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Initiative and Referendum

This information brief provides commonly requested information about statewide initiative and referendum. It explains how statewide initiative and referendum could be implemented in Minnesota, describes common features of these processes in other states, tells which states have initiative or referendum, briefly describes recent experience in some states, and summarizes arguments for and against initiative and referendum.

Initiative and referendum have been on the ballot in Minnesota in the past.

Initiative is a process that allows voters to bypass the legislature and governor and propose a law or a constitutional amendment to be placed on the ballot. One variant on initiative is the indirect initiative, found in a handful of states. With this tool, a proposal must be submitted to the legislature, which has an opportunity to act on it. Failing legislative action, the question then must be placed on the ballot.

Referendum allows voters to vote on a law passed by the legislature, to prevent it from taking effect. This information brief does not address the form of referendum in which the legislature, rather than the voters, starts the process of placing a question on the ballot.

In order to have initiative or referendum for statewide laws, Minnesota would need to amend its state constitution. Two 19th century Minnesota Supreme Court cases seem to indicate that the legislature could not implement referendum without a constitutional amendment.¹ From these cases it appears that an attempt to implement referendum by statute would be held an unconstitutional delegation of the legislature's power to make laws. There has been no attempt to implement initiative by statute in Minnesota, so there is no case law on that issue. All states that provide for statewide initiative do so in their constitutions as an exception to the vesting of the law-making power in the legislature. Also, Minnesota has a long history of proposing constitutional amendments for initiative. Together, these facts suggest that a constitutional amendment would be needed to implement initiative as well as referendum here.

¹ *State v. Young*, 29 Minn. 473, 9 N.W. 737 (1881)(dicta); *State ex rel. Childs v. Copeland*, 66 Minn. 315, 69 N.W. 27 (1896)(dicta).

Ballot questions for initiative and referendum came before Minnesota voters in 1913, 1915, and 1980. Each time, the proposal received more “yes” than “no” votes. However, it did not achieve the approval of a majority of all those voting at the election, the margin required to ratify an amendment to the state constitution. Following the last ballot appearance in 1980, at least one bill providing for initiative and referendum has been introduced in the Minnesota Legislature every biennium until the present.

About half the states have initiative, referendum, or both.

Procedural and substantive requirements. Aspects of the initiative and referendum processes vary among the states, but there are many common features. Initiative, the tool used most often, begins with proponents of an idea filing it with an official such as the secretary of state or lieutenant governor. In the case of a referendum, proponents would file a petition that identifies the law they want referred to the voters. A referendum must be requested within a specified, usually short, period (such as 90 days) after a law is enacted. In some states, if the law has not taken effect before a referendum qualifies, the law would remain suspended until the referendum vote.

Most states allow initiatives on any subject the legislature could pass law on. States with a single subject rule applicable to legislation also apply that rule to initiatives.

Some states place restrictions on the topics a ballot proposal can address. In the area of referendum, only Arkansas, Idaho, and Nevada subject all legislative enactments to the possibility of a ballot question. Most states do not permit a referendum on laws involving revenue, taxation, or appropriations. Some states prohibit a referendum on a law designated by the legislature as necessary for public health and safety. This designation may be available only for bills that pass with a specified minimum margin, such as 60 percent or two-thirds. In a few states, the legislature has the power to designate any law as off-limits to referendum.

About a dozen states place limits on the topics an initiative can address. Issues that are prohibited include religion, appropriations, public employee pensions, and creating or abolishing courts or changing their jurisdiction.

Official review. When an initiative proposal is filed, it is reviewed by a state official for compliance with applicable legal requirements. Some states provide for the attorney general or an office like the Revisor of Statutes to review the proposal for form and clarity. However, proponents make the final decision about the language that would be in law if the proposal passes. On the other hand, a state official always prepares the ballot question and, in many states, a summary of the proposal to place on the ballot. If relevant, a fiscal note may be prepared by an agency like the finance department or a legislative budget office. In some states, the revisor or a legislative research office prepares an official summary for the public.

Signature gathering. Supporters of either an initiative or referendum next collect the necessary number of eligible signatures within the applicable time limits. Signatures typically must come from registered voters in an amount equal to a stated percentage of either the total votes cast or the total vote for the office of governor at the preceding election. Most states require a larger number of signatures for a constitutional amendment than for a statutory proposal. The

percentage required ranges in the various states from 3 percent of the vote for governor at the last election to 15 percent of the total vote at the last election.

Ten states impose a further requirement on the signatures gathered: that they satisfy a geographic distribution. The purpose of this provision is to insure that a proposal has broad support around the state. The practical effect is to dilute the influence of urban areas on ballot question campaigns.

The responsible official must verify the number and validity of the signatures, often by checking a random sample. If the petitions satisfy the law, the question will be on the ballot. In most states, an initiative or referendum appears on the next general election ballot after the issue qualifies. A few states provide for a vote at a special election or at the state primary.

Voter information. In eight states, a voter information guide containing information about each ballot question is then prepared and mailed to voters. In other states, a guide may be published in newspapers or may be available to pick up at county auditors' offices. The concept of a guide is generally supported by commentators. In practice, guides have been criticized for being so lengthy and detailed that they confuse or overwhelm average voters. Observers believe neutral information is important for the voters, but they want guides made more accessible.

Approval or rejection. Most states provide for adoption of an initiative proposal, including proposals to amend the state constitution, by approval of a simple majority of those voting on the question. A few states require that the vote must in addition equal at least some percentage of the total vote at the election (for example, 30 percent or 40 percent). If an initiative passes, a few states prohibit the legislature from repealing it. Five states restrict the legislature's ability to change or repeal an enacted initiative. Legislative amendment of an initiative may be prohibited for a period of years, may require an extraordinary majority, or may have to be submitted to the voters in a referendum. If an initiative does not pass, some states prohibit bringing the idea back again for a specified period between two and five years.

Campaign financing. Some states have attempted to regulate the financing of ballot drives. Constitutional issues have restricted these efforts. A state may not limit the size of contributions to a ballot campaign because the United States Supreme Court has ruled that doing so infringes on the constitutional right of free speech.² A state may not prohibit paying signature gatherers for the same reason.³ Some states prohibit paying circulators based on the number of signatures they gather, reasoning that this limitation deters fraudulent signatures. Other states require petition forms to indicate whether the circulator is paid or a volunteer.

Every state except Nevada requires spending reports by proponents and opponents of ballot questions. Reporting does not raise constitutional issues.

² *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290 (1981). The court reasoned that ballot questions differ from candidate campaigns because in a ballot drive there is no danger of corrupting a candidate. The danger of corruption is the reason the Supreme Court has upheld contribution limits that apply to candidates.

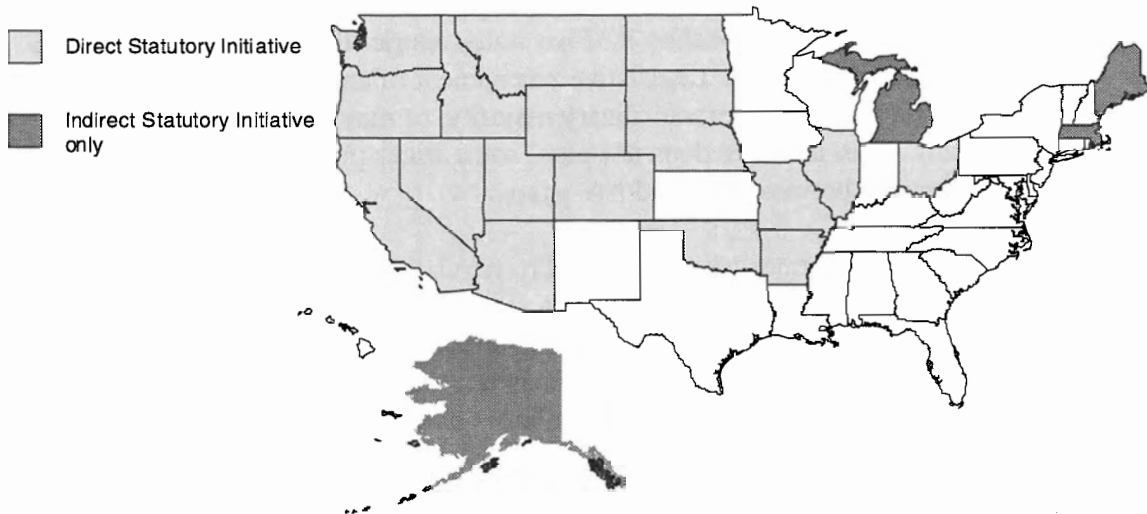
³ *Meyer v. Grant*, 486 U.S. 414 (1988).

States with Constitutional Initiative



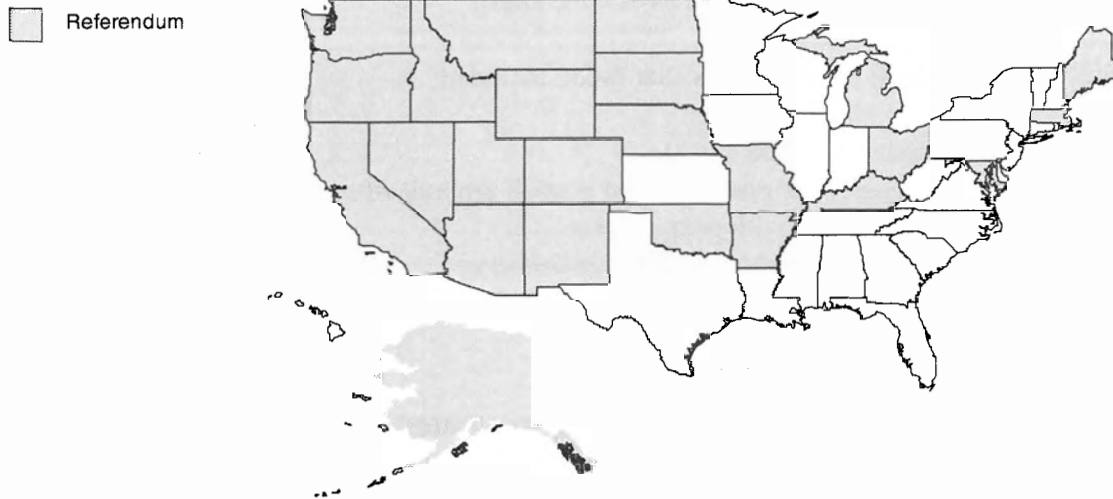
Direct constitutional initiative means a proposed constitutional amendment goes directly to the voters.
Indirect constitutional initiative means a proposal goes first to the legislature for action before appearing on the ballot.

States with Statutory Initiative



Direct statutory initiative means a proposed law goes straight to the voters.
Indirect statutory initiative means a proposed law goes to the legislature for possible action before it goes to the voters.

States with Referendum



In these states, the voters can require that a legislative act be submitted to the voters for their approval before it takes effect.

Initiative is used often on a range of issues.

Initiative and referendum were first adopted in South Dakota in 1898. In the subsequent 100 years, 1,850 questions have appeared on state ballots. Of these, 725 (40 percent) passed. Individual states vary in how much their voters use initiative, but there has been a trend to use this mechanism more frequently in recent years. For example, Arizona has had over ten questions on the ballot at each of several elections in the past decade. In 1996, Oregon had a record 16 questions on its ballot. California often has around ten proposals at an election. Only one state, Mississippi, limits the number of questions per election. Mississippi allows initiative only for constitutional amendments and has a limit of five proposals at a time (the first five to qualify).

Initiative topics range from major government fiscal policies such as California's Proposition 13 on property taxes to an Arizona ballot proposal to change the term of service for mine inspectors. It is difficult to categorize the kinds of initiatives that are likely to win, aside from the fact that proposals to reduce or limit taxes nearly always win, tax increases almost never win, and the higher spending side (regardless of topic) is more likely to win, at least in those cases where spending data is available.

November 1998 was the last election at which many states had initiatives or referenda on their ballots. Sixty-one questions went before the voters at that time; 59 percent were approved. This was the highest rate of success for any election year ever. Proposals that won included the following:

- legalizing medical use of marijuana (four states)
- expanding gambling facilities (two states)
- banning same sex marriage (two states)
- providing public funding for state candidates (two states)
- authorizing voters to veto tax increases (one state)

- holding all elections by mail (one state)
- banning affirmative action programs (one state)
- authorizing counties to limit gun sales (one state)

Proposals voted on in one or two states that failed included:

- legalizing physician-assisted suicide
- increasing the penalty for possession of a small amount of marijuana
- banning funding schools with property tax
- banning discrimination based on sexual orientation
- limiting state and local taxes
- banning late-term abortions

California groups have recommended improvements for initiative and referendum.

In the early 1990s, three groups in California studied the initiative and referendum process.⁴ They all concluded that the process should be retained but that several changes should be made. Some key recommendations were:

- allow sponsors to correct errors or omissions or make other text changes before the question goes on the ballot, if the changes further the intent of the initial proposal;
- have a period during which the legislature could negotiate compromise legislation which, if it satisfied initiative sponsors, would lead to dropping the ballot drive;
- require the legislature to vote on each proposal before it appears on the ballot and put each member's vote in the voters' guide;
- allow the legislature to amend an initiative by a 60 percent vote if the amendments further the purpose and intent of the initiative;⁵
- require constitutional amendments, which can currently be adopted in California by a simple majority, to be approved by either (1) a 60 percent margin or (2) a simple majority at two succeeding elections;
- provide a long enough circulation period so that volunteer signature gatherers can better compete with paid petition circulators;
- include the names and affiliations of the top two contributors to each side of an initiative campaign at the top of all signature forms and in all advertising; and

⁴ California Commission on Campaign Financing, *Democracy by Initiative: Shaping California's Fourth Branch of Government*, Center for Responsive Government, 1992; Citizens' Commission on Ballot Initiatives, *Report and Recommendations on the Statewide Initiative Process*, 1994; Dubois, Philip L., and Floyd Feeney, *Improving the California Initiative Process: Options for Change*, California Policy Seminar, University of California, 1992.

⁵ This proposal would be unnecessary in a state that did not prohibit legislative amendment of a law passed by initiative.

- publish a short voters' guide in addition to the regular long pamphlet that would contain only a list of major contributors, major supporters and opponents, and the legislative vote on the proposal.

Following are commonly mentioned pros and cons of initiative and referendum.

PROS	CONS
Initiative lets voters make decisions on public policy issues the legislature refuses to address or is unable to resolve.	It undermines representative government — gives the legislature an excuse to avoid hard questions.
Initiative and referendum are counterweights to the influence of professional lobbyists in the legislative process.	It takes considerable money to put a question on the ballot and get voter approval for it; initiative and referendum are most likely to be successfully used by interests with money.
	Initiative and referendum encourage single-issue politics.
	Initiative and referendum encourage simplistic proposals because it is not possible to compromise or change the proposal over time as is done with a pending bill.
	A large number of questions on the ballot may overwhelm voters.
	Conflicting or overlapping proposals on the same subject have sometimes been proposed for the purpose of confusing voters and defeating a particular proposal.
Initiative may be the only way to achieve government structural change that the legislature and governor resist.	
Initiative and referendum stimulate citizen interest in public policy.	
Public opinion polls in states with initiative and referendum consistently show voters like it.	
No state has ever repealed initiative or referendum.	