

A Brief The History of the Initiative and Referendum Process in the United States ¹

Setting the Foundation for Initiative and Referendum

Initiative and referendum (I&R) has existed in some form in this country since the 1600s. Citizens of New England placed ordinances and other issues on the agenda for discussion and then a vote utilizing town meetings. These town hall meetings established the precedent which lead to the creation of the legislative referendum process – a process in which the citizens were entrusted with ratifying laws and amendments proposed by their elected officials.

Thomas Jefferson was the first of our founding fathers to propose legislative referendum when he advocated it for the 1775 Virginia state constitution. However, he was attending the Continental Congress and was unable to be present to make certain that this requirement was added to his own state's constitution. ² His strong support for establishing the process was based on his belief that the people are sovereign and should be the ones to agree to and approve any change to the one document, the constitution, that dictated the laws in which they would have to live by. However, James Madison said it best in Federalist 49 when he stated: "[a]s the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived, it seems strictly consonant to the republican theory to recur to the same original authority... whenever it may be necessary to enlarge, diminish, or new-model the powers of government."

In 1776, Georgia delegates gathered in Savannah to draft a new constitution. One of the changes that was made was a requirement that the new constitution could only be amended when petitions signed by a majority of voters in each county called for a convention. Though the process was never used and ultimately deleted from the constitution it was the first state to establish a process that recognized the true sovereignty of the people in controlling their constitution. ³

The first state to hold a statewide legislative referendum for its citizens to ratify its constitution was Massachusetts in 1778. New Hampshire followed in 1792.⁴ The next state to require voter approval of a state constitution and any constitutional change was Connecticut in 1818, then Maine in 1819, New York, 1820 and Rhode Island in 1824.⁵ The U.S. Congress subsequently made legislative referendum for constitutional

¹ All the statistical data and information contained in this Chapter, unless otherwise noted, was gathered from *Citizen Lawmakers* (Temple University Press) or independently gathered by the Initiative & Referendum Institute and can be verified by visiting the Institute's website at www.iandrinstitute.org.

² David Schmidt's manuscript of *Citizen Lawmakers*, 1985.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

changes mandatory for all new states entering the union after 1857.⁶ Today, every state has the legislative referendum process.

However, even with advent of legislative referendum, the people began to realize in the late 1800s that they had no direct ability to reign in an out of touch government or government paralyzed by inaction and that something needed to be done to increase their check on representative government.

The Populist and Progressive Era

The 1890s and early 1900s saw the establishment of the Populist and Progressive movements. Both were based on the people's dissatisfaction with government and its inability to deal effectively in addressing the problems of the day. The supporters of both these movements had become especially outraged that moneyed special interest groups controlled government, and that the people had no ability to break this control. They soon began to propose a comprehensive platform of political reforms that included women's suffrage, secret ballots, direct election of U.S. Senators, recall, primary elections, and the initiative process.

The cornerstone of their reform package was the establishment of the initiative process for they knew that without it many of the reforms they wanted – that were being blocked by state legislatures – would not be possible.

Their support for the process was based on a theory of trusting the individual and not as a method of destroying representative government – **but to enhance it**. They believed that our founding fathers at the federal and state levels had done a tremendous job in creating constitutions that established the criteria in which our daily lives should be governed. However, they knew that these constitutions were based on compromise and not documents that should be subject to permanent enshrinement. The founding fathers realized this as well and placed in every state constitution and the federal constitution a provision for its revision. The Populists/Progressives took advantage of these methods of amending state constitutions and began the arduous journey of pushing state legislators to add an amendment allowing for the initiative and popular referendum process.

Their efforts soon began to pay off. In 1897, Nebraska became the first state to allow cities to place initiative and referendum in their charters. One year later, the citizens of South Dakota, lead by Father Robert W. Haire, copied initiative and referendum provisions from the 1848 Swiss Constitution and successfully amended them into the South Dakota Constitution. On November 5, 1898, South Dakota became the first state to adopt the statewide initiative and popular referendum process. Utah followed in 1900 and Oregon voters approved their initiative and referendum amendment by an 11-to-1 margin in 1902 . Other states soon

⁶ Ibid.

followed. In 1906 Montana voters approved an initiative and popular referendum amendment proposed by the state legislature. Oklahoma became the first state to provide for the initiative and popular referendum in its original constitution in 1907. Maine and Michigan passed initiative and popular referendum amendments in 1908.

In 1911 California placed initiative and popular referendum in their constitution. Other states were to follow – but even with popular support in many states, the elected class refused the will of the people and did not enact this popular reform. In Texas, for example, the people actually had the opportunity to vote for initiative and popular referendum in 1914, but voted it down because the amendment proposed by the legislature would have required that signatures be gathered from 20% of the registered voters in the state – a number twice as large as what was required in any other state. The proponents for initiative and popular referendum felt it was more important to get a useable process than one that would have maintained the status quo and provided no benefit to the citizenry.

According to David Schmidt, author of Citizen Lawmakers (the most comprehensive study on I&R available to date); “In states where I&R activists were unable to gain passage of statewide I&R amendments, they achieved numerous successes at the local level. In 1898, Alfred D. Cridge led a successful drive to incorporate I&R provisions into the city charter of San Francisco; John Randolph Haynes concluded a similar drive in Los Angeles in 1903; Grand Rapids, Michigan followed in 1905; Des Moines, Iowa in 1906; Cedar Rapids, Iowa and Wilmington, Delaware in 1907.”⁷

Eventually, between 1898 and 1918, 24 states and numerous cities had adopted initiative or popular referendum – mostly in the West.

The expansion of initiative and popular referendum in the West fit more with the Westerners belief of populism – that the people should rule the elected and not allow the elected to rule the people. Unfortunately in the East and South this was not the case. Those that were in power were opposed to the expansion of initiative and popular referendum because they were concerned that blacks and immigrants would use the process to enact reforms that were not consistent with the beliefs of the ruling class. This was exemplified by a 1911 article in the national I&R movement's newsletter *Equity* in which it was reported that, “many conscientious Southerners oppose direct legislation (I&R) because they fear that this process of government would increase the power of the negro, and therefore increase the danger of negro domination.”⁸ As to the East Coast states, this racism was exemplified by Massachusetts political leaders who “fear[ed] initiatives [that] could be passed over their objections by Irish-Catholic voting blocs.”⁹

⁷ Ibid.

⁸ *Equity*, January 1911, pg 19.

⁹ As quoted from Schmidt's Citizen Lawmakers manuscript and footnoted with “Legislative Research Council of Massachusetts, 1975”

By 1915, the push for establishing the initiative process began to wane due to “a developing conviction that German militarism might be a danger to the U.S.” which “was generating a crusade for pure, undiluted Americanism – and as usual, patriotism came to be identified with defense of the status quo rather than its alteration.”¹⁰ It took 40 years before another state would adopt the initiative process.

Popular Votes on Adopting the Initiative Process ¹¹

State	Year	Passed Failed	Margin	Yes	% Yes	No	% No
South Dakota	1898	Passed	3-2	23,816	59%	16,483	41%
Utah	1900	Passed	5-2	19,219	71%	7,786	29%
Oregon	1902	Passed	11-1	62,024	92%	5,688	8%
Illinois ¹²	1902	Passed	5-1	428,469	83%	87,654	17%
Missouri	1904	Failed	2-3	115,741	41%	169,281	59%
Nevada	1905	Passed	5-1	4,393	85%	792	15%
Montana	1906	Passed	5-1	36,374	85%	6,616	15%
Delaware ¹³	1906	Passed	6-1	17,405	89%	2,135	11%
Oklahoma	1907	Passed	5-2	180,333	71%	73,059	29%
Missouri	1908	Passed	1-1	177,615	55%	147,290	45%
Maine	1908	Passed	2-1	51,991	69%	23,712	31%
Michigan ¹⁴	1908	Passed	2-1	244,705	65%	130,783	35%
Illinois	1910	Passed	3-1	443,505	63%	127,751	37%
Colorado	1910	Passed	3-1	89,141	76%	28,698	24%
Arkansas	1910	Passed	2-1	91,363	70%	39,680	30%
California	1911	Passed	3-1	138,181	75%	44,850	25%
Arizona	1911	Passed	3-1	12,534	76%	3,920	24%
New Mexico ¹⁵	1911	Passed	5-2	31,724	70%	13,399	30%
Nebraska	1912	Passed	13-1	189,200	93%	15,315	7%
Idaho (I) ¹⁶	1912	Passed	8-3	38,918	72%	15,195	28%
Idaho (PR)	1912	Passed	3-1	43,658	76%	13,490	24%
Nevada ¹⁷	1912	Passed	10-1	9,956	91%	1,027	8%

¹⁰ Chrislock, Carl H., *The Progressive Era in Minnesota, 1899-1918*, St. Paul: Minnesota Historical Society (1971).

¹¹ This information was compiled from research contained in David Schmidt's *Citizen Lawmakers* and from independent research conducted by the Initiative & Referendum Institute.

¹² Illinois's 1902 and 1910 votes were advisory—not binding on the legislature. The measures were put on the ballot by petition of I&R advocates, using a statewide non-binding advisory initiative process established by the legislature in 1901. The legislature never followed the people's mandate. A constitutional convention passed a very limited initiative process in 1970, and the voters approved it.

¹³ Delaware voted on an advisory referendum put on the ballot by the legislature, asking voters whether they wanted the initiative process. Their reply was overwhelmingly "yes", as shown here, but the legislature never followed that mandate. Delaware is also the only state that does not require that the people approve all changes to the state constitution.

¹⁴ The initiative procedures put in place in Michigan in 1908 proved so difficult that citizens were unable to put initiatives on the ballot. Reformers got the legislature to approve less restrictive procedures, which were placed on the ballot in 1913 and ratified by the voters. There were two separate initiative amendments on the ballot, one giving voters power to propose and enact initiative statutes (laws), the other giving voters power to propose and enact initiative amendments to the state constitution.

¹⁵ New Mexico's new constitution was ratified by the voters in a single vote, not provision by provision and included the popular referendum process but not the initiative process.

¹⁶ In Idaho, there were separate amendments for initiative and popular referendum.

¹⁷ Nevada's 1905 amendment secured only the popular referendum process. The initiative process was secured by Nevada's 1912 amendment.

State	Year	Passed Failed	Margin	Yes	% Yes	No	% No
Ohio	1912	Passed	3-2	312,592	57%	231,312	43%
Washington	1912	Passed	5-2	110,110	71%	43,905	29%
Wyoming ¹⁸	1912	Failed	6-1	20,579	86%	3,446	14%
Mississippi ¹⁹	1912	Failed	2-1	25,153	65%	13,383	35%
Michigan (C)	1913	Passed	5-4	204,796	56%	162,392	44%
Michigan (S)	1913	Passed	3-2	219,057	59%	152,388	41%
Mississippi	1914	Passed	2-1	19,118	69%	8,718	31%
North Dakota	1914	Passed	2-1	43,111	66%	21,815	44%
North Dakota	1914	Passed	5-2	48,783	71%	19,964	29%
Minnesota ²⁰	1914	Failed	3-1	162,951	77%	47,906	23%
Wisconsin	1914	Failed	2-1	84,934	36%	148,536	64%
Texas	1914	Failed	1-1	62,371	48%	66,785	52%
Maryland	1915	Passed	3-1	33,150	77%	10,022	23%
Minnesota ²¹	1916	Failed	4-1	187,713	78%	51,546	22%
Massachusetts	1918	Passed	1-1	170,646	51%	162,103	49%
North Dakota	1918	Passed	3-2	47,447	59%	32,598	41%
Alaska	1956	Passed	2-1	17,447	68%	8,180	32%
Florida	1968	Passed	1-1	645,233	55%	518,940	45%
Wyoming	1968	Passed	3-1	72,009	75%	24,299	25%
Illinois	1970	Passed	1-1	1,122,425	57%	838,168	43%
Washington, DC	1977	Passed	4-1	27,094	83%	5,627	17%
Minnesota ²²	1980	Failed	1-1	970,407	53%	854,164	47%
Rhode Island ²³	1986	Failed	1-1	129,309	48%	139,294	52%
Mississippi	1992	Passed	3-1	592,536	70%	251,276	30%
Rhode Island	1996	Passed	1-1	165,347	53%	145,808	47%
47 Votes in 32 States and DC		38 Passed 9 Failed	2-1	7,944,583	62%	4,937,179	38%

The Modern Day Movement

In 1959, Alaska was allowed admittance into the Union with initiative and popular referendum in their founding constitution. In 1968, Wyoming voters adopted the process and in 1972 Floridians adopted the statewide initiative process. Mississippians in 1992 restored the initiative process to their constitution, 70 years after the state supreme court had invalidated the election that had established it. Mississippi became the newest and last state to get this valuable tool.

The battle to expand the initiative process is still being waged. But a new front has been opened – the battle to keep the initiative process

¹⁸ The amendment was defeated because the state constitution requires an approval by a majority of all those voting in the election and not just a majority of those voting on the amendment. Blank votes count as a no vote against the amendment.

¹⁹ See footnote 17.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ An amendment establishing statewide I&R was approved in Rhode Island's 1986 Constitutional Convention; but when placed on the ballot, voters very narrowly defeated it. In 1996 the legislature put a non-binding advisory question on the ballot asking voters if they would like to adopt I&R. Voters said yes, but the legislature did nothing.

from being taken away in the states where it exists. However, the factor that causes hesitation among legislators to expand the process is the same reason being used by lawmakers to call for its extinction – how the process has been used.

Initiative Usage

There is little doubt that in recent years the initiative process has become one of the most important mechanisms for altering and influencing public policy at the local, state and even national level. In the last decade alone, utilizing the initiative process, citizens were heard on affirmative action, educational reform, term limits, tax reform, campaign finance reform, drug policy reform and the environment.

The modern day movement to utilize the initiative process can be said to have begun in 1978 in California with the passage of Proposition 13 that cut property taxes from 2.5 percent of market value to just 1 percent. After Proposition 13 passed in California, similar measures were adopted through the initiative process in Michigan and Massachusetts. Within two years, 43 states had implemented some form of property tax limitation or relief and 15 states lowered their income tax rates.

A report from the National Taxpayers Union makes the case that the tax revolt that began with Proposition 13 in the 1970s would never have occurred without the initiative process. The study's author, Pete Sepp, stated: "[w]ith I&R, citizens have created an innovative, effective array of procedural restraints on the growth of state and local government that have even awakened the federal political establishment. Without I&R, citizens almost certainly would be laboring under a more oppressive and unaccountable fiscal regime than they do today.... As initiative and referendum enters its second century of use in the United States, citizens should embrace and nurture this invaluable process. It has transformed the 'Tax Revolt' from a passing fancy to a permanent fixture in American politics."²⁴

The citizens, utilizing the initiative process have brought about some of the most fundamental and controversial public policy decisions affecting our daily lives.

Statewide reforms made possible through the use of the initiative process ²⁵

Women gained the right to vote *	Ended bi-lingual education
Politicians are elected through direct primaries	Movie theatres and other stores can be open on Sunday
Yellow margarine can be sold	Poll taxes were abolished *
States can't fund abortions *	Parents must be notified prior to the performing of an abortion *
The eight-hour workday was created	Medical marijuana was legalized *

²⁴ See "Twins at Birth" by Pete Sepp in Chapter Nine.

²⁵ An in-depth overview of the issues marked with an asterisk (*) can be found in Chapter Nine.

Physician-assisted suicide was legalized	The use of steel traps in hunting was outlawed *
A vote of the people is required before any new tax increases can be adopted *	A super-majority vote of both houses of state legislatures is required before any new tax increase can be adopted *
Ended the use of racial preferences in government hiring and contracting	Bottle taxes to protect the environment were adopted
Term limits on elected officials were adopted *	Campaign finance reform was adopted *
Prohibition was adopted and abolished *	The death penalty was adopted and abolished *

Clearly, reforms have been enacted that represent different ideologies - conservative, liberal, libertarian and populist agendas. This typifies the initiative process - individuals of all different political persuasions use it. Furthermore, because of the diversity of issues that have been placed on the ballot, voters in states with an initiative on the ballot have been more likely to go to the polls than voters in states without an initiative on the ballot. In election after election, no matter what election cycle is analyzed, voter turnout in states with an initiative on the ballot has been usually 3% to 8% higher than in states without an initiative on the ballot. In 1998 voters in the 16 states with an initiative on the ballot went to the polls at a rate of almost 3% greater than voters in the states without an initiative on the ballot.²⁶ This can be attributed to the fact the people believe that their vote can make a difference when voting on initiatives. They realize that when they vote for an initiative, they get what they voted for. They get term limits, tax limits, and educational or environmental reform. That is the key distinction between voting on an initiative and voting for a candidate. With a candidate there are no guarantees - you can only hope that the candidate delivers on his or her promises.

Since the first statewide initiative appeared on Oregon's ballot in 1904, citizens in the 24 states with the initiative process have placed approximately 2,051 statewide initiatives on the ballot and have only adopted 840 (41%). Even though 24 states have the statewide initiative process, over 60% of all initiative activity has taken place in just six states - Arizona, California, Colorado, North Dakota, Oregon and Washington.²⁷

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% of all initiatives filed have made it to the ballot and only 8% 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 made the ballot - about 22%²⁸.

²⁶ Based on independent research conducted by the Initiative & Referendum Institute.

²⁷ Based on independent research conducted by the Initiative & Referendum Institute. A complete listing of all the initiatives that appeared on the ballot can be found in the Institute's historical database at www.iandrinstitute.org.

²⁸ Ibid.

Decades with the lowest number of statewide initiatives on the ballot	Number Proposed	Number Adopted	Passage Rate
1901-1910	56	25	45%
1961-1970	87	37	41%
1951-1960	114	45	39%

The initiative process has been through periods of tremendous use as well as periods in which it was rarely utilized. Initiative usage steadily declined from its peak of 293 from 1911-1920 to its low of 87 in 1961-1970. Many factors contributed to this, but the distraction of two World Wars, the Great Depression and the Korean War are largely responsible.

However, in 1978, with the passage of California's Proposition 13, the people began to realize the power of the initiative process once again and its use began to climb. Since 1978, two of the three most prolific decades of initiative use have occurred, 1981-90 (271 initiatives) and 1991-2000 (389 initiatives).²⁹

Decades with the highest number of statewide initiatives on the ballot	Number Proposed	Number Adopted	Passage Rate
1991-2000	389	188	48%
1911-1920	293	116	40%
1981-1990	271	115	42%

In 1996, considered by scholars to be the “high water mark” for the use of the initiative process, the citizens placed 93 initiatives on statewide ballots and adopted 44 (47%). In contrast, that year, state legislators in those same 24 states adopted over 14,000 laws and resolutions.³⁰

States with the highest number of statewide initiatives on the ballot (1904 – 2002)	Number Proposed	Number Adopted	Passage Rate
Oregon	325	115	36%
California	279	98	35%
Colorado	183	65	36%
North Dakota	168	76	45%
Arizona	154	64	42%

Since 1996, the number of initiatives actually making the ballot is remaining constant if not falling. In 1998, only 61 statewide initiatives actually made the ballot - the lowest in a decade. In 2000 a total of 76 initiatives found their way to statewide ballots, though more than 1998, it is 17 less than appeared on the 1996 ballot and is consistent with the decade average of 73 initiatives per election cycle. These numbers do not support the accusation that there has been a “drastic” increase in

²⁹ Ibid.

³⁰ Numbers are approximate due to the fact that a comprehensive list of laws passed by state legislatures is unavailable. The numbers utilized in this section were arrived at utilizing information provided by the National Conference of State Legislatures.

initiative usage over the last decade.

In 2001 there were only four initiatives on statewide ballots. This number is actually two fewer than the number of initiatives that appeared on the 1991 general election ballot. The reason for the low number in odd numbered election years is that the constitutions of only five states allow initiatives in the odd years – Colorado, Maine, Mississippi, Ohio and Washington State.

The 2002 Election Cycle

The 2002 election cycle continues to show that the use of the initiative process is declining - perhaps showing the success that legislatures have had in restricting the public's use of the initiative process. On Election Day 2002, voters cast their ballots on 202 statewide ballot measures in 40 states and approved approximately 60% of them. 53 were placed on the ballot by the people and 149 were placed on the ballot by the state legislatures³¹. Of the measures placed on the ballot by the people, 45% were approved. This number is a little higher than the 100-year average of 41%. In looking at the measures placed on the ballot by the state legislatures, the voters continued the trend of passing those at a higher percentage than citizen measures by adopting almost 66% of them. Arizona and New Mexico hold the top honor of having the most prolific ballot on Election Day – both with 14. The state that had the most issues from the people was Oregon with 7 – though a 60% decrease from 2000. Three of the top five most prolific ballots comprised of issues from lawmakers and not the people – New Mexico, Louisiana and Georgia. There was an average of 2.04 initiatives per state and an average of 2.94 legislative referendums per state on the ballot this election. (a complete post election report is available in appendix F).

The Future of the Initiative Process in the United States

Whether or not the trend of decreasing numbers of initiatives making the ballot will continue is hard to predict. The history of the initiative process has shown that there are high use periods as well as low use periods. One thing that is for certain – if state lawmakers continue to put more restrictions on the people's ability to utilize the initiative process there is no doubt that fewer initiatives will be making the ballot. However, there is no doubt that in the upcoming election cycles, there will be numerous initiatives on the ballot 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. The impact on state governments will be substantial. Whether the impact is positive or negative will be entirely up to the individual observer. If history is any

³¹ This analysis was prepared by M. Dane Waters, President of the non-profit and non-partisan Initiative & Referendum Institute. Nothing in this analysis should be construed as an endorsement of any of the ballot measures mentioned and is being provided for educational purposes only.

indicator, there is no doubt that the fiscal and social implications will be far-reaching.

But it is hard to predict what will happen with the future of the initiative process itself. The expansion of the process seems to be an uphill battle. Due to the reforms that the citizens have been successful in promoting through the initiative process – reforms that have limited the power of government – legislators in states without I&R have been hostile to advocating it and unfortunately its expansion can only occur by legislators giving it to the people. This in itself is a perfect example of why we need I&R.