	4	1	2	3	1	0	57
Missouri	14	0	2	5	0	1	38
Montana	26	3	4	15	3	2	61
Nebraska	9	1	0	1	0	0	10
Nevada (I)	11	0	0	5	0	0	45
North Dakota	106	4	2	44	3	2	44
Ohio (I)	6	0	1	2	0	0	29
Oklahoma	26	1	0	6	1	0	26
Oregon	117	6	2	38	3	1	34
South Dakota (I)	19	3	2	2	1	1	17
Utah (D)	6	0	2	2	0	0	25
(I)	0	0	0	0	0	0	0
Washington (D)	69	1	1	31	1	1	46
(I)	9	0	0	6	0	0	67
Wyoming	0	0	0	0	0	0	0
Totals	674	27	26	253	17	10	38%

(D) = Direct
(I) = Indirect

[a] California repealed the indirect statutory initiative in 1966.

Sources: Compiled by the Legislative Council from: Library of Congress, Congressional Research Service, "A compilation of Statewide Initiative Proposals Appearing on Ballots Through 1976," Virginia Graham, Jan. 12, 1978; Commerce Clearing House, Inc., "Results of the General Election, Nov. 7, 1978," and "General Election, Nov. 4, 1980, Constitutional Amendments, Initiatives, and Referendums."

Appendix B: Table 2

Number of Constitutional Amendment Initiatives Proposed and Adopted, by State, 1898 through 1980

State	No. proposed 1898-1976	No. proposed 1978	No. proposed 1980	No. adopted 1898-1976	No. adopted 1978	No. adopted 1980	Percent adopted 1898 - 1980
Arizona	46	0	1	19	0	0	40%
Arkansas	40	1	1	30	0	0	71
California	89	1	0	25	1	0	29
Colorado	72	1	2	20	0	1	28
Florida	1	1	0	1	0	0	50
ILLINOIS[a]	0	0	1	0	0	1	100
Massachusetts (I)	2	0	2	2	0	2	100
Michigan	34	5	0	8	3	0	28
Missouri	30	2	0	7	0	0	22
Montana	2	1	0	1	0	0	33
Nebraska	15	1	0	7	0	0	44
Nevada	3	1	3	2	1	2	71
North Dakota[b] (D)	23	0	0	12	0	0	52
(I)	7	-	-	7	-	-	100
Ohio	38	0	0	8	0	0	21
Oklahoma	43	0	0	10	0	0	23
Oregon	88	1	2	28	0	0	31
South Dakota	0	0	2	0	0	0	0
Totals	533	15	14	187	5	6	35%

(D) = Direct
(I) = Indirect

[a] Illinois' constitutional amendment initiative applies only to structural and procedural matters in the legislative article.

[b] North Dakota replaced the indirect constitutional amendment initiative adopted in 1914 with the direct procedure in 1918.

Sources: Compiled by the Legislative Countil from: Library of Congress, Congressional Research Service, "A compilation of Statewide Initiative Proposals Appearing on Ballots Through 1976," Virginia Graham, Jan. 12, 1978; Commerce Clearing House, Inc., "Results of the General Election, Nov. 7, 1978," and "General Election, Nov. 4, 1980, Constitutional Amendments, Initiatives, and Referendums."

TAXPAYERS POLITICAL ACTION COMMITTEE
TAXPAC
P.O. Box 919 • Denville, New Jersey 07834 • (201) 627-1424

April 29, 1992

Dear Committee:

We have been examining the details of Initiative and Referendum (I & R) and would like to comment on the details we consider important.

Attached is a summary we have prepared of the key features of three resolutions (ACR33, ACR1 and ACR57) which are being considered by the Assembly Committee. We comment first on overall details and then on specific wording and provisions in each resolution.

Indirect Initiative: We agree with the principle of having a petition matter first go to the legislature for up to six months consideration, and only then go on the ballot if necessary. This creates an opportunity for additional consideration and discussion. We DO believe the time limit of six months should be in the constitutional amendment as provided by ACR1 and ACR57.

Subject matter: We believe I&R should be able to address a broad range of subject matter and the citizens should not be limited unduly. We favor ACR33 or ACR57 in that respect. However we do not have a major problem with the provisions of ACR1.

Signature Percentages: This is a major item of great importance. There is disagreement among different groups and among the three resolutions. We believe the 8% and 12% of ACR33 and ACR1 are at the maximum level that should be considered. It would be extremely hard for any group to achieve them. Only a few issues could support that high level of signature collection. Higher requirements would make I&R essentially unusable.

On the other hand, too low a signature requirement would make it easy for matters to be placed on the ballot. A group with a special idea might bring this before the voters and it might pass if it has a nice sound. This would be especially true for measures without strong focused opposition since the public depends on a vigorous dialog between proponents and opponents to clarify the issue. Also a low signature requirement would encourage more issues to be on the ballot. We are

concerned that the 3% and 5% of ACR57 may be too low and result in a large number of issues on the ballot.

There is also the question of the relationship between the signature percentages for legislative referenda (repeal of laws), legislative initiatives and constitutional initiatives. It is common in other state constitutions for the first two to be the same. In the three resolutions before the Assembly Committee they are the same. We concur and believe they should be the same.

On constitutional initiatives it is common that the percentages be higher than for legislative initiatives. The nature of a constitution amendment should require a more difficult process than passing a law or repeal of a law. This is true in the three resolutions. These resolutions have the percentage for constitutional amendments at least 1.5 times as high but not less than a 2% difference (12% vs 8% in ACR33 and ACR1 or 5% vs 3% in ACR57). We favor that constitutional amendment initiatives require at least 1.5 times more signatures than legislative initiatives but not less than 9%.

One might consider the requirements of other states that have I&R in their state constitutions. A listing of these is attached. The average of all states with initiative is 7.4% for legislation and 8.9% for constitutional amendments. These numbers seem pretty good to us and have stood the test of time. No state has as low as the proposed 3% of ACR57. All states have a signature requirement of at least 5% and most have at least 5% for legislation and 8% for constitutional amendments.

Our group STRONGLY recommends that the signature requirements be made high enough to require a major effort, but not impossible, to put an issue on the ballot. We favor somewhere in the range of 6-8% for laws and 9-12% for constitutional amendments.

It's likely that these percentages would give some slight advantage to large existing organizations over small, informal volunteer groups on new issues. But they are enough that even a large organization would have to persuade a substantial number of its members to get active and in the end would have to persuade the public in order to succeed. A highly biased issue is not likely to be acceptable to the general public in any case. On the other hand if the public is highly interested in an issue, then it would be relatively easy for a volunteer group to collect the required signatures. This would have been true in the recent resentment over the 2.8 billion dollar tax increase. A brand new issue to the public would be harder--but we think it should be.

Geographic Distribution of Signatures: We have a slight preference for the 15% limit from any one county as contained in ACR33. However we can accept no limit as in ACR57. We could, reluctantly, accept the north-south requirement of ACR1.

The higher the percentages of signatures required then the less need for a geographic distribution requirement. The lower the percentages then there is more need.

Time in Legislature: We favor six months and believe it should be spelled out as in ACR1 and ACR57.

Time after rejected by Legislature: Both ACR1 and ACR57 specify that the matter would be on the ballot of the next general election more than 120 days later. For other similar matters in the New Jersey State Constitution, the time is specified as three months. For example the resolutions specify that three months would elapse before they go on the ballot. We strongly urge that the time be changed from "120 days" to "three months". This would be fairer.

Time to collect signatures: ACR1 and ACR57 specify "as set by law but not less than one year". We favor the one year but do not see why the possibility of a longer time is allowed.

When becomes self-executing: We believe the constitution amendmentment should become self-executing in six months and not the year written into the resolution.

Other matters:

We agree strongly (as in all three resolutions) that the governor should not have veto power over matters approved by the voters.

We agree strongly (as in ACR1 and ACR57) that a matter approved by the voters can not later be challenged regarding the signature count on the petitions.

We agree strongly (as in ACR1 and ACR57) that measures passed by the voters can not be amended, repealed or reenacted without a 3/4 vote for two years and a 3/5 votes for an additional three years. We think that a permanent 3/5 requirement (as in ACR33) is too strenuous.

We agree mildly (as in ACR1 and ACR57) that a measure rejected at the polls could not appear again until the third general election.

We agree as to the desirability of disclosure of expenditures and contributions but would tend to favor including this in enabling legislation and not the constitutional amendment.

We are somewhat opposed to delaying the effect of any tax or expenditure changes until the beginning of the next fiscal year. It is a long time from November to the next July. The possibility of the change would be well known a year before then and the government should be preparing.

We agree strongly (as in all three resolutions) on having a self-executing clause in case the enabling legislation is not passed within a year. Any petition drives started in that first year should be allowed to proceed under reasonable rules (grandfathering) in the enabling legislation.

New matters:

We are undecided about the desirability of a requirement of a fiscal note. This sounds good but may result in consequences which are undesirable. In any case, it is a matter for the enabling legislation and not the constitutional amendment.

We suggest that the enabling legislation allow for groups to request the use of the state personnel to help draft a proper initiative and that they be allowed to use state facilities to hold a public hearing prior to circulating petitions.

CONCLUSION: On balance we find that ACR57 would be the closest of any of the resolutions to our recommendations if the following two critical changes were made:

1. Percentages of signatures required changed from 3% to 6-8% and from 5% to 9-12%.
2. Delay for appearing on general election ballot changed from "120 days" to "three months".

We strongly hope that the final resolution released will be in line with these carefully considered recommendations.

Thank you,

C. A. Haverly, Executive Director

COMPARISON OF ASSEMBLY RESOLUTIONS FOR INITIATIVE AND REFERENDUM

TAXPAC 4/5/92

I&R Item	ACR 33 Kamin	ACR 1 Franks	ACR 57 Kamin
I & R applies to: Legislative Referendum Legislative Initiative Constitutional Intitiative	 Yes Yes Yes	 Yes Yes Yes	 Yes Yes Yes
Signature Requirements: Legislative Referendum Legislative Initiative Constitutional Initiative	 8% of GV 8% of GV 12% of GV	 8% of GV) (when signature 8% of GV)--(circulation 12% of GV) (begins.	 3% of GV) (when signature 3% of GV)--(circulation 5% of GV) (begins.
GV is the number of votes cast in the preceeding gubernatorial election			
Restrictions on Subject Matter.	None specified.	1. Laws the legislature are prohibited from enacting. 2. Siting of facilities.	None specified.
Geographic Distribution of Signatures.	No more than 15% from any one county.	1. No more than 15% from any one county. 2. Percent of signatures must be met in both the southernmost eight counties and the other thirteen counties.	None specified.
Indirect (successful petition goes to Legislature first)?	Yes.	Yes.	Yes.
How long does legislature have to consider it?	Time set by law.	Time set by law but not over six months.	Time set by law but not over six months.
If not approved by legislature?	On ballot as specified by law.	On ballot at next general election more than 120 days later. Publish notice three	On ballot at next general election more than 120 days later. Publish notice three months before election

Time to collect signatures.	Not specified.	As set by law but not less than one year.	As set by law but not less than one year.
Can governor veto a measure approved by the voters?	No.	No.	No
Can an approved measure be set aside later for lack of signatures?	Not specified.	No.	No
Requirement to amend, repeal or reenact a measure decided at the polls.	3/4 vote of both houses for two years and 3/5 vote thereafter.	3/4 vote of both houses for two years and 3/5 vote for the next three years. Public hearing required.	3/4 vote of both houses for two years and 3/5 vote for the next three years. Public hearing required.
If a petition measure fails to get the required votes how soon can it be on the ballot again?	Not specified.	Third general election.	Third general election.
If several petition matters on the same subject pass which one applies?	Not specified.	One with the most votes.	One with the most votes.
Disclosure.	Not specified.	Not specified.	Disclosure of expenditures and contributions is required.
When an approved matter takes effect.	Not specified.	At the beginning of the next fiscal year for taxes or appropriations. Other items in 30 days or as specified.	At the beginning of the next fiscal year for taxes or appropriations. Other items in 30 days or as specified.
If enabling legislation law not passed in one year.	Self executing.	Self executing.	Self executing

NUMBER OF SIGNATURES REQUIRED FOR INITIATIVE IN THE VARIOUS STATES

		Minimum Requirements			
		Legislative Initiative		Amendment Initiative	
		%	Signatures	%	Signatures
1.	Alaska	10	20,343	–	–
2.	Arizona	10	86,699	15	130,048
3.	Arkansas	8	55,081	10	68,851
4.	California	5	372,174	8	595,479
5.	Colorado	5	50,668	5	50,668
6.	Florida	–	–	8	363,886
7.	Idaho	10	38,743	–	–
8.	Illinois	–	–	8	180,813
9.	Maine	10	42,686	–	–
10.	Massachusetts	3(a)	50,525	3(a)	50,525
11.	Michigan	8	191,725	10	239,656
12.	Missouri	5	104,296	8	166,874
13.	Montana	5	18,351	10	36,702
14.	Nebraska	7	39,510	10	56,442
15.	Nevada	10	35,426	10	35,426
16.	North Dakota	1.6 (b)	13,055	3.2 (b)	26,110
17.	Ohio	6 (c)	183,198	10	306,662
18.	Oklahoma	8	93,683	15	175,656
19.	Oregon	6	63,578	8	84,770
20.	South Dakota	5	14,723	10	29,444
21.	Utah	10	64,911	–	–
22.	Washington	8	150,001	–	–
23.	Wyoming	15	27,962	–	–
	Average	7.4	81,778	8.9	152,883
	Proposed for NJ	8	160,000	12	240,000

(a) Plus 25% vote of legislature in 2 successive sessions.
(b) of population in prior census
(c) only 3% if subsequently passed by legislature

- Reference: David Schmidt, Citizen Lawmakers, Temple Univ Press,(1989) p 296.

New Jersey
Principals and Supervisors Association
1479 Pennington Road, Trenton, NJ 08618
TEL: (609) 771-8200 FAX: (609) 771-9375

NJPSA TESTIMONY BEFORE THE

ASSEMBLY STATE GOVERNMENT COMMITTEE

INITIATIVE AND REFERENDUM

APRIL 30, 1992

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM DEBRA COSGROVE, DIRECTOR OF GOVERNMENT RELATIONS OF THE NEW JERSEY PRINCIPALS AND SUPERVISORS ASSOCIATION. I AM HERE TODAY REPRESENTING OVER 5,000 PUBLIC SCHOOL PRINCIPALS, VICE-PRINCIPALS AND SUPERVISORS THROUGHOUT THE STATE. WE ARE DEEPLY CONCERNED ABOUT THE DEVASTATING IMPACT THAT A SYSTEM OF INITIATIVE AND REFERENDUM COULD HAVE ON PUBLIC EDUCATION IN NEW JERSEY.

AS INDIVIDUALS AND AS A PROFESSIONAL ASSOCIATION, WE BELIEVE THAT PUBLIC EDUCATION IS THE MOST IMPORTANT INVESTMENT WE CAN MAKE AS A SOCIETY. BY DEVELOPING THE POTENTIAL OF OUR YOUTH TO BECOME ACTIVE, PRODUCTIVE AND INFORMED CITIZENS, WE WILL IMPROVE THE QUALITY OF LIFE IN NEW JERSEY FOR YEARS TO COME.

INITIATIVE AND REFERENDUM IS A DIRECT THREAT TO THE FUTURE OF NEW JERSEY'S PUBLIC EDUCATION SYSTEM. THE VERY NATURE OF OUR PUBLIC SCHOOL SYSTEM LEAVES IT VULNERABLE TO ATTACK IF A SYSTEM OF INITIATIVE AND REFERENDUM IS ENACTED. PUBLIC SCHOOLS ARE ONE OF THE MOST HIGHLY REGULATED AND SCRUTINIZED INSTITUTIONS IN THE STATE. THE MANNER IN WHICH SCHOOLS ARE FUNDED, OPERATED, STAFFED AND ORGANIZED IS CURRENTLY GOVERNED BY AN INTRICATE WEB OF PUBLIC LAWS, REGULATIONS AND POLICIES. FURTHER, SCHOOLS ARE TOTALLY DEPENDENT UPON PUBLIC TAX DOLLARS FOR THEIR VERY SURVIVAL.

IF I & R IS ENACTED, A DISTRESSED AND OVERLY-TAXED CITIZENRY CAN BE EXPECTED TO SEEK PROMPT RELIEF THROUGH TAX LIMITATION MEASURES WITHOUT REGARD TO THE IMPACT ON PUBLIC EDUCATIONAL PROGRAMS OR OTHER NECESSARY SOCIAL SERVICES. DUE TO DIFFICULT ECONOMIC TIMES AND THE RECENT UPROAR OVER TAX INCREASES, NEW JERSEY CITIZENS MAY <u>REACT</u>, YET FAIL TO <u>ENACT</u> GOOD PUBLIC POLICY.

THE PASSAGE OF I & R IN MASSACHUSETTS LED TO SUCH A RESULT. IN THE NAME OF STATEWIDE TAX RELIEF, VOTERS IN MASSACHUSETTS ENACTED PROPOSITION 2 1/2 PURSUANT TO A SYSTEM OF INITIATIVE AND REFERENDUM. PROPOSITION 2 1/2 LIMITED TAX RATE INCREASES FOR CITIES AND TOWNS TO A 2% INCREASE PER YEAR. AS LOCAL PROPERTY TAXES DIMINISHED, THE ECONOMY TOOK A NOSE DIVE. THE RESULT WAS SHRINKING STATE AND LOCAL AID TO EDUCATION. CURRENTLY, MASSACHUSETTS RANKS 46 OUT OF THE 50 STATES IN STATE AID TO EDUCATION. THE IMPACT UPON THE MASSACHUSETTS PUBLIC EDUCATION SYSTEM HAS BEEN CATASTROPHIC:

* IN THE FIRST YEAR OF ENACTMENT, APPROXIMATELY 15,000 SCHOOL EMPLOYEES (ABOUT 16% OF THE TOTAL WORK FORCE) WERE LAID OFF;
* CLASS SIZE ROSE DRAMATICALLY - UP TO 40 TO 1 IN SOME INSTANCES;
* SCHOOL LIBRARIES HAVE BEEN CLOSED;
* MANY SCHOOL BUILDINGS WERE CLOSED;
* GIFTED AND TALENTED PROGRAMS HAVE BEEN CUT SIGNIFICANTLY STATEWIDE;
* DUE TO SENIORITY AND BUMPING RIGHTS IN TEACHER'S CONTRACTS, OFTEN THE TEACHERS WHO ARE STILL EMPLOYED ARE ASSIGNED TO TEACH A PARTICULAR SUBJECT OR AGE GROUP THAT THEY ARE NOT EXPERIENCED WITH.
* DUE TO DECREASED STAFFING AND PROGRAM CUTS, HIGH SCHOOL STUDENTS IN MASSACHUSETTS TYPICALLY SPEND TWO TO THREE CLASSES A DAY IN STUDY HALL.
* CO-CURRICULAR AND AFTER SCHOOL ACTIVITIES SUCH AS ATHLETICS HAVE BEEN CUT OR REDUCED. STUDENTS ARE CURRENTLY CHARGED USERS' FEES IN MOST DISTRICTS FOR ATHLETICS, DRAMA AND OTHER EXTRA CURRICULAR ACTIVITIES. IN ATHLETICS ALONE, THERE HAS BEEN A 20,000 REDUCTION IN THE NUMBER OF STUDENTS PARTICIPATING OVER THE LAST THREE YEARS.
* BUDGET CUTS HAVE SIGNIFICANTLY DECREASED THE NUMBER OF SCHOOL ADMINISTRATORS AND SUPERVISORS. CURRENT RESEARCH INDICATES THAT THE SCHOOL PRINCIPAL AS THE EDUCATIONAL LEADER IS THE KEY TO A SCHOOL'S SUCCESS. WITH THE ELIMINATION OF VICE-PRINCIPALS AND SUPERVISORS ON THE FRONT LINES IN SCHOOLS, PRINCIPALS IN MASSACHUSETTS HAVE BEEN FORCED TO PERFORM THE DUTIES OF PRINCIPAL,

VICE-PRINCIPAL AND SUPERVISOR OF INSTRUCTION. THE RESULTING PRESSURES LEAVE LITTLE TIME FOR LONG RANGE VISION OR PLANNING FOR THE SCHOOL'S SUCCESS BY THE PRINCIPAL.

IN SHORT, THE IMPACT OF I & R ON THE MASSACHUSETTS PUBLIC EDUCATION SYSTEM HAS BEEN DEVASTATING! CAN NEW JERSEY AFFORD A SIMILAR RESULT?

UNFORTUNATELY, RECENT EVENTS IN NEW JERSEY HAVE SET THE STAGE FOR A SIMILAR OUTCOME. VOTERS ARE DEMORALIZED BY INCREASING TAXES, DECREASING SERVICES, AND A DECLINING ECONOMY. IN THE REALM OF EDUCATION, THE STATE HAS BEEN POLARIZED BY LONG-TERM INEQUITIES IN EDUCATION SPENDING AND THE RESULTING IMPACT OF THE QEA. COMPLEX ISSUES IN THE AREAS OF INSURANCE, HEALTH CARE AND SOCIAL SERVICES CRY OUT FOR STATEWIDE REFORM.

DIFFICULT TIMES CALL FOR TOUGH DECISIONS. I & R IS NOT THE ANSWER. IT IS YET ANOTHER LEGISLATIVE PLACEBO, - SOUNDS GOOD, BUT HAS NO POSITIVE EFFECT. A SYSTEM OF I & R WILL NOT PROVIDE THE NECESSARY LEADERSHIP TO RESOLVE THE MYRIAD OF COMPLEX ISSUES FACING THE STATE. AS LEGISLATORS, YOU ARE IN THE UNIQUE POSITION OF BEING CHOSEN TO PROVIDE THAT LEADERSHIP. YOU HAVE THE NECESSARY STAFF, RESEARCH TOOLS AND INFORMATION TO CONSIDER THE TOUGH ISSUES IN DEPTH AND WITHIN THE CONTEXT OF COMPETING STATE ISSUES. YOU HEAR AND BALANCE THE COMPETING VIEWPOINTS THROUGHOUT THE PUBLIC HEARING PROCESS. I & R WILL ONLY PROVIDE A ROADBLOCK TO THE RESOLUTION OF THESE ISSUES. IN ADDITION, I & R IS COSTLY, TIME CONSUMING, AND TENDS TO REDUCE COMPLEX ISSUES TO BUMPER STICKERS SLOGANS OR 30 SECOND RADIO SPOTS.

NJPSA BELIEVES THAT THE CURRENT SYSTEM OF REPRESENTATIVE DEMOCRACY IS THE MOST EFFECTIVE GOVERNMENT PROCESS FOR ALL OF NEW JERSEY'S CITIZENRY. UNDER THE CURRENT SYSTEM, NJPSA HAS CONSISTENTLY HAD THE OPPORTUNITY TO PROVIDE OUR PROFESSIONAL EXPERTISE INTO THE DEVELOPMENT AND IMPLEMENTATION OF MANY EXISTING LAWS AND REGULATIONS. FOR EXAMPLE, OUR INPUT HAS BEEN INSTRUMENTAL IN DEVELOPING CURRENT REQUIREMENTS FOR PRINCIPALS' ASSESSMENT AND CERTIFICATION, UPGRADING THE CERTIFICATION REQUIREMENTS FOR ATHLETIC DIRECTORS, DEVELOPING THE T & E SCHOOL FUNDING SYSTEM (CHAPTER 212), AND THE ENACTMENT OF THE SCHOOL TAKEOVER LEGISLATION. THE EXISTING PUBLIC HEARING PROCESS HAS PROVIDED THE PUBLIC AND OUR MEMBERSHIP WITH AMPLE OPPORTUNITIES TO PROVIDE INPUT ON KEY EDUCATIONAL MATTERS. ALTHOUGH WE HAVE NOT ALWAYS AGREED WITH THE RESULT, OUR MEMBERSHIP DOES AGREE THAT THE EXISTING LEGISLATIVE PROCESS IS A SOUND ONE.

WE ASK YOU TO CONSIDER THE DELETERIOUS EFFECT I & R CAN HAVE UPON OUR SCHOOL CHILDREN. WE ASK YOU TO <u>VOTE NO</u> TO THE RELEASE OF ANY I & R PROPOSAL FROM THIS COMMITTEE. THANK YOU FOR CONSIDERING THE VIEWS OF THE NEW JERSEY PRINCIPALS AND SUPERVISORS ASSOCIATION.