

Trends in State Initiatives and Referenda

By M. Dane Waters

When comparing the use of initiatives and referenda, one can argue that the initiative process has the greater impact on the day-to-day operations of state governments. Little debate surrounds the use of the referendum process because most of the issues that are placed on the ballot by state legislatures are there because the law requires a public vote. For this reason and because of the fact that great controversy surrounds the initiative process itself, this article will focus on the use of the statewide initiative process.

History of the Statewide Initiative Process¹

There is a long and rich history of citizens utilizing the initiative process in the United States. Since the first statewide initiative was placed on Oregon's ballot in 1904, citizens in the 24 states with the initiative process have placed approximately 1,987 statewide measures on the ballot. However, they have only adopted 821 measures, or 41 percent. Even though 24 states have the statewide initiative process, almost 60 percent of all initiative activity has taken place in just five states: Arizona, California, Colorado, North Dakota and Oregon.

Additionally, it is important to point out that very few initiatives actually make it to the ballot. In California, according to political scientist Dave McCuan, only 26 percent of all initiatives filed have made it to the ballot, and only eight percent of those filed actually were adopted by the voters. During the 2000 election cycle, over 350 initiatives were filed in the 24 initiative states, and 76, roughly 22 percent, made the ballot.

The initiative process has been through periods of tremendous use, as well as periods in which it was rarely utilized. From 1904 to 1970, the use of the initiative steadily declined from its peak of 291 between 1911 and 1920 to its low of 78 between 1961 and 1970. Many factors contributed to this decline, but the distraction caused by two World Wars, the Great Depression and the Korean War is largely responsible. However, in 1978, with the passage of California's Proposition 13, an initiative that cut state property taxes by nearly 60 percent, people began to realize the power of the initiative process once again and its use began to climb. Since 1978, the two most prolific decades of initiative use occurred in 1981 to 1990 (289 initiatives) and 1991 to 2000 (396 initiatives).

In 1996, the year considered by scholars to be the high water mark for the initiative process, citizens placed 102 initiatives on statewide ballots and adopted 45, or 44 percent. In contrast, that year, state legislatures in those same 24 states adopted over 14,000 laws and resolutions.²

Since 1996, the number of initiatives actually making the ballot seems to be decreasing. In 1998, only 66 statewide initiatives actually made the ballot - the lowest number in a decade. In 2000, there were four initiatives on primary ballots and 72 on general election ballots, for a total of 76. Though this is more than were on the ballot in 1998, this number is still off pace with previous election cycles in the preceding decade.

In 2001, there were four initiatives on statewide ballots. The reason for the low number is that the constitutions of only five states allow initiatives in the odd years. These states are Colorado, Maine, Mississippi, Ohio and Washington.

The 2000 and 2001 Election Trends

Since only four initiatives appeared on the 2001 ballot, very little can be gathered as to the impact those measures will have on state governments and what trends they will set. Therefore, we will focus on the 2000 general election and how the initiatives voted on will impact the moral and fiscal fabric of our society in years to come.

On November 7, 2000, the voters in 17 states spoke out on 72 statewide initiatives dealing with some of the most emotional and controversial issues, including abortion, drug policy, gay rights, taxes, animal welfare, education and the environment. The voters adopted 35 of them, or 48 percent. The overriding theme of the 2000 election when discussing initiative results is that the voters were cautious. There were definitely big winners and losers, and the voters did pass a few measures that will have long-lasting impacts on state governments. But overall, the people chose to take a very cautious and moderate approach to reform.

Let's take a closer look at the election results, how some of the top issues fared, and what that means for state governments and future ballots.³

Animal Protection

The animal-protection movement has had an impressive win record with initiatives, primarily due to the support of the Humane Society of the United States

INITIATIVES AND REFERENDA

and their growing knowledge and expertise in using the initiative process to accomplish reform. The 2000 election cycle saw a continuation of that winning streak, though the win record wasn't as perfect as it was in previous elections.

Initiatives dealing with animal protection included a vote in Massachusetts on banning dog racing, one in Montana on banning game farms, and votes in Oregon and Washington on banning traps and poisons. Animal-welfare advocates won in Montana and Washington, but they lost in Massachusetts and Oregon.

The animal-protection movement has prided itself on using the initiative process at an increasing pace from election year to election year. However, in 2002, animal-protection activists will most likely opt to lessen the number of initiatives they place on the ballot and spend more resources on candidate campaigns. But they will likely show a strong return in 2004, with numerous ballot measures across the country.

Drug Policy Reform

The medical-marijuana movement supported by George Soros, John Sperling and Peter Lewis that dominated the 1998 ballot was back in 2000. With the exception of the medical-marijuana initiatives that were voted on in Colorado and Nevada on November 7th, drug-policy reformers focused their efforts on reforming asset-forfeiture laws and on how nonviolent drug offenders are sentenced. Initiatives dealing with these issues were voted on in California, Massachusetts, Oregon and Utah. Reformers passed measures on drug treatment in California, on medical marijuana in Colorado and Nevada, and on asset forfeiture in Oregon and Utah. Their only defeat came in a Massachusetts measure on drug treatment.

There is no doubt that this movement will be around

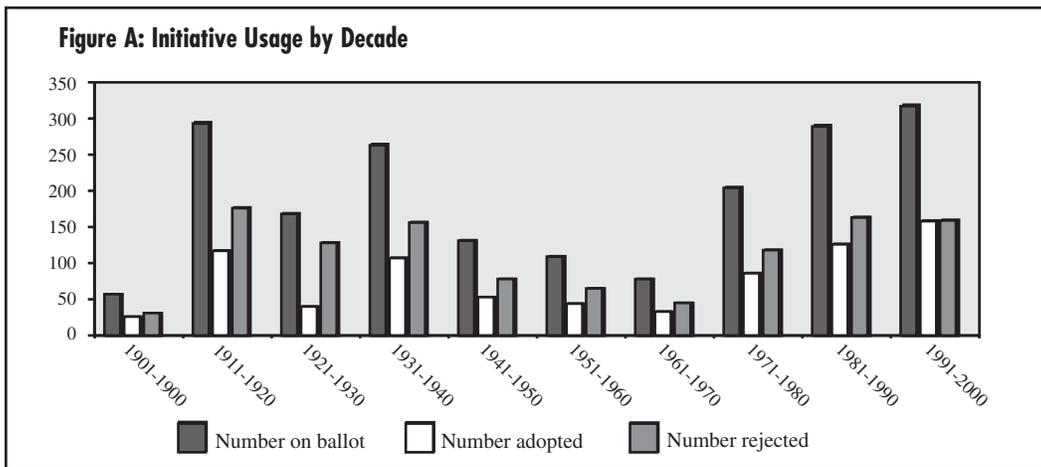
in 2002 and will most likely be focused on some of the larger states, like Florida, Michigan and Ohio. The ultimate goal of this movement is to create a groundswell of popular support for drug reform that can be used to push Congress to reform the country's drug laws.

Education Reform

There has never been a successful school-choice initiative on a statewide ballot. This is due primarily to the tremendous amount of time, energy and money the teachers unions have spent fighting these measures. 2000 was no different. The anticipated "Goliath-versus-Goliath" fight pitted the unions, with their millions of dollars, against the backers of school-choice initiatives, including billionaire Tim Draper in California, Microsoft billionaire Paul Allen in Washington and Amway founders Betsy and Dick DeVos in Michigan. The campaigns of these three initiatives accounted for almost 50 percent of all the money spent for or against initiatives in the 2000 election cycle, which was around \$100 million dollars.

The defeat of school-choice measures in those three states - coupled with the outcomes of a California measure that lowered the threshold for passing local school bonds, measures in Colorado and Oregon that increased funding for public education, and a Washington initiative that increased teachers' pay and reduced class sizes - equaled a good year for the advocates of additional funding for public education.

Many people have speculated that the school-choice movement was dead at the ballot box. However, there have been some indications that a new group is considering forming for the sole purpose of pushing school-choice initiatives again. These efforts will be met with serious opposition from the National Educational Association. The NEA changed its bylaws



in 2000 to create a special dues increase of \$5 for a five-year period, with sixty percent of the fund to be used to fight "anti-public-education" initiatives. The other 40 percent will be used to advance public-education issues, including possible "pro-public-education" initiatives. There is little doubt that there will be several education-related initiatives floating around in 2002.

Guns

The National Rifle Association was largely silent in the 2000 election cycle when it came to regulations on guns. Gun-control advocates had big victories in Colorado and Oregon, with measures that will require that persons purchasing guns at gun shows be subject to background checks. These victories have emboldened the advocates of gun control and will no doubt lead to other gun-control measures in the very near future. However, there is little doubt that the NRA and other gun-owner groups will fight these initiatives in 2002.

Health Care Reform

Many people have placed the defeat of universal health care in Massachusetts as a big defeat for the health care reform movement, but in reality it was a victory for them. The presence of the initiative on the ballot served as the 800-pound gorilla that prompted the state legislature to pass a watered-down version of the measure. The fact that the legislature was prompted to act in Massachusetts because of the initiative has spurred activists in other states to consider pushing for this reform, in hopes that it would prompt legislators in other states to act.

Physician-Assisted Suicide

This issue has had its ups and downs at the ballot box, with big victories in Oregon and a devastating loss in Michigan in 1998. However, in 2000, voters in Maine chose not to adopt their proposed death-with-dignity law. Nevertheless, I wouldn't count the movement down for the count.

Same-Sex Marriage and Gay Rights

The ban on same-sex marriages was the new trend to watch at the ballot box. The issue was first tested in Hawaii and in Alaska in 1998 and in California in March 2000. After these victories the supporters of this issue shifted their attention inland, placing the issue on the ballots in Nebraska and Nevada. The measures passed handily in both states, giving rise to the possibility that this reform is here to stay. With these two victories and the failure of a legislative referendum in Maine prohibiting discrimination based on sexual orientation, it was not a good year for gay-rights advocates.

Taxes

This has become the issue with the greatest impact on state governments. Initiatives that impact state revenues and state spending have always appeared on ballots, but their dominance has grown since California's Proposition 13 in 1978. In 2000, tax-cutters suffered some big defeats. In Alaska, voters defeated a property-tax-relief measure. In Colorado, they declined to lower taxes on certain items. And in Oregon, they rejected a measure that would have allowed for the full deduction of federal income taxes from state taxes.

However, these losses were offset by big victories in Massachusetts, where an initiative to reduce income taxes passed; South Dakota, where voters abolished the inheritance tax; and Washington, where voters passed a measure declaring null and void certain tax or fee increases adopted by state and local governments without voter approval.

Regardless of these outcomes, the tax revolt is here to stay and will almost certainly be a permanent fixture on state ballots - but the question is what measures will be adopted and where. A lot depends on the future of the economy. Tax activists might wait to see what happens with the economy, as well as what happens in the 2002 midterm elections, before acting in any substantial way.

Additionally, this last election saw numerous initiatives, as well as measures referred by legislatures, that allocated tobacco-settlement money in various ways. With most of these payoffs taking place over 20 years, many people who want to either cut taxes or increase spending in certain areas will be looking at the tobacco money as a clear target to accomplish their goals of either reducing or increasing the size of government.

Ending Bilingual Education

Arizonans voted overwhelmingly to eliminate bilingual education in 2000. This strong showing, coupled with all the positive reports associated with the passage of a similar measure in California, has given rise to the likely prospect that this reform will be voted on in future elections. The chief architect of this movement, Ron Unz, is seriously eyeing states like Massachusetts and Colorado for 2002.

Environmental Reform

Environmental initiatives took a beating in 2000, with the defeats of measures imposing growth limitations in Colorado and Arizona, the defeat of a measure limiting clear-cutting in Maine, and the defeat of one regulating billboards in Missouri. Environmentalists' only major initiative victory was in Florida, with the passage of an initiative creating a statewide high-speed

INITIATIVES AND REFERENDA

rail system. However, legislative referenda dealing with increased funding for environmental and conservation efforts seem to have done well, as they do in most election cycles.

Even though these initiative defeats may give a little pause to environmental reformers, there is no doubt that these types of measures will again appear on the ballot. However, it is likely that this movement may move toward using the local initiative process in greater numbers than statewide initiatives. This is due primarily to the fact that most zoning laws are created by local governments and should be changed by local initiatives. Also, the use of local initiatives would allow the movement to focus its efforts on specific voting blocks that might be receptive to the efforts, versus trying to convince an entire state to adopt a reform that only affects certain large cities or counties.

Campaign Finance Reform

In a surprise development, both campaign finance reform measures that appeared on the 2000 general election ballot were defeated overwhelmingly - one in Missouri and one in Oregon. It is hard to say exactly what this means for the movement, but after big victories in 1998, it will almost certainly slow some of the movement's momentum. However, a lot depends on how successful U.S. Senator John McCain is in pushing this issue through Congress. If he is successful, it will likely reinvigorate efforts at the state level, which would prompt more initiatives in this area.

Term Limits

Nebraska became the 19th state to impose term limits on their state lawmakers, thereby reducing to two the number of states where term limits could theoretically be imposed using the initiative process. These states are North Dakota and Mississippi. However, due to judicial action in January 2002 in Oregon, where term limits were struck down on technical grounds, and a possible similar judicial decision expected from the Montana Supreme Court in mid-2002, there is a strong possibility that 2002 will once again see term limits being placed before the voters.

The 2002 Election Cycle

Based on the number of initiatives being filed as of the writing of this article, it is likely that 50 to 60 initiatives will appear on the 2002 ballot. This drop in the number of initiatives can be attributed to increased judicial action in stopping initiatives on technical grounds, as well the growing cost of utilizing the initiative process. The number of legislative referenda will most likely be consistent with previous election

cycles, since the number of issues placed on the ballot by state legislatures has remained fairly constant over the last decade.

However, most of the initiatives that do make their way to state ballots will be those that have the backing of national groups that are providing the primary funding for these issues. As with previous elections over the last decade, fewer and fewer initiatives that are the product of the vision of one individual within the state are making it to the ballot. Instead, more and more often the initiatives appearing on state ballots are the vision of national groups wishing to place their reforms on state ballots all over the country as a way to increase the national debate on these issues, and in hopes of pushing Congress to adopt reforms. Term limits, drug-policy reform, campaign finance reform, animal protection and tax reform are all examples of this trend.

Conclusion

There is no doubt that in the upcoming election cycles, there will be numerous initiatives that will have a tremendous impact on our daily lives. These initiatives will be derived from the brains of activists of all political persuasions, including those who wish to diminish the size of government and those who wish to increase it. Regardless of which political party or philosophy is behind them, one thing that we will see is an increase in the amount of money being spent on initiatives, as well as a decrease in the number of successful initiatives launched by individuals within a state with no support from individuals or groups outside the state. The impact on state governments will be substantial. Whether the impact is positive or negative will be entirely up to the individual observer. However, if history is any indicator, there is no doubt that the fiscal and social implications will be far-reaching.

Notes

¹ All the statistical data and information contained in this article, unless otherwise noted, was independently gathered by the Initiative & Referendum Institute and can be verified by visiting the Institute's website at <http://www.iandrinstitute.org>.

² Numbers are approximate due to the fact that a comprehensive list of laws passed by state legislatures is unavailable. The numbers utilized in this article were arrived at utilizing information provided by the National Conference of State Legislatures.

³ See the table in this chapter on "Initiatives and Referenda, 2000 and 2001" for more details.

About the Author

M. Dane Waters is the founder, president and co-chairman of the Initiative & Referendum Institute, a nonprofit educational and research organization dedicated to educating people on the initiative and referendum processes. He has lectured widely in the United States and abroad and has written and edited numerous articles and books.