2016 Ballot Propositions

By
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Voters decided 162 state-level ballot propositions in 2016. Voters approved 47 initiatives, the most in a single year in American history. California pulled into a tie with Oregon for the most initiatives all time. High profile issues included marijuana legalization, labor markets and capital punishment.

About the Author
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Overview
Ballot proposition activity remained at a somewhat muted level in 2016, with 162 propositions appearing on state ballots. This number is comparable to the 158 that were decided in 2014, but well below the even-numbered early years of the century (2000, 2002, 2004, 2006) when ballots contained an average of 216 propositions per year. The overall passage rate was 75 percent, above the 67 percent approval rate in 2014, and above the normal rate.

The propositions in 2016 were distributed across 35 states. California had the most with 18 propositions, followed by Alabama with 15 constitutional amendments, and South Dakota with 10 propositions. California’s propositions were a mix of 14 initiatives (citizen-initiated new laws), one referendum (a citizen-initiated proposal to repeal an existing law), and three legislative measures (proposed new laws placed on the ballot by the legislature). Historically, most propositions across the country are placed on the ballot by legislatures, and 2016 was no exception with 51 percent of proposals originating in this way. However, there was an unusual surge in initiative activity in 2016, and a record-setting number of initiative proposals were approved.

Table A contains a summary of propositions by state and type in 2016, Table B contains a year-by-year breakdown of ballot proposition activity since 2000, and Table C provides a complete list of propositions decided in 2016.

Initiative Trends
The best-known form of direct democracy is the initiative process, in which citizens qualify new laws for the ballot by collecting a required number of signatures from other citizens. Signature
requirements typically run in the range of 5 to 8 percent of the number of votes cast in the state’s previous gubernatorial election. In most years, initiatives attract the most attention, the most funding and the most controversy. Proponents view the process as an important supplement to representative democracy that allows citizens to counteract the influence of special interests in the legislature; while opponents view the process as increasing the influence of wealthy and organized interest groups who can fund petition drives and election campaigns.

The initiative and referendum emerged in the United States during the Progressive Era. South Dakota was the first state to adopt the process in 1898, followed by Utah in 1900 and Oregon in 1902. By 1918, 19 states had adopted the process, and adoption continued at the rate of about one state every 20 years, ending (for now) with Mississippi, which adopted the process in 1992. The total number of states allowing initiatives now stands at 24. The initiative process is widely available in states west of the Mississippi, but is not a purely a Western phenomenon; there are initiative states in the Northeast (Maine, Massachusetts), South (Arkansas, Florida) and Central regions (Michigan, Ohio). The initiative process is also common at the local level, with 82 percent of American cities allowing initiatives. Whatever mixed feelings political observers may have about initiatives are not shared by the general public; opinion polls consistently show that citizens by a 3-to-1 ratio trust each other to make public decisions more than elected officials.

Two interesting historical milestones were passed in 2016. The first was the total number of approved initiatives for the year. At 47, this represents the largest number of approved initiatives in a single year in American history, eclipsing the previous record of 43 in 1996. The overall approval rate for initiatives in 2016 was 66 percent, well above the historical average of 40 percent. The reason for this burst in initiative activity is not clear. Often initiatives are a sign of discontent with elected officials—activists choose to take their proposals directly to the voters only when the legislature does not address their concerns to their satisfaction. Somewhat speculatively, the burst of initiative activity might be a manifestation of popular distrust of political elites that seems to be bubbling beneath the surface across the globe, as exhibited in the U.S. presidential election, Brexit in the United Kingdom, and other recent elections across Europe. The 71 initiatives in 2016 is the third highest total for the century, behind 79 initiatives in 2006, 76 initiatives in 2000, and well below the record of 93 in 1996.

Figure A shows the number of initiatives by decade, beginning in 1904 when the first initiatives appeared on the ballot in Oregon. Initiatives were common in the first four decades of the 20th century, particularly in the Progressive Era that ran through the end of World War I. Many initiatives during this period were fueled by tensions between new urban majorities in many states and rural interests that controlled state legislatures because district lines were not redrawn to accommodate population changes. Initiative activity tailed off in the middle decades of the 20th century, with a trough of only 89 measures from 1961 to 1970. Beginning in the late 1970s, initiative use picked up again, following California’s Proposition 13 in 1978 that set off a national tax revolt. Each successive decade after Proposition 13 set a new record for the number of initiatives, peaking with 394 from 1991 to 2000. Voters have decided 172 initiatives so far in the current decade, below the pace in the preceding two decades.

The second milestone in 2016 was California pulling into a tie with Oregon for the most initiatives historically. Oregon has been the overall leader since it adopted the process in 1902, but both states...
have now decided 371 initiatives overall. California's per-year average is slightly higher since it adopted the process in 1911. Rounding out the top five most active initiative states are Colorado with 232, North Dakota with 195 and Washington with 182. Initiative activity is particularly high in the Western half of the country. East of the Mississippi River, Arkansas has voted on the most initiatives with 124. In the 21st century, California leads with 102 initiatives, followed by 68 for Oregon, 57 for Colorado and 54 for Washington.

Issue Highlights

Typically, ballot propositions are a response to state-specific challenges, but common issues occasionally emerge. The following are some of the trends and high profile issues of 2016.

Marijuana

The breakout issue in 2016 was marijuana legalization. The issue slowly gained traction in the 1990s as states one after another approved medical use of marijuana. An important breakthrough took place in 2012 when voters in Colorado and Washington legalized recreational use of the drug. In 2014, voters in Alaska, Oregon and the District of Columbia followed suit by passing their own legalization laws. In 2015, Ohio voters turned down a self-interested legalization initiative that would have granted monopolies to the measure’s sponsors. With the dire warnings of legalization from opponents not unfolding in pioneering states, and sensing an attractive new revenue source, the floodgates opened in 2016. Legalization initiatives appeared on the ballot in Arizona, California, Maine, Massachusetts and Nevada, and medical marijuana initiatives appeared on the ballot in Arkansas, Florida, Montana and North Dakota. Every one of the measures passed, except for Arizona’s Prop 205 that narrowly failed 49-51. With the passage of these measures, recreational use of marijuana has been legalized in states that account for almost one-quarter of the country’s population. The growing acceptance of marijuana at some point may start to put pressure on the federal government to reconsider its position on marijuana. Marijuana remains illegal under federal law, which nominally supersedes state law, but so far federal law enforcement has not attempted to override local decisions on marijuana.

Labor Markets

Regulation of labor markets was another common topic for ballot measures in 2016, most prominently concerning the minimum wage. The minimum wage has been an extremely popular issue with voters in the 21st century. Since 2000, 15 state-level propositions have been proposed to increase the minimum wage; every one of them has passed, usually by majorities in the 2-1 range. Minimum wage measures also have had success at the city level. In November, voters in Arizona, Colorado, Maine and Washington voted to increase the state minimum wage, and South Dakota voters used a referendum to repeal a law creating a subminimum wage for workers younger than the age of 18. With the overwhelming success of minimum wage measures to date, progressive groups have expanded the scope of their proposals: the initiatives in Arizona and Washington also require employers to provide guaranteed minimum amounts of paid sick leave.

Other ballot propositions offered voters the opportunity to set policy concerning labor unions. Two right-to-work states considered adding to their constitutions the prohibition on requiring union membership as a condition of work. Alabama voters approved, and Virginia voters rejected going down this path. South Dakota rejected a union-sponsored initiative that would have chipped away at the state’s right-to-work law by making non-union employees subject to union fees even they chose not to join the union.

Animals

Although animal-related issues are rarely discussed at the federal level, they seem to be an ongoing
topic of interest based on the continuing popularity of animal-related ballot propositions. Five ballot measures in 2016 concerned animals. Animal rights groups remain the most active. Oregon voters approved Measure 100 that prohibits the purchase and sale of parts from 12 endangered species; Washington approved a similar measure in 2015. Massachusetts voters approved Question 3 that guaranteed farm animals a minimum amount of living space; several states have passed similar measures beginning with Florida’s 2002 amendment protecting pregnant pigs. The Yes campaign in both Oregon and Massachusetts were funded by the Humane Society.

Indiana and Kansas approved proposals that established a constitutional right to hunt and fish, apparently intended to head off future actions from animal rights groups. Several states, mostly in the interior of the country, have passed similar amendments recently. Montana voters rejected I-117 that would have prohibited the use of traps and snares on public lands. Oklahoma rejected a proposal that would have empowered courts to sharply limit new regulations concerning farming and ranching, in part over concerns that the proposal would end favoring corporate farms that were more effective at using the legal process.

Capital Punishment
The death penalty has reemerged as a hot button issue, with four capital punishment propositions on the ballot in 2016. Death penalty defenders prevailed on all four. In California, voters rejected an initiative to end the use of capital punishment (Prop 62), and narrowly approved an initiative to expedite executions (Prop 66). Total spending on the two initiatives exceeded $20 million, about evenly divided between proponents and opponents. In 2015, the Nebraska Legislature abolished the death penalty over the governor’s veto; voters repealed the law and reinstated the death penalty via Referendum 426. Similarly, in 2015, Oklahoma’s attorney general suspended executions until protocols could be reviewed to determine their constitutionality. State Question 776 explicitly established that the use of capital punishment is constitutional in the state.

Gambling
Gambling is a perennial topic of ballot propositions and voters decided three gambling measures in 2016. Massachusetts voters rejected Question 1 that would have allowed a second slots parlor, and New Jersey voters rejected their own Question 1 that would have permitted casinos outside Atlantic City. Competing gambling interests spent over $8 million for and over $14 million against the New Jersey proposal. Voters in Rhode Island were more amenable, approving a gaming facility in the town of Tiverton. The Arkansas ballot contained an initiative to allow the operation of three new casinos, but the measure was disallowed by the state supreme court and the votes were not counted.

Schools
Education is a central activity of state and local governments, and it is common for education-related issues to be resolved through propositions. In 2016, there were 15 propositions concerning education. One of the most high-profile issues was Massachusetts’ Question 2, rejected by the voters, that would have allowed the creation of 12 new charter schools. The initiative’s failure was in part due to concerns that the new charter schools would siphon resources from existing public schools. Question 2 was supported by the state’s Republican governor and education reform groups, and opposed by many Democratic officials and teachers’ unions. The yes side outspent the no side $24 million to $15 million. Another high-profile measure was California’s Prop 58, approved by voters, that removed the state’s 20-year-old law restricting bilingual education. Louisiana rejected a constitutional amendment that would have allowed education management boards to set college tuition independently of the legislature. Oregon voters approved proposals to create a state program to prevent dropouts and another to create an outdoor education program. Five states approved funding for school construction, led by California’s authorization of a $9 billion bond issue for K-12 and community college facilities, and North Carolina’s authorization of a $2 billion bond issue for school construction,
Taxes
Tax issues are the most common subject of ballot propositions historically and 2016 fit the pattern. There were 24 tax-related measures for the year. Most tax propositions concerned relatively minor changes, such as providing limited property tax exemptions to spouses of first responders who died in the line of duty. Tobacco companies spent substantial sums opposing proposed cigarette tax increases, managing to defeat the increase in Missouri and North Dakota, and failed to win in California and Colorado. Voters approved California’s Proposition 55 that extended a “temporary” income tax increase on high incomes that voters approved in 2012 to address a budget crisis.

Bond Issues
Many states require voter approval before state bonds can be issued. In 2016, voters approved 13 of 14 bond proposals, authorizing a total of $13.5 billion in new debt, a modest total by historical standards. The most expensive proposal was California’s Proposition 51 that authorized $9 billion for K-12 and community college buildings. Overall, states do not appear to be borrowing aggressively, despite historically low interest rates. By comparison, voters approved almost $31 billion in bonds in 2006, one year before the onset of the financial crisis.

Crime Victims
Voters continued to take a hard line against crime. Montana, North Dakota and South Dakota approved a “bill of rights” for crime victims. These rights typically include restitution and being notified of sentencing and parole decisions, and have been adopted by several states since in the 1990s. New Mexico adopted an amendment allowing judges to deny bail in certain criminal cases. Georgia adopted an amendment allowing tougher penalties for prostitution, and Washington increased penalties for identity theft and consumer fraud targeting senior citizens.

The “Long” California Ballot
California had the longest ballot in November, with 17 propositions. Some media outlets ran stories sounding the alarm over the length of this ballot. From a historical perspective, the number of propositions is unremarkable. Since the initiative and referendum were adopted in 1911, even-year California ballots have averaged 17 propositions, so 2016’s total was consistent with the historical norm. Existing research does not show that ballots of this length are prohibitively challenging for voters. The longest ballot in California contained 48 propositions in 1914.

Notes
1 For detailed information on initiative adoption and provisions and a discussion of pros and cons about the process, see John G. Matsusaka, For the Many or the Few: The Initiative, Public Policy, and American Democracy (University of Chicago Press, 2004) and M. Dane Waters, Initiative and Referendum Almanac (Carolina Academic Press, 2003).