

# OREGON'S INITIATIVE SYSTEM: CURRENT ISSUES

In November 2000, Oregonians voted on 26 ballot measures, 18 of which were initiatives drafted by citizens. The initiatives addressed major issues of governance including taxes, fees, spending levels, criminal justice, campaign finance, land use planning, and gun control.

During the 2000 general election cycle:

- Petitioners filed 166 proposed initiatives with the Secretary of State.
- Oregon Taxpayers United, headed by Bill Sizemore, filed more than one-fourth of the proposed initiatives (45) and qualified six for the ballot.
- The Secretary of State rejected 12 initiatives for violating the one-subject rule.
- More than a quarter of the Oregon Supreme Court's caseload was devoted to initiatives, primarily ballot title challenges.
- Initiative sponsors spent between \$65,000 and \$400,000 per initiative to gather the required number of signatures for 18 initiatives.
- About 2.4 million signatures were turned in to the Secretary of State for verification.
- Fifteen political action committees supporting or opposing initiatives spent more than \$400,000; one, opposing two initiatives, spent \$4.8 million.
- One individual gave more than \$1 million to initiative campaigns.
- Voters approved five of the initiatives.
- Opponents have challenged the constitutionality of two of the approved initiatives.

The sheer number of initiatives and associated activities has raised questions about the initiative process. Is the quantity of initiatives a sign of strong civic engagement or of voter overload? Is this democratic government at its best or a threat to representative government? Is the initiative system sound or in need of repairs? This report considers these matters by looking at the major steps in the initiative process and associated issues.

## STEP 1: WRITING THE INITIATIVE

Any citizen or group can draft initiatives. In the 2000 election cycle, ordinary citizens, frequent peti-

tion filers, unions, public policy organizations, individual legislators, and the Governor wrote initiatives.

**Citizen initiative vs. legislative process.** The text of the proposed law or constitutional amendment is solely up to the sponsors. Although the Secretary of State recommends getting legal advice, initiative writers are not required to do so. There also are no required reviews except for a limited one by the Secretary of State.

This contrasts with the legislative process for writing laws and constitutional amendments. Before the House and Senate vote, committees hold hearings, lobbyists and citizens comment, Legislative Counsel reviews, and legislators negotiate. The checks and balances of this system can help clarify ambiguous language, remove unintended consequences, and address constitutional issues.

Some people think Legislative Counsel or another body should review initiatives prior to signature collection to help identify and remedy any concerns with the wording. Others strongly oppose any legislative staff or other governmental involvement in the citizen law writing process.

When voters approve a measure that is difficult to implement or unconstitutional, the courts and/or Legislature must attempt to sort out the issues. Despite these problems, initiative supporters believe the initiative is a vital tool for passing laws that the Legislature is unwilling to consider.

**Statutory vs. constitutional initiatives.** Traditionally most initiatives were written as statutory law. But in every election since 1994, over half the initiatives have been constitutional amendments and in 2000, two-thirds were constitutional. In order to qualify for the ballot, constitutional amendment initiatives require the number of signatures equal to 8% of the votes cast for all gubernatorial candidates in the last general election—more signatures than statutory amendments (89,048 vs. 66,786 in 2000). Some initiative writers like constitutional amendments because they can only be changed by another vote of the people. Others believe that the Oregon

Constitution, as the basic framework of government, has become cluttered with details that should be in the statutes.

In May 2000 the Legislature referred to the voters a proposal to increase the number of signatures needed to qualify constitutional amendments from 8% to 12% of the votes cast for all candidates for governor in the last general election. Voters soundly rejected that measure.

## STEP 2: CERTIFYING FOR SIGNATURE COLLECTION

In the 2000 election cycle, sponsors filed 166 initiatives with the Secretary of State to begin the process of obtaining an official ballot title. The Attorney General has five working days to write the 15-word-or-less title plus a summary collectively known as the ballot title. The ballot title appears on the ballot and in the *Voters' Pamphlet*. Any registered voter may comment on the draft ballot title and, if dissatisfied with the final version, may appeal it to the Oregon Supreme Court. Once all challenges have been exhausted, the chief petitioners may submit cover and signature sheets to the Secretary of State to obtain approval for circulation.

**Secretary of State review.** In the last election cycle, the Secretary of State began reviewing constitutional amendments for compliance with constitutional requirements, including the one-subject rule, and he rejected 12 initiatives. The basis for this review was a 1998 Oregon Supreme Court (*Armatta v. Kitzhaber*) ruling that a 1996 victims' rights initiative was invalid because it amended sections of the constitution that are not closely related.

This review is controversial. Both petitioners who thought their measure was valid and opponents who thought a measure should have been rejected sued the Secretary of State. Two suits (*Sager v. Keisling*, *Dale v. Keisling*) contended that measures proposing to replace all taxes with a single gross receipts tax contained more than one amendment to the constitution and the Secretary of State should have rejected them. The Oregon Court of Appeals agreed with the plaintiffs saying that amendments are closely related only when a vote in favor of one implies a vote in favor of another. The Oregon Supreme Court dismissed appeals of these

rulings, without vacating the decisions, because it was too late for the measures to get on the ballot.

**Multiple filings.** Few of the initiatives filed with the Secretary of State move on to signature collection. Some initiatives are filed to stake out political positions, such as threatening to counter another initiative. Many petitioners submit multiple versions of a measure hoping to get a ballot title that will resonate with the voters. For example in 2000, there were five similar initiatives to legalize marijuana, six measures to clarify the minimum wage law, and four proposals to make federal income taxes fully deductible.

**Ballot title challenges.** Because only the official ballot title appears on the ballot, both initiative sponsors and opponents closely examine these succinct bits of prose. Supporters and opponents filed 92 challenges involving 67 measures before the Oregon Supreme Court in the last election cycle. In other words, two out of five ballot titles were challenged, some more than once. For initiative sponsors, litigation delays the start-up of signature collection. For the Supreme Court, ballot title challenges mean other matters must be set aside to expeditiously deal with initiatives. For voters, the challenge process helps assure that the ballot title accurately reflects the measure's content.

The 2001 Legislature is considering several proposals to change the ballot title process. Ideas include having Legislative Counsel write ballot titles, requiring a significant percent of signatures to be collected before challenges can be made, and allowing three-judge panels to hear these cases.

## STEP 3: COLLECTING SIGNATURES

Once an initiative is approved for circulation, the sponsors may begin collecting signatures. Petitioners must turn in the required number of signatures four months before the election to qualify for the ballot. The state Elections Division then verifies that sufficient signatures were received. In 2000 the state Elections Division began using a revised statistical formula, authorized by the Legislature, to estimate the number of invalid signatures. While there was some initial contention about the formula, none of the measures was kept off the ballot because of it.

Reacting to the recent volume of initiatives, the 1999 Legislature referred a measure to the voters increasing the period for verifying signatures from 15 to 30 days. Voters approved this measure in the May 2000 election.

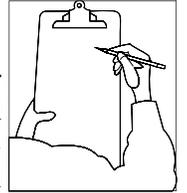
**Paid petitioners.** The number of initiative campaigns using paid circulators has increased markedly since the U.S. Supreme Court ruled that Colorado's ban on paid petitioners was an unconstitutional abridgement of freedom of speech (*Meyer v. Grant*). In 1988, the year of the ruling, two of the five initiatives on the Oregon ballot used paid petitioners. By 2000, 15 of the 18 qualifying campaigns used paid petitioners.

**Voter and residency requirements.** Several states have tried to regulate who can circulate petitions. In 1999 the U.S. Supreme Court ruled in a Colorado case (*Buckley v. American Constitutional Law Foundation*) that states could not require petitioners to be registered voters. Many states, including Oregon, have adopted residency requirements. A federal district judge let Mississippi's residency requirement stand, but the Oregon Court of Appeals rejected the Oregon law (a constitutional initiative), not on its merits, but because it contained more than one constitutional amendment.

**Employment status.** With the increased use of paid petitioners, the Oregon Employment Department has investigated the way workers are paid. Many signature collection companies pay workers on a per signature basis and have considered the workers independent contractors. The Employment Department, however, says workers do not meet the tests for independent contractors and must be considered employees. Under this ruling, firms must pay payroll taxes, including unemployment insurance premiums. The Oregon Court of Appeals upheld this ruling in 1999, but some firms continue to use independent contractors.

**Where petitioners can operate.** Some retailers have sought to keep petitioners away from their doors. In September 2000 the Oregon Supreme Court ruled that private property owners can ban petitioners (*Stranahan v. Fred Meyer, Inc.*). This decision reversed a 1993 ruling that Lloyd Center must allow petitioners in its common area because a regional mall is a public gathering place. The latest decision ended a series of skirmishes over petition-

ers at Fred Meyer, Home Base, and other stores. In their new ruling, the court looked at the intent of the voters when they initially adopted the initiative process and found nothing that required private property owners to allow petitioners on their premises.



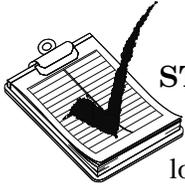
Some governmental agencies have also tried to restrict petitioners and have been sued for doing so. A Lane County judge threw out a transit district rule that restricted signature gathering on the Eugene transit mall. The Initiative and Referendum Institute, American Civil Liberties Union, and others are currently suing the U.S. Postal Service over a rule barring petitioners from post offices, including the adjoining public sidewalk.

**Cost of qualifying initiatives.** Campaigns spent between \$65,000 and \$400,000 to qualify measures for the ballot in 2000. Bill Sizemore, head of Oregon Taxpayers United, qualified six initiatives, using an efficient, low-cost system for collecting signatures. His six campaigns cost on average about \$90,000 each. For \$65,000, about the same as it cost the Oregon Citizen Alliance's all volunteer effort to qualify a measure restricting the teaching of homosexuality in schools, Sizemore qualified an initiative to make federal income taxes fully deductible on Oregon returns.

Sizemore runs a vertically integrated organization that prepares initiatives, raises funds from large and small donors, and collects signatures on his own and others' initiatives. He keeps the cost per signature low by starting signature collection early and encouraging petitioners to carry multiple petitions.

The most expensive signature collection effort costing nearly \$400,000 was for a complex measure to reform campaign financing by publicly funding campaigns. This campaign started as a volunteer effort but added paid petitioners when it appeared the volunteers would not collect enough signatures. A gun control measure was another example of a campaign that hoped to use volunteers but ran out of time and began paying petitioners.

**All volunteer efforts.** Volunteer efforts require extensive organization and usually rely on paid staff to mobilize volunteers. The payoff for volunteer efforts is that often voters are more willing to sign a petition circulated by a volunteer who passionately believes in a measure.



## STEP 4: CAMPAIGNING

Once an initiative is approved for the ballot, campaigns to persuade voters begin. As the number of initiatives has risen, the *Voters' Pamphlet*, published by the Oregon Elections Division, has increased in volume. The *Voters' Pamphlet* includes an explanatory statement written by a committee of supporters and opponents plus a financial impact statement written by the Secretary of State, Treasurer, Director of Administrative Services, and Director of the Department of Revenue. Individuals or groups may obtain space for arguments for or against measures for \$500 or with 1,000 verified signatures.

Voters can also find information about ballot measures in election guides published by the League of Women Voters Education Fund and other groups. Newspapers, TV, and radio present information and analysis as well as paid advertisements.

**Cost of campaigns.** An analysis by *The Oregonian* showed that the cost of initiative campaigns has been rising faster than spending on congressional, statewide, or legislative races. Measured in constant dollars, average spending on an initiative (not counting costs of signature collection) doubled from \$862,433 in the late 1970s to \$1,704,482 in the 1990s.

Of course, few campaigns are average. In 2000 a coalition led by the Governor spent \$2.8 million to oppose three tax- and spending-limitation measures. A committee fighting two measures to limit the ability of unions to collect funds for political purposes spent \$4.8 million. In contrast, hardly anything was spent by either side on some measures. Examples include the Governor's school finance accountability measure, which passed, and Sizemore's proposal to prohibit the Legislature from making the initiative process harder, which failed.

**Major donors.** *The Oregonian* also found that over the last 25 years (2000 election not included) opponents have outspent proponents of measures by nearly 3.5 to 1. Part of the reason is that corporations have felt threatened by measures like those to close the Trojan Nuclear Plant, limit logging, and expand the bottle bill. Corporations contributed over half of the large donations (\$25,000 or more)

to "no" campaigns, but only 18% of large donations to "yes" campaigns.

Wealthy individuals, however, were more likely to sponsor measures, like the medical marijuana initiative of 1998, that aim to change the status quo. Individuals made about 18% of the large donations to "yes" campaigns, but they only wrote 1% of the large checks for "no" campaigns. The remainder of the large donations came from unions (20% of the "yes" and 27% of the "no" donations) and nonprofits (45% of the "yes" and 21% of the "no" donations.)

**Sound bites vs. informed analysis.** Some observers wonder whether voters really understand the measures. They fear voters are swayed by slogans and sound bites, especially when the ballot averages 13 initiatives per election as it has done in the last decade. The Portland City Club concluded that the initiative had shifted the method for analyzing and resolving public policy issues from an interactive group deliberative process, the Legislature, to a process that consists primarily of evaluating information transmitted through advertising and the mass media.

Other observers think Oregonians do a good job of sorting out the initiatives. They point out that Oregonians are not easily persuaded. Over nearly a century of initiative use, voters have approved fewer than 40%. Year 2000 was no exception: voters approved 5 out of 18 (28%).

## STEP 5: CHALLENGING AND REVISING

The initiative process is not always over when the votes are counted. Opponents took to court nearly half the initiatives that voters approved in the last quarter century. Already two of the five initiatives approved in 2000 are wending their way through the courts. Challengers contend the latest constitutional amendments contain more than one amendment to the constitution and/or that voters were not informed of the full effects of the measure.

The Legislature has the power to amend any statutory initiative but rarely does so without the consent of the sponsors. However, the Legislature must refer any changes to constitutional amendments back to the voters.

**Court challenges.** The courts have invalidated in whole or in part nearly half of the Oregon initiatives challenged in the last 25 years. These measures either violated individual rights or ran afoul of procedural rules. Litigation costs to the state have risen substantially in the 1990s.

Kenneth P. Miller, a University of California at Berkeley political scientist, attributes the high rate of court challenges in Oregon and other states to the lack of checks and balances in the initiative writing process. Rather than being the last institutional reviewer of the law, the courts are often the only one. Miller says that courts can either be “accommodaters” deferring to the will of the people or “watchdogs” vigorously reviewing the process.

Initiative activists feel that the Oregon courts have recently put too many constraints on the process. They point to rulings such as where petitioners can work, the relationship between paid petitioners and the people who hire them, and interpretations of the one-subject rule.

**Legislative revisions.** The Legislature sometimes steps in to revise measures that the courts have invalidated or that are difficult to implement. After the courts invalidated a 1996 victims’ rights initiative for containing more than one amendment to the constitution, the Legislature rewrote it as seven amendments. Voters approved four of the seven amendments in November 1999.

The Legislature has twice asked voters to approve amendments to a prison work program put in the constitution by initiative in 1994. One amendment made the program consistent with federal law and another changed administration of the program.

The 1997 Legislature spent considerable time reworking Measure 47, a constitutional initiative to change the way property taxes are calculated. The Legislature worked with Bill Sizemore, the initiative sponsor, to retain the intent of the measure while clarifying the way the process would work. The revised measure was approved as Measure 50 in a May 1997 special election.



## THE EFFECTS OF THE INITIATIVE PROCESS

The era of paid petitioners has coincided with a period of rising discontent with elected officials. Both factors have contributed to greater use of the initiative in Oregon and elsewhere. Individuals or groups who have been able to distill citizen discontent into term limit, tax reform, and getting-tough-on-crime initiatives have been successful in putting measures on the ballot and sometimes passing them.

Some recent initiatives have cut revenue, shifted responsibilities among governments, or had high price tags. These initiatives have limited the flexibility of the Legislature and governor in budgeting. Other initiatives that proposed changes in taxation or spending have put the governor, Legislature, and other elected officials on the defensive—working to defeat measures rather than forwarding their own agendas.

But not all initiatives reflect voter discontent. Some recent Oregon initiatives have set national precedence—physician assisted suicide, vote-by-mail, and open adoption records. Others are similar to initiatives in other states. Examples include efforts to regulate hunting and trapping, legalize marijuana, and reform campaign financing.

People hold a variety of views on whether recent initiatives have been good or bad for Oregon. Everyone agrees they have created a lot of public dialogue on issues.

The high number of initiatives has generated talk of reforming the process in Oregon and other states. The Legislature has referred measures to the voters that require a certain percentage of the signatures from each congressional district and that increase the number of signatures needed to qualify constitutional amendments. Voters rejected these proposals as well as a 2000 initiative that would have prohibited the Legislature from asking voters to consider proposals like these to make the initiative process more difficult.

Most change has come via the courts. On the one hand, the U.S. Supreme Court has ruled that restrictions on petitioners are violations of freedom of speech and opened the door to paid petitioner businesses. On the other hand, the Oregon Supreme

Court has made it more difficult to write constitutional amendments and to find places to collect signatures.

The initiative process is not a perfect system, and laws regulating it may need change. But for 98 years, the initiative system has given a direct voice to the people of Oregon, a voice that many cherish.

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