Approved: March 8, 1994
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on February 21, 1994 in Room 526-S of the Capitol.

All members were present except: Representative Rand Rock, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Governor Joan Finney
Janet Chubb, Executive Director, Kansas Racing Commission
Roy Berger, Executive V. P., Wichita Greyhound Park
Bill Henry, Kansas Thoroughbred Association

Others attending: See attached list

The Chairperson welcomed Governor Joan Finney to the committee and announced the Governor would be testifying in support of HCR 5036 and HCR 5037.

Governor Joan Finney testified in support of initiative stating they will further involve citizens in their government, a goal we all agree is laudable. HCR 5036 deals with the constitutional initiative and HCR 5037 deals with the statutory initiative. HCR 5036 would allow the voters to enact laws. While the bills are similar in many instances, there are several major differences. The first difference concerns the signature requirements of getting a constitutional or statutory initiative on the ballot. For constitutional initiative, the proposal woud require 8% of the total vote cast of the office of Secretary of State at the last general election to sign the petition. Based on 1990 election figures this would be approximately 58,608 signatures necessary to get a constitutional initiative placed on the ballot. Of those 58,608 voters, 60% would need to be equally apportioned among the four congressional districts. Therefore, 8,791 of the signatures must be from each congressional district. This insures that the entire state is represented and precludes the urban areas of the state, for instance, from being in a position to dictate their special interests to the less populated regions. The geographic distribution requirement is a safeguard for all citizens.

Also, in order for a constitutional initiative to pass, a two-thirds vote of the people voting in the general election on the initiative would be necessary. At this time 27 states and the District of Columbia have some form of initiative and/or referendum. This legislation allows initiative measures only at general elections and limiting the number of public initiated measures at any election to three, concerns about abuse of the process have been constrained. (See Attachment #1)

Representative Sebelius asked what the time frame was to get a proposal on the ballot.

Staff stated 180 days - there needs to be at least 130 days back from election day to file with the Secretary of State and that leaves the Secretary of State 60 days to count the names on the petition.

It was mentioned the 91 legislation would place the first three proposals on the ballot and this is different in that the three proposals having the most names on the petition would be placed on the ballot.

Mary Galligan, Principal Analyst, Kansas Legislative Research Department, gave a staff briefing on HCR 5036 and HCR 5037. (See Attachment #2)

Janet Chubb, Executive Director, Kansas Racing Association, testified in support of HB 2836 with three

amendments. The definition of "recognized greyhound owners' group" is amended to require that the election of the group be conducted in accordance with rules and regulations of the commission and that the members must be elected by a majority of those voting in the election. Furthermore, the commission may designate an organization, such as the National Greyhound Association of Abilene, Kansas, to conduct the election. Similar amendments are proposed for the definition of "recognized horsemen's group" in subparagraph (cc) except that the commission does not propose language for designation of an organization to conduct the election for the horsemen's group.

The third proposed amendment to the racing act concerning simulcasting is the addition of subparagraph (k) to K.S.A. 74-8836. "(k) If the simulcasting licensee and the recognized horsemen's group or recognized greyhound owners' group, are unable to agree concerning a simulcasting question, the matter may be submitted to the commission for determination at the written request of any party in accordance with rules and regulations of the commission". (See Attachment #3)

Roy Berger, Executive Vice President of Wichita Greyhound Park, appeared before the committee in support of HB 2836 stating the bill was written to give all simulcasting partners, the greyhound owners, the horse owners and the racetrack a seat at the negotiating table. (See Attachment #4)

Bill Henry, Kansas Thoroughbred Association, testified in opposition of HB 2836. The Kansas Thoroughbred Association has not had the opportunity to sit down with other members of the racing industry and the Racing Commission to see if differences can be ironed out. (See Attachment #5)

The meeting adjourned at 3:15 PM

The next meeting will be February 22, 1994.

Date: Feb 21, 1994

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Jim & Sonia Yount	K.Q.H.R.A	Valley Falls, Ks
Pat Hubbell	WGP	Atchison, KS
Gina McFarland	Overland Park Chamber	O.P
George Wingert		Gov Office
Steph C English Jr	intern	Lawrence, KS
DEBRA DEIBS	TOPEKA	CLARION COURT
Mary Wallace	Governors Office	Topeka
Molly Hofmeier	intern	Manhattan
Steve Bland	Intern	Manhattan
Craig Grant	KNEA	Topeka
John Koepke	KASB	Topeka

Remarks to House Federal and State Affairs Committee
Concerning Initiative HCR 5036 and HCR 5037

February 21, 1994

Mr. Chairman, I would like to thank you and your Committee for the opportunity to appear today and review my two initiative proposals. First, I want to make some general remarks on why these measures are being recommended. The short answer is that they will further involve citizens in their government, a goal we will all agree is laudable.

At first glance, some people may view initiative as somewhat of a departure from our traditional form of government. However, initiative is a logical extension of representative democracy as it allows the people to participate directly when necessary.

Our country and state have progressed in large measure because we live in a democracy and our citizens are the key ingredient to a democracy. The people decide who is to lead our government and the people decide who represents them in government. My initiative measures are just a logical expansion of this citizen involvement with their government. We already have forms of initiative and referendum in Kansas. While our constitution cannot be changed without the approval of the people, at the local unit level, citizens can use protest petitions in a variety of areas to decide local issues and have done so for over 30 years.

With a government framework that is centered around being of, by and for the people, giving our citizens a more direct role can only strengthen our democracy and increase citizen's faith in our government. All of us here work for the people. We should have no reservations about giving the people we serve a more direct role and an opportunity to directly participate in the process.

You may be aware of how much of an instrumental role our part of the country has had in the initiative process. South Dakota was the first state to adopt initiative. They did that clear back in 1898. In fact, Kansas is somewhat of an island. All the people in our bordering states

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have the power to initiate constitutional amendments and legislation. Our surrounding States have all had constitutional initiatives since early in this century. The process has worked well in those states and none have revoked the process after having used it. In the western and mid-western States, the idea of giving citizens the direct power to amend the state constitution or enact laws is the norm.

There are pending before you two initiative proposals. HCR 5036, the constitutional initiative, and HCR 5037, the statutory initiative. The constitutional initiative would allow the people to amend the state constitution and statutory initiative would allow the voters to enact laws. While the bills are similar in many instances, there are several major differences. The first difference concerns the signature requirements of getting a constitutional or statutory initiative on the ballot. For constitutional initiative, the proposal would require 8% of the total vote cast of the office of Secretary of State at the last general election to sign the petition. Based on 1990 election figures this would be approximately 58,608 signatures necessary to get a constitutional initiative placed on the ballot. Of those 58,608 voters, 60% would need to be equally apportioned among the four congressional districts. Therefore, 8,791 of the signatures must be from each congressional district. This insures that the entire state is represented and precludes the urban areas of the state, for instance, from being in a position to dictate their special interests to the less populated regions. The geographic distribution requirement is a safeguard for all citizens.

Also, in order for a constitutional initiative to pass, a two-thirds vote of the people voting in the general election on the initiative would be necessary. This super majority recognizes the significance of amending the constitution by requiring a strong majority of the people to express their wish to amend. With respect to statutory initiative, the minimum number of signatures on the petition to place a statutory initiative on the ballot would be 5% of the total votes cast for the

office of Secretary of State at the last election. In terms of real numbers, the number of voters to initiate a law would be 36,630. Geographic distribution of signatures on the petition again requires that not less than 60% of the signatures must be equally apportioned among residents of each of the congressional districts. This would require that at least 5495 voters from each of the congressional districts must sign the petition prior to getting a measure placed on the ballot. A simple majority of the registered voters voting on a proposed initiative would be sufficient to pass the law.

Similarities between the constitutional and statutory initiatives are that the effective date of both statutory laws and constitutional amendments would be the first day of July following enactment of the law or passage of the constitutional amendment. Also, no more than three laws could be submitted at any general election so elections will not be inundated with initiative proposals. Statutes enacted through statutory initiative are subject to the same presumption of constitutionality as typical legislation.

At this time, 27 states and the District of Columbia have some form of initiative and/or referendum. The fact so many states have preceded us in passing initiative has allowed Kansas to draw upon the experiences of those states, both favorable and unfavorable, in crafting legislation which is best suited to the purpose desired by the people of Kansas. Typically there are several areas of opposition to the initiative process and virtually all can be reduced to the basic proposition of whether you believe the people of the State of Kansas are competent to make their own decisions regarding proposed legislation. One of the benefits of the proposals pending before you is that they limit to three, the number of measures which may be placed on the ballot at any particular election. By so limiting the number of issues, the public will be able to become familiar with and understand the measures. Contrast that requirement with the initiative experience in the State of California where the number of measures at any election is unlimited

and where it is much easier to get a measure placed on the ballot. Kansas will not have the onslaught of initiative proposals as California. Critics of direct democracy further question whether the people are informed enough to exercise good judgement on complicated policy questions. Some contend the average voter is ignorant and largely apathetic about issues appearing on the ballot. I maintain the common sense of Kansas citizens should not be underestimated and that a significant portion of voters know what the issues are and how they want to vote on them. The empirical data tends to suggest that voters are capable of taking a long range outlook when considering initiatives on the ballot. In many instances, rather than opt for a short range financial benefit, i.e., a tax cut, they have shown a strong concern for maintaining those aspects of the public sector which will enhance their quality of life into the future.

Another popular criticism of the initiative process is that big money lobbyists and special interest groups will sway public opinion into voting on special interest initiatives. There is no question finances enter into the picture when discussing initiative-driven legislation. However, the members of this committee are all too familiar with having lobbyists attempt and sway a vote on a particular issue. It would certainly appear to be exceedingly more difficult to sway the vote of approximately 700,000 Kansans' before an election than it would be 165 legislators. Certainly media coverage plays a role in dispersing information regarding issues and money can buy access to major markets. However, in the end, the people of Kansas must determine their own minds regarding a particular issue. How can the same people that are so aptly able to choose between good and bad candidates for public office be unable to choose between good and bad laws subject to an initiative measure.

Voter education is also the responsibility of the legislature and elected officials who should assist in educating and heightening awareness of pending issues. As the late George

Gallup, Sr. said in 1984 after more than 50 years in the public opinion business, "the judgment of the American people is extraordinarily sound. The public has always been ahead of its' leaders."

Another legitimate concern of initiative opponents is that voters will target taxes and appropriations in an attempt to cut back and in some cases eliminate property taxes. In actual practice, while tax measures have been the most frequent policy issues subject to initiatives, there is a fairly equal split between passage and failure of such measures. Most notably in Ohio, California and Michigan, anti-tax campaigns have been stopped as the voters determined that short term fiscal gain did not warrant the long term economic benefit for the state and it's people.

These bills before you represent the opportunity to allow your constituents a direct role in their government. If passed, it is unlikely the initiative process will be utilized on a frequent basis. The experience of our surrounding states has been that use of initiative is sporadic and typically only after the legislature has been unresponsive to the peoples' needs for a significant period of time. While other states allow initiative measures to be voted at special elections called by the governor, our legislation allows initiative measures only at general elections. Due to the restrictions in getting measures placed on the ballot and by limiting the number of public initiated measures at any election to three, concerns about abuse of the process have been constrained.

I trust that you will give these measures your serious consideration. In their broadest terms they all give people a larger role in their government and they all present the potential for giving the people a stronger interest and belief in their government.

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MEMORANDUM

Kansas Legislative Research Department

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February 16, 1994

To: House Committee on Federal And State Affairs

From: Mary Galligan, Principal Analyst

Re: Initiative and Referendum

Enclosed are several documents you might find useful by way of background for next week's hearings on the initiative and referendum proposals. The following are included:

1. A National Conference of State Legislatures *Legisbrief* (Volume 1, No. 38) on the topic;

2. a memorandum that summarizes the resolutions before the Committee, and which includes a table comparing those resolutions to the 1991 House Resolutions on the same topics;

3. an outline of the briefing paper presented to the Committee in 1991 with a summary of arguments for and against initiative and referendum; and

4. the briefing paper which Lynne Holt presented to the Committee in 1991.

The only state to adopt initiative since the Committee last reviewed this issue is Mississippi, which began to permit voter initiated amendments to its state Constitution in 1992. The NCSL publication mentions some aspects of the Mississippi procedure. We have not updated the 1991 memorandum to reflect the change in Mississippi.

If you have any questions, please feel free to call.

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NCSL • LEGISBRIEF

October 1993 Vol. 1, No. 38

THE VOTER INITIATIVE

By Tommy Neal

Initiative, referendum and recall are political terms that to some signify the ultimate in democracy and to others a repudiation of our representative system of government.

- ❑ The **initiative** enables citizens to bypass the legislature by placing proposed statutes and, in some states, constitutional amendments on the ballot.
- ❑ The **referendum** provides for a popular vote on laws that have been enacted by the legislature.
- ❑ The **recall** allows citizens to remove elected officials from office.

The initiative has a long history.

In the United States, the initiative, referendum and recall movement can be traced directly to the populist and progressive eras of the late 19th and early 20th centuries when state governments were perceived to be controlled by special interests, such as railroads, bankers, land speculators and "robber barons." Given its populist roots, the initiative has been primarily a western innovation—16 of the 24 initiative states are west of the Mississippi.

Discussions of direct citizen involvement in government usually include all three processes. This brief, however, focuses only on the initiative as it applies to state government. The terms "initiative" and "referendum" are sometimes used interchangeably, which is inaccurate. Initiatives propose legislation or constitutional amendments independently of the legislature. The referendum refers only to approval or rejection of legislation that has already been enacted by the legislature. Referenda can be placed on the ballot by the legislature or by a petition process similar to that for initiatives.

The initiative allows the public to bypass the legislature.

Proponents of the initiative maintain that the process provides a method for making decisions on public policy issues that the legislature refuses to address or on which it is unable to reach agreement. It is also argued that the initiative provides a counterbalance to the influence of special interests in the legislative process—an influence that, in the public's perception, is often excessive.

Initiative States
Ranked in Order of Use, 1898-1992

State	Year Initiative Adopted	Number on Ballot Since Adoption
Oregon	1902	274
California	1911	232
North Dakota	1914	160
Colorado	1910	150
Arizona	1910	133
Washington	1912**	91
Arkansas	1909	80
Oklahoma	1907	79
Missouri	1906	60
Ohio	1912	58
Montana	1904	56
Michigan	1908	54
South Dakota	1898	42
Massachusetts	1918	41
Nebraska	1912	35
Nevada	1904	27
Maine	1908**	27
Alaska	1959**	22
Idaho	1912**	17
Utah	1900**	16
Florida	1972*	12
Illinois	1970*	4
Wyoming	1968**	3
Mississippi	1992*	0

* Applies only to constitutional amendments.
** Applies only to statutes.

NATIONAL CONFERENCE OF STATE LEGISLATURES

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A major argument against the initiative is that it undermines our system of representative government. Legislators are elected to represent their constituents in the consideration of public policy questions. And the electorate has an opportunity, at the polls, to approve or reject the actions of the legislator who represents them. With the money now needed to qualify a ballot question, it is also said that, contrary to the original intent, the initiative can become a tool of special interests.

Initiatives may undermine representative government.

There are two types of initiatives—direct and indirect. In the direct process, proposals that qualify go directly on the ballot. In the indirect process, they are submitted to the legislature, which has an opportunity to act on the proposal. Amendments or substitute measures are allowed in some states; prohibited in others. The legislature is given varying lengths of time to act on a proposal and—depending on the state—the initiative goes to the ballot if the legislature rejects it, submits a different proposal or takes no action. States with some form of the indirect process are **Maine, Massachusetts, Michigan, Mississippi, Nevada** and **Ohio** (the last two for statutory proposals, but not for constitutional amendments). Two states—**Utah** and **Washington**—allow proponents to use either method. **South Dakota** requires initiatives to be submitted to the Legislature, where they must be enacted and referred to the voters at the next general election.

There are direct and indirect initiatives.

No two states have exactly the same requirements for qualifying initiatives. In general, however, the process includes these steps: preliminary filing of a proposed petition with a designated state official; review of the petition for conformance with statutory requirements and, in several states, a review of the language of the proposal; preparation of a ballot title and summary; circulation of the petition to obtain the required number of signatures—usually a percentage of the votes cast for a statewide office in the preceding general election; and, finally, submission to the state elections official (normally the secretary of state), who is responsible for verifying the number of valid signatures obtained.

There are 24 variations of the initiative process.

Central to the whole process, obviously, is getting the requisite number of valid signatures. Early proponents of the initiative foresaw the requirement for circulating petitions as a demonstration of widespread public support for a proposal: The petitions would be circulated by informed citizens concerned about public policy questions that were not being addressed by the legislature. While that may still be the case in some instances, many petition drives now are highly organized, professional campaigns employing paid circulators. In **California**, and other states, the essential ingredient for qualifying an initiative for the ballot is money. It has been estimated that in California an expenditure of $1 million will guarantee a place on the ballot. Only two initiatives in California have spent more than $500,000 and not qualified. The right to pay circulators has been upheld by the U.S. Supreme Court (*Meyer vs. Grant*).

Money helps get initiatives to the ballot.

Once an initiative is on the ballot, the general requirement for passage is a majority vote. Exceptions include **Nebraska, Massachusetts** and **Mississippi**. Those states require a majority, provided the votes cast on the initiative equal a percentage of the total votes cast in the election (35 percent in Nebraska, 30 percent in Massachusetts, and 40 percent in Mississippi). **Wyoming** requires "an amount in excess of 50 percent of those voting in the preceding general election." An initiated constitutional amendment in **Nevada** must receive a majority vote in two successive general elections.

Selected References

California Commission on Campaign Financing. *Democracy by Initiative: Shaping California's Fourth Branch of Government.* Los Angeles, Calif.: Center for Responsive Government, 1992.

Congressional Research Service. *Initiative, Referendum and Recall: A Resume of State Provisions.* Washington, D.C.: Library of Congress, March 1981.

Cronin, Thomas E. *Direct Democracy: The Politics of Initiative, Referendum, and Recall.* Cambridge, Mass.: Harvard University Press, 1989.

Public Affairs Research Institute of New Jersey. "Initiative and Referendum Analysis." Princeton, N.J., 1992.

Contact for More Information

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MEMORANDUM

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February 14, 1994

To: House Committee on Federal and State Affairs

From: Mary K. Galligan, Principal Analyst

Re: H.C.R. 5036 and H.C.R. 5037

These concurrent resolutions were introduced by the Committee at the request of the Governor. They would amend the *Kansas Constitution* to provide for enactment of laws or subsequent amendment of the *Constitution* by direct initiative and referendum. If approved by two-thirds of the House and Senate these proposed amendments would be presented to Kansas voters at the November, 1994 general election.

H.C.R. 5036 would amend Article 14 of the *Constitution* to provide for initiation of constitutional amendments by petition[1]. Those proposed amendments would be subject to approval by voters. Each proposition would have to relate to a single subject, but could include amendment of one or more sections within a single article of the *Constitution*. Amendments proposed by initiative could not encroach on any right guaranteed by the Bill of Rights. Amendments proposed by initiative could not violate either the state or federal constitutions. The initiative process could not be used to amend the *Constitution* regarding:

1. enactment of laws;

2. initiation of laws by the voters or submission of laws to voters for approval (not currently provided for in the *Constitution)*; or

3. reapportionment or procedures for reapportionment of legislative, congressional, judicial, or State Board of Education districts.

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[1] Currently, the *Kansas Constitution* can be amended by two means: voter approval of proposals approved by two-thirds of each house of the Kansas Legislature (Article 14§1); or by a constitutional convention (Article 14§2). A constitutional convention would be called if voters approve the question submitted by two-thirds of each house of the Legislature. The question calling for a convention could provide for either general consideration of the entire *Constitution* or specify which article or articles would be considered. Delegates to a constitutional convention would be elected from Kansas House districts. Proposals of the convention would be submitted to voters at the first statewide election held at least two months after final action of the convention. A majority vote would be required to adopt proposals presented by a convention.

H.C.R. 5036 would require that prior to being circulated for signatures, a petition initiating a proposition to amend the *Constitution* would have to be submitted to the Attorney General for determination of proper form, legality, and constitutionally. The Attorney General would be required to issue a written determination within 21 days of submission of the petition. Within ten days of issuance of the Attorney General's determination, any person aggrieved by that determination could appeal to the Kansas Supreme Court.

Each separately circulated portion of the petition would have the full text of the proposed amendment attached. In order to be valid, each petition would have to be signed by the number of registered voters equivalent to at least 8 percent of the total vote cast for the office of Secretary of State at the last general election for that office (58,608 based on the 1990 election). At least 60 percent of those signatures (35,165) would have to be from equal numbers of residents of each congressional district. Thus, currently, a minimum of 15 percent of the total required number of signatures (8,791) would have to be of residents of each congressional district. The required number of signatures would have to be obtained within 180 days of the final determination of proper form of the petition. The entire petition would have to be filed with the Secretary of State at one time.

The Secretary of State would have 60 days within which to determine whether a petition has the requisite number of valid signatures. If the petition has the required number of valid signatures, the Secretary of State would be required to place the proposed amendment on the ballot of the next statewide general election scheduled for at least 130 days after the petition is filed. No more than three proposed constitutional amendments could be on the ballot at any election. The entire text of the proposed amendment would appear on the ballot.

If more than three valid petitions are filed, the three with the greatest number of valid signatures would be placed on the ballot. Others would be null and void.

A constitutional amendment proposed by initiative petition would have to be approved by two-thirds of voters who vote on the question. Any amendment approved by voters would take effect on the first day of July following the election. If conflicting amendments were adopted by voters at the same election, the one that received the largest number of votes would become effective. If conflicting amendments received the same number of votes, neither proposed amendment would take effect. An amendment that failed to receive the required number of votes could not be submitted for a vote again within four years.

The amendment proposed by H.C.R. 5036 would be self-executing, but would authorize the Legislature to enact legislation to facilitate its implementation. The Legislature would be required to provide for reporting of expenditures and contributions made to support or oppose amendments initiated under these procedures.

H.C.R. 5037 would amend Article 2 of the *Kansas Constitution* to provide for initiation of laws by petition and for enactment of those laws by voters. Any such proposed laws could address only one subject and could not violate either the Kansas or the *U.S. Constitution*. Prior to being circulated for signatures, any petition, proposed law, and ballot summary would have to be submitted to the Attorney General for determination of proper form, legality, and constitutionality. The Attorney General would have to issue a written determination within 30 days after submission of the petition. Persons aggrieved by the determination of the Attorney General would be able to appeal to the Kansas Supreme Court.

Each page of a petition initiating a proposed law would have to contain a ballot summary and each separately circulated portion of the petition would have to have the full text of the proposed law attached. The ballot summary would be an objective, nontechnical statement of 150 words or less expressing the intent or purpose of the proposed law and a clear statement that a "yes" vote is a vote in favor of the proposition and a "no" vote is a vote against the proposition.

In order to place a proposal on the ballot, the petition for that issue would have to be signed by a number of registered voters equal to at least 5 percent of the total vote cast for the office of Secretary of State at the last general election for that office (36,630 signatures based on the 1990 election). At least 60 percent of those valid signatures (21,978) would have to be from equal numbers of residents of each congressional district. Thus, currently, 15 percent (5,494) of the total required number of signatures would have to be of residents of each congressional district. The required number of signatures would have to be obtained within 180 days of the Attorney General's determination. The entire petition would have to be filed with the Secretary of State at one time.

The Secretary of State would have 60 days to determine whether the petition contained the requisite number of valid signatures. If the Secretary of State determined that the required number of valid signatures were contained in the petition, the Secretary would be required to place the initiative on the ballot for the next general election for state representative held at least 130 days after the petition is filed. The ballot summary would appear on the ballot, and the full text of the proposed law would be filed in the office of each county election officer. No more than three propositions could be place on the ballot at a single election. If more than three valid petitions were filed, the three with the greatest number of valid signatures would be placed on the ballot. Any others would be null and void.

A proposed law approved by a majority of voters who cast a vote on the issue would take effect on the first day of July following enactment of the law, unless a later effective date is specified in the law itself. A proposal that is defeated could not be placed on the ballot again for at least four years. In the case of reconsideration of a defeated proposal, the signature requirement would be equal to at least 25 percent of the total vote cast for the office of Governor at the last election for that office (195,831 based on the 1990 election). The requirement that a certain portion of signatures come from each congressional district would not apply to these petitions.

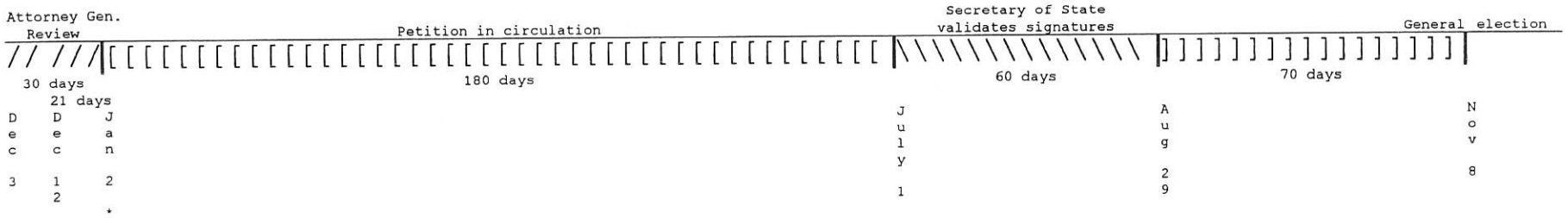
If conflicting laws were approved by voters at the same election, the law receiving the largest number of votes would become effective. If conflicting proposals received the same number of votes, neither would become law. If a law approved by referendum conflicted with existing law, the prior law would be effectively amended or repealed.

Laws approved by referendum could not be vetoed by the Governor, nor could the Legislature amend or repeal those laws.

The constitutional amendment proposed by H.C.R. 5037 would be self-executing, but the Legislature could enact laws to facilitate its implementation. The Legislature would be required to provide for reporting of expenditures and contributions made to support or oppose laws proposed by petition initiative.

TIME LINE FOR INITIATIVE AND REFERENDUM

1994 H.C.R. 5036 and H.C.R. 5037



Dates represent latest date for completion of each required step.

* This time line does not include the time necessary for an appeal to the Supreme Court. Such an appeal would have to be filed within 10 days of A.G.'s determination The Supreme Court would have no specific time within which to take action.

COMPARISON OF 1991 AND 1994 INITIATIVE PROPOSALS

Direct Initiative of Constitutional Amendments

PROVISION	1991 H.C.R. 5004, AS AMENDED BY HOUSE COMMITTEE OF THE WHOLE	1994 H.C.R. 5036
Applies to	Amendments to *Kansas Constitution*	Same
Limitation on Scope	One subject, but may amend more than one section within an article.	Same
Initiatives could not	-- dedicate any revenue; -- make or repeal appropriations; -- change provisions relating to courts, their jurisdiction or funding; -- encroach on any constitutional rights; -- violate the *U.S. Constitution*; -- change constitutional provisions regarding initiative and referenda; or -- change apportionment or procedures for apportionment.	-- encroach on any constitutional right; -- violate the *U.S. Constitution*; -- amend provisions regarding initiative and referenda on laws; or -- change apportionment or procedures for apportionment.
Petition review prior to circulation	Conducted by Attorney General regarding form, legality, and constitutionality; written determination issued within 21 days; determination appealable to Kansas Supreme Court	Same
Information provided with petition and form of petition	Full text of proposed amendment must be attached to each separate part of petition.	Same
Signature threshold	8 percent of registered voters of each county	8 percent of total vote cast for Secretary of State; at least 60 percent equally from each congressional district
Time for obtaining signatures	180 days from final determination regarding form, legality and constitutionality; entire petition must be filed at once	Same
Signed petition filed with	Secretary of State	Same
Time for validating signatures	60 days	Same
Submission to voters	At next statewide general election at least 130 days after petition is filed.	Same
Number of propositions	Maximum of 3 at any election	Same
Required vote	2/3 of voters voting on the question	Same
Subsequent legislative action	Required approval by 2/3 of each house during session following election.	None
Conflicting amendments	One receiving greatest number of votes would go to Legislature.	One receiving greatest number of votes would become effective.
Resubmission of defeated proposals	Could not be resubmitted within four years of rejection.	Could not be resubmitted within 4 years if a majority of voters vote against the proposal.
Implementing legislation	Required to provide for reporting of expenditures and contributions made to support or oppose proposed amendments. Other legislation authorized, but not required.	Same

COMPARISON OF 1991 AND 1994 INITIATIVE AND REFERENDUM PROPOSALS

Direct Initiative of Laws

PROVISION	1991 H.C.R. 5003, AS AMENDED BY HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS	1994 H.C.R. 5037
Applies to	Direct initiative of laws	Same
Limitation on Scope	Proposal may address only one subject	Same
Limitations on subject matter	No initiative to: -- dedicate revenue; -- make or repeal any appropriation; -- effect the courts, their jurisdiction, or funding -- enact a law that would be unconstitutional	Could not be unconstitutional.
Review of petition prior to circulation	Petition, proposed law, and ballot summary submitted to Attorney General for determination as to form, legality, and constitutionality. Written determination issued within 30 days; determination may be appealed to Kansas Supreme Court.	Same
Petition requirements	-- ballot summary on each page -- each separately circulated portion of petition must contain or have attached the full text of the proposed law	Same
Ballot summary	No more than 150-word objective, nontechnical description of purpose of proposed law clearly stating that a "yes" vote is a vote in favor of the proposal and a "no" vote is a vote against the proposal.	Same
Signature requirements	At least 5 percent of registered voters most recently recorded by Secretary of State. At least 60 percent of total would have to come equally from the state's congressional districts.	5 percent of number of votes cast for Secretary of State. Same geographic distribution requirement.
Time limit on collection of signatures	180 days from determination of form, legality, and constitutionality.	Same
Secretary of State time to validate signatures	60 days	Same
Time to election	Next general election at least 130 days after filing with Secretary of State	Same
Contents of ballot	Ballot summary only on ballot. Full text of proposal filed with each county election officer.	Same
Number of proposals on ballot	If more than three filed, those three with greatest number of signatures placed on ballot.	Same
Approval by voters	Must be approved by majority and the number of affirmative votes must be more than a majority of the total number of votes cast for all candidates for House at that election.	Majority of voters voting on the question.
Effective date	40th day of next regular legislative session, unless otherwise provided in the proposition (see "legislative amendment or repeal" below).	July 1 following election, unless otherwise specified.

PROVISION	1991 H.C.R. 5003, AS AMENDED BY HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS	1994 H.C.R. 5037
Conflicts	Law receiving greatest number of votes prevails.	Same
Resubmission	Defeated propositions could not be resubmitted within four years of defeat. Petition signature requirement of 25 percent of vote for governor at most recent election.	Same
Legislative amendment or repeal	Requires 2/3 vote of each house prior to becoming effective (within first 40 days of the legislative session following the referendum). May be amended or repealed by majority vote after 40th day.	Legislature could never amend or repeal.
Enabling legislation	Required to provide for reporting of expenditures and contribution to support or oppose proposed laws. Authorized to facilitate implementation of the self-executing section.	Same

MEMORANDUM

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Room 545-N – Statehouse
Topeka, Kansas 66612-1586
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January 28, 1991

This outline accompanies a memorandum entitled "Background Information on Initiatives and Referenda" prepared by the Research Department. Page numbers in the outline refer the reader to the page in the memorandum where the topic is discussed in greater detail.

I. **Definitions** (page 3)

A. **Initiative.** Voters may propose, or initiate, laws (statutory initiative) or constitutional amendments (constitutional initiative) via petition.

1. **Direct Initiative.** No legislative involvement.

2. **Indirect Initiative.** Proposition submitted to the Legislature, which, if not enacted, is placed on a ballot.

3. **Advisory Initiative.** Nonbinding expression of public opinion.

B. **Referendum.** Enactments of Legislature referred to voters.

1. **Petition Referendum.** Demand through petition that legislation be referred to the voters.

2. **Obligatory or Compulsory Referendum.** Requirement that a legislative enactment be submitted to the voters.

3. **Contingent Referendum.** Legislature makes an act effective upon approval by the voters.

4. **Advisory Referendum.** Called by the Legislature to seek the opinion of the electorate.

II. **Background** (page 5)

A. The *Kansas Constitution* provides for constitutional amendments and certain local issues to be delegated to voters.

B. **States' Uses of Initiatives and Referenda** (page 5)

1. 26 states authorize initiative or petition referendum

a. 23 states authorize some type of initiative

b. 25 states authorize petition referenda; 49 states require referenda for constitutional amendments

C. **Historical Background** (page 6)

1. Initiative/referendum authority adopted since World War I in 4 states and D.C. None authorized since 1970.

2. Initiative/referendum authority never retracted once granted.

D. **Disposition of Measures and Subject Matters** (page 6)

1. Approximately one-third of all initiatives have been approved by voters.

2. At least 60 percent of referred measures have been approved by voters.

3. Common subjects in order of prevalence: procedural questions; environment; taxes; gambling; liquor; obscenity; financing other than taxes; and education

III. **Initiatives and Referenda – Arguments Pro and Con** (Appendix I of this outline) (page 9)

IV. **Legislative Policy Decisions** (page 17)

A. **What Measures Should be Authorized?** (page 18)

1. Initiatives -- statutes or constitutional amendments

2. Initiatives -- direct or indirect

3. Referenda -- petition, legislatively-generated, contingent, or advisory

B. **Should Subject Matter be Restricted?** (page 19)

1. Common restrictions on referenda -- emergency legislation and appropriations generally exempt

2. Common restrictions on initiatives -- one subject matter; does not concern the judiciary

C. **What Criteria Should be Used for Determining Eligible Signatures?** (page 19)

1. Minimum number of signatures

2. Should the Governor be authorized to veto approved initiatives?

3. How soon and how frequently can defeated initiatives be resubmitted for a vote?

4. How soon should approved initiatives take effect?

S. **How Much Time Should Be Provided to Contest an Election?** (page 29)

T. **Should Legislative or Public Hearings Be Required for Direct Initiatives?** (page 29)

U. **How Much Detail Should be Contained in Constitutional Provisions for Initiative and Referendum?** (page 30)

APPENDIX I

INITIATIVES AND REFERENDA – ARGUMENTS PRO AND CON

PROPONENTS	OPPONENTS

Voters' Acceptance of Government (page 9)

PROPONENTS	OPPONENTS
Direct Democracy:	Direct Democracy:
1. supplements legislative process.	1. undermines the system of representative government.
2. makes voters more likely to support and obey laws they have been actively involved in creating.	2. undermines the system of checks and balances and bypasses experienced lawmakers.
3. has been consistently ruled by the courts, including the U.S. Supreme Court, to be permissible under the *U.S. Constitution*.	3. was consciously rejected by founders of the American republic.

Voter Participation (page 9)

PROPONENTS	OPPONENTS
Voters:	The opportunity for direct participation in policy making:
1. participate in greater numbers due to the public debate about issues and because of having a direct role in decision making.	1. does not galvanize large numbers of voters.
	2. is taken primarily by those who do not represent the majority of the population in terms of education or income.

Voter Comprehension (page 10)

PROPONENTS	OPPONENTS
Voters:	Voters:
1. grasp the meaning of most issues, particularly well-publicized ones, on which they are asked to vote.	1. are frequently confused when confronted with issues that are complex and technical.

PROPONENTS	OPPONENTS
2. are not likely, when confronted with long ballots, to engage consistently in negative voting or to participate less in voting.	2. who are less educated and disadvantaged experience difficulties in comprehending the issues underlying propositions.
3. are not likely to do anything more foolish than the Legislature is likely to do.	3. are most likely to think in the short-term and in their own self-interest and not integrate individual propositions into an overall assessment of popular will or into a coherent policy.

Information about Ballot Measures (page 11)

Voters:	Voters:
1. will acquire more civic knowledge and pride as they educate themselves about issues.	1. in states without direct democracy measures also have civic pride.
2. will make more intelligent decisions through private discourse.	2. can be confused by television advertising on ballot measures, which relies heavily on emotionally-loaded slogans.
3. can receive quite comprehensive information from newspapers on ballot propositions.	3. rely mostly on television coverage which devotes little time to news or editorial coverage.

Racial and Ethnic Minority Rights (page 12)

Direct democracy measures, which have been enacted, do not for the most part:	Direct Democracy:
1. have the effect of narrowing civil rights or liberties.	1. is inherently biased against racial and ethnic minorities.
2. limit or narrow civil rights or liberties to a much greater extent than measures enacted by Legislatures.	2. runs counter to representative democracy envisioned by the founding fathers.
	3. elevates a momentary majority to a pre-eminent position and exacerbates the problem of factionalism.

PROPONENTS	OPPONENTS

Legislative Responsiveness and Systemic Flexibility (page 12)

The initiative process is desirable:	The initiative process may or will prevent:
1. when consumer and reform groups support legislation that is frequently defeated by the Legislature due to opposition from a particular industry or a threat to legislators' personal interests.	1. compromises between competing issues and forces voters to choose between "yes" and "no" positions.
2. with respect to issues which defy compromise and are unlikely to be resolved by the Legislature.	2. legislators from grappling with controversial legislation because they know they can leave decisions on such issues to voters.
3. and is no more likely to result in faulty laws than is legislation enacted by the Legislature; one third of each new legislative session is spent amending legislation passed during previous sessions.	3. amendments to a proposition once it appears on the ballot.

Frequency of Use (page 13)

The initiative is:	The initiative is:
1. a relatively rare legal device; the electorate passes, on average, less than one state law a year through the initiative process.	1. a tactic used too often and appears most frequently on ballots in states with low signature thresholds.

Special Interest Spending (page 13)

Well-financed special interest groups:	Well-financed special interest groups:
1. have the potential to sway legislative decisions, not only voters' decisions.	1. dominate the initiative process by using their superior financial resources to mount media campaigns that can defeat popular ideas on election day.
2. are a decisive factor in the outcome of only about one-eighth of all campaigns, according to one study.	2. have resources to finance signature gatherers and media campaigns which place "grass roots" organizations at a considerable disadvantage. (The U.S. Supreme Court has struck down laws aimed at

PROPONENTS	OPPONENTS
	curbing expenditures for payments to campaigns or signature gatherers.)
3. are not always successful in realizing their objectives in the initiative process.	3. have resources to litigate proposed initiatives, thus draining the resources from a poorly financed initiative campaign.

Popular Reaction to the Initiative Process (page 15)

The initiative process:	The job of making laws:
1. enjoys popular support; the majority of people polled in several surveys considered it to be a good idea. A survey conducted in 1987 found that two-thirds of the people surveyed believed that voters should be able to vote directly on some state and local laws. Another survey conducted in 1985 found that 71 percent of those surveyed opposed elimination of the initiative system.	1. should be left to elected officials, according to two-thirds of respondents who were surveyed by the Eagleton Institute in New Jersey; respondents also noted that many issues were too complicated for a "yes" or "no" vote; that many people would not be able to cast an informed vote; and that special interests would gain power through the initiative process by spending more money.

91-75/LH

BACKGROUND INFORMATION ON INITIATIVES AND REFERENDA

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INTRODUCTION

This memorandum has five parts. First, it defines the most frequently used terms related to the initiatives and referenda. Second, it provides some background information on the use of these mechanisms in other states. Third, it presents arguments for and against the use of initiatives and referenda. Fourth, it sets forth policy issues to be considered by lawmakers in their deliberations on these mechanisms. The implications of each policy issue also are explained. Finally, this memorandum examines some of the costs incurred by state agencies of five states in implementing these mechanisms.

SECTION I: DEFINITIONS[1]

The predominant feature of government in the United States at all levels -- federal, state, and local -- is representative democracy. By contrast, initiative and referendum processes are examples of direct or participatory democracy.

Initiative. The **initiative** process enables voters to propose, or initiate, a law or a constitutional amendment by filing a petition signed by a specified number of voters. There are three types of initiatives:

1. A **direct initiative** permits electors to propose laws or constitutional amendments by petition and enact them by majority vote in a subsequent election[2]. This procedure bypasses the legislature and is not subject to executive veto.

2. In an **indirect initiative** electors propose by petition that a legislature pass a desired law. If the legislature amends or enacts legislation which is acceptable to sponsors of the initiative, the proposed initiative would not be placed on the ballot. However, if the legislature fails to act within a specified period of time or rejects the proposed measure, the measure would then appear on the election ballot for the voters to decide. Usually this is automatic if no action from the legislature is forthcoming. In some states and localities, sponsors of a proposed law must repeat the petition process to qualify the measure for an election ballot. In another variant of the indirect initiative, the legislature is authorized to suggest changes to the proposal or pass an amended version of the proposed law. If the citizen sponsors of the original initiative object to the changes, however, they may petition to have the original version of the proposal placed on an election ballot.

3. An **advisory initiative** is one in which the outcome is a nonbinding expression of public opinion.

Referendum. A **referendum** relates to the referring of legislation enacted by the legislature for electorate approval or rejection. There are three categories of referenda:

1. A **citizen petitions referendum** may be called a "petition," "protest," or "popular" referendum. For purposes of this memorandum, this type of referendum will be referred to as "petition referendum." This referendum enables electors, once a specified minimum number of petition signatures is gathered, to require a popular vote on whether or not a law already passed by the legislature shall remain in effect or take effect. In essence, voters exercise a form of veto power over the actions of their legislators. In the states and localities where this type

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[1]Most of Section I is derived from an explanation of definitions included in the *State of Wisconsin Legislative Reference Bureau* (hitherto referred to as Wisconsin LRB), pages 1-2.

[2]As will be discussed in Section IV, some states specify conditions for approval that are in addition to a majority vote.

of referendum exists, if a majority of those voting reject a law in question, it is repealed or does not become effective.

2. The **obligatory or compulsory referendum** requires by state constitutions or state statutes that a legislature submit an enacted measure on a specific subject, such as ratification of amendments to the state constitution, approval of the contracting of certain types or amounts of government debt, or tax issues, to a vote of the electorate. Measures, particularly constitutional amendments, which are referred by legislatures, are the most common ballot propositions. The outcomes of such referenda are binding.

3. **Contingent and advisory referenda** are called at the will of the legislature. With respect to a contingent referendum, the legislature decides that a law it has passed will only take effect upon ratification by the voters. An advisory referendum is called to seek the opinion of the electorate. With respect to this type of referendum, the voters indicate their preference for general policy and the legislature can handle the statutory and constitutional steps needed to implement and administer that policy. However, the results of the advisory referendum are not binding on the legislature.

SECTION II: BACKGROUND

What is Permissible in Kansas

The Kansas Legislature has self-executing powers and, therefore, cannot currently delegate its decision-making authority to voters. There are, however, two exceptions.

1. The Legislature is required to hold referenda on issues involving amendments to the *Kansas Constitution*. Examples include referenda held in 1986 on liquor by the drink, the lottery, and parimutuel betting.

2. The Kansas Legislature is authorized pursuant to K.S.A. 25-3601 *et seq*. to delegate its decision-making authority to local units of government on certain local issues (bonds for local purposes, local tax increases etc.).

With those two exceptions, no other type of referendum is authorized. The *Kansas Constitution* provides no authority for voters to initiate either a law or a constitutional amendment, even if the initiated proposition would be subject to legislative modification and action (indirect initiative). Nor does the *Kansas Constitution* provide authority for the voters to initiate referenda to change or repeal statutes enacted by the Kansas Legislature or for the Legislature to refer legislation on statewide issues to the voters for their approval or disapproval.

A Survey of States' Uses of Initiatives and Referenda

The distribution and implementation of initiatives and referenda is highly heterogeneous throughout the country. This memorandum will focus solely on initiatives and referenda for state, and not local, issues. Twenty-six states currently provide some form of initiative or petition referendum. Twenty-three states and the District of Columbia authorize some type of initiative. Of that number, 15 states and the District of Columbia make provisions only for the direct form of initiative. Five states allow for the use of either the direct or indirect form of initiatives. Only three states -- Maine, Massachusetts, and Wyoming -- authorize the exclusive use of indirect initiatives.[3] With respect to the 23 states and District of Columbia that permit initiatives, all but Illinois and Florida provide for initiatives, called "statutory initiatives," which allow voters to propose laws and

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[3]The Wyoming Legislature is required to convene and adjourn after a petition has been submitted on an initiative but prior to an election at which the proposed measure would be voted upon. This would afford the Legislature an opportunity to take action on all issues subject to the initiative/referendum process. Some political scientists consider this type of initiative to be direct because there is no express requirement that the Legislature take action on the issue prior to its appearance on the ballot. Others consider it to be indirect because of the timing and specific reference to legislative session. In this memorandum it is considered indirect. Massachusetts is a less ambiguous example of a state which authorizes indirect initiatives. In that state, for example, a voter-initiated constitutional amendment can only appear on a ballot if the proposed amendment first receives an affirmative vote of one-fourth of the Legislature for two consecutive sessions prior to its submittal to the voters. (Magleby, page 44)

circulate petitions to get proposals on the ballot. Seventeen states (including Illinois and Florida) allow initiatives to amend their constitutions.[4]

All states which authorize initiatives, with the exception of Florida, authorize petition referenda. Twenty-five states and the District of Columbia authorize petition referenda. Eleven states which authorize petition referenda also authorize referenda generated by the Legislature. The states of Wisconsin, Connecticut, and New Jersey authorize legislatively-generated referenda, but not petition referenda. With the exception of Delaware, all states, including Kansas, authorize referenda for amendments to their respective constitutions. (See Attachment I for a map of the 50 states, indicating their use or nonuse of initiatives, referenda, and recall mechanisms. Attachment II lists mechanisms by state.)

Historical Background

Much has been written about the origins of initiatives and referenda. These mechanisms were first adopted in states where turn-of-the-century populist and progressive reformers viewed state and local lawmakers as politically and financially corrupt, controlled by political machines or beholden to special interests like railroads, banks, timber and mining interests, and private utility companies (Jost, page 466). For example, in California, initiatives were championed by reformers in 1911 as a means of breaking the hold of the Southern Pacific Railroad and other special interest groups over the state Legislature.

Attachment III lists all the states in which the initiative and referendum have been adopted. The first state to adopt the initiative was South Dakota in 1898. Through 1918, legislation or constitutional amendments to establish the initiative and referendum process had been approved by voters in 22 states. The states which added proposition mechanisms since World War I include: Alaska (1959), Florida (1968), Wyoming (1968), and Illinois (1970). The District of Columbia also adopted the initiative in 1977. Since 1970, no other states have adopted initiative or referendum mechanisms. In two states (Minnesota in 1980 and Rhode Island in 1986), voters defeated proposed constitutional amendments to authorize the use of initiatives and referenda. In no state with initiative and referendum authority has that authority ever been retracted once it has been granted.

Disposition of Measures in States and Subject Matters

What is the disposition of measures which have been included on ballots throughout the country? Since the inception of direct legislation in 1898 there have been more than 17,000 statewide propositions (Magleby, page 70). Of hundreds of initiative petitions which have been circulated in recent years, only about 20 percent have qualified for inclusion on the ballot (Cronin, page 205).

Propositions to appear most frequently on the ballot are legislatively-generated referenda to amend the constitution, followed in order of prevalence by: statutory initiatives; initiatives to amend the constitution; petition referenda; and legislatively-generated referenda to amend statutes (conversation with John Keast, Institute for Government and Politics, January 21, 1991). Between 1968 and 1978, 2,315 statewide propositions were placed on the ballot. About one-

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[4]Illinois allows for the use of referenda for constitutional amendments but only for structural and procedural subjects contained in Article IV of the *Illinois Constitution*.

third of all statutory and constitutional initiatives placed on the ballot from 1898 through 1979 period were approved by voters. Of those states with initiative authority, Nebraska has the lowest approval rate -- 7 percent. In only six states have 50 percent or more initiatives been approved. Oregon voters have decided more statewide initiatives than voters in any other state which authorize initiatives. The other five states with the heaviest usage are California, North Dakota, Colorado, Arizona, and Washington (Magleby, page 70). Nevada has perhaps one of the most restrictive provisions concerning constitutional initiatives; voters have to approve constitutional initiatives twice in successive elections before they can take effect (Schmidt, page 251).

Several thousand legislatively-generated measures have been placed on the ballot, and at least 60 percent of these have won voter approval. Attachment IV illustrates the voter approval rates for referenda generated by Legislatures (first three columns) and voter initiatives (last three columns) (Magleby, page 73). As this table indicates, voters are more likely to approve a statute or constitutional amendment proposed by a Legislature than one proposed through the initiative process (Magleby, page 72).

What types of subject matter most frequently appear on proposition ballots? A study of the topics of statutory initiatives and referenda in 12 states (1976-1980) disclosed that procedural questions (legislative arrangements, executive commissions, financial disclosure, and others), environmental questions and tax questions surfaced most often. These were followed by questions related to parimutuel betting, lottery, and gambling; vice regulation (*e.g.*, drinking, obscenity); financing other than taxes; and education (Zisk, pages 16-17). With respect to constitutional amendments initiated by voters in 23 states from 1976-1980, voters in every state considered amendments related to procedural topics and tax and revenue issues. Regulatory issues and environmental issues were likewise important, followed in order of prevalence by criminal justice issues; lottery, bingo, and gambling; and school issues (Zisk, pages 17-19).

SECTION III: INITIATIVES AND REFERENDA – ARGUMENTS PRO AND CON

The following arguments have been made for and against direct legislation. The terms "proponents" and "opponents" are used to reflect two contrasting positions. It should be noted, however, that in reality certain proponents might be critical of some aspects of the direct legislative process whereas certain opponents might see some virtue in aspects of the process. Finally, certain arguments presented below under one category will overlap with arguments presented under other categories.

Voters' Acceptance of Government

Proponents believe that the people, and not only their elected representatives, should have the direct power to make laws (Benenson, page 786). In this instance, direct democracy is a supplement to, and not a substitute for, the regular legislative process (State of Wisconsin LRB, page 18). Indeed, in those areas where direct democracy mechanisms are used, 98 or 99 percent of the laws are produced by legislators (Cronin, page 228). Moreover, the legitimacy of the government is enhanced when voters make a decision through the referendum or initiative process because they will more likely support and obey those laws in which they have been actively involved in creating (Wisconsin LRB, page 18). Finally, it is noted that courts, including the U.S. Supreme Court, have consistently ruled that these measures are permissible under the *United States Constitution* -- a fact that might cause the public to accept more readily the legitimacy of such mechanisms.

Opponents argue that giving this power to the people undermines the system of representative government (Benenson, page 786). The delicate system of checks and balances built into the legislative process is lost and those individuals who are most experienced in lawmaking are bypassed (Wisconsin LRB, page 19). In addition, the founders of the American republic consciously rejected direct democracy as extreme, vulnerable to demagoguery, and potentially anti-democratic (Magleby, page 181).

Voter Participation

Proponents contend that initiatives and referenda increase voter participation by stimulating public debate about issues and giving the public a direct role in deciding them (Jost, page 463). Although its findings are subject to debate, one study disclosed that in each of five election years (1976, 1978, 1980, 1982, and 1984), turnout was higher in states with initiatives on the ballot than it was in states without initiatives. In 1982, the peak year for initiatives in the period 1934 to 1987, turnout was one-sixth higher in states with initiatives on the ballot (Schmidt, page 27).[5]

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[5]A researcher from Sangamon University, David Everson, disputed this claim after he had compared election cycles over a 20-year period and focused on voter turnout in northern initiative states, as opposed to noninitiative states. Mr. Everson concluded that the differences in turnout were so small as to be insignificant (League of Women Voters -- hitherto referred to as LWV, pages 55-56).

Evidence cited by Thomas Cronin in his book *Direct Democracy* supports the opponents' position that electors vote on fewer state ballot issues than on candidate races on the same ballot (Cronin, pages 66-68). A study on direct democracy (1978-1982) in four states -- California, Massachusetts, Michigan, and Oregon -- disclosed that the opportunity for direct participation on major issues did not appear to have "galvanized" large numbers of voters (Zisk, page 250). Moreover, those who are sufficiently interested and informed to vote on these measures are not representative of the general public. They are usually more affluent and educated. The underrepresentation of persons with low education and income in decisions involving most direct democracy propositions is more marked than that of such individuals in other election decisions (*i.e.*, elections of candidates) (Magleby, page 108).

Voter Comprehension

Concerning an issue related to voter participation, **proponents** note that on most issues, especially well-publicized ones, voters better grasp the meaning of an issue on which they are asked to vote, and that they therefore act competently. Research on direct ballot voting suggests that: "long ballots do not seem to cause consistent patterns of either negative voting or a drop in participation. Nor do 'difficult' propositions (in substance or in wording) invariably evoke negative reactions" (Zisk, page 192). Supporters of the referendum and initiative process likewise point out that (to quote an observation from two analysts regarding the competence of Oregon voters in the 1950s): "Over the long period, the electorate is not likely to do anything more foolish than the legislature is likely to do. The legislature emerges from the people and clearly cannot differ too radically from it . . . both the legislature and the electorate have had and will have their periods of legislative 'sagacity' . . . both of them have 'erred' and will 'err'" (Cronin, page 89). "Like voters, legislators are not experts on every issue" (Cronin, page 210).

Opponents take the position that voters are frequently confused when confronted with issues that are complex and technical. Examples of such issues include an oil-refinery measure, a measure to create a Massachusetts Power Authority, and a measure to regulate electric utility charges and permit peak load pricing. One political scientist observed that evidence from scattered surveys and newspaper interviews indicated a very low degree of voter sophistication (except among a very small group of voters) about complex economic issues, such as tax caps, as well as about "style" issues, such as smoking regulation and gun control (Zisk, page 246). A survey of 508 registered voters in California (October 4-6, 1990) also disclosed that only 4 percent of those voters considered statewide ballot initiatives to be understandable. Another 17 percent said that most were understandable. The remaining 78 percent considered some or only a few of the propositions to be understandable to most voters (The Field Institute, October 24, 1990).

Less educated individuals from a disadvantaged socio-economic background experience difficulties in comprehending the issues underlying propositions on ballots (Benenson, page 787). As David Magleby, a political science professor at Brigham Young University, observed: "The politics of the initiative process is largely emotive rather than rational." According to Professor Magleby, who conducted a study on voter profiles, "people who are less educated or from lower income, more disadvantaged backgrounds are going to be much less likely to comprehend the process and effectively translate their policy views into their votes" (Benenson, page 787).

In addition, voter information pamphlets which are issued in nine states, while sometimes praised, have also been criticized for "impenetrable prose," class bias, and for not being widely read (Cronin, pages 80-82). A study conducted on the "readability" of voters' pamphlets

disclosed that descriptions of referred and initiated ballot measures were written on an 18th grade level (college plus two years) in California and Oregon and on a 15th grade level (three years of college) in Massachusetts and Rhode Island (Benenson, page 787).[6]

Furthermore, voters on propositions are most likely to think in the short-term and in their own self-interest. Finally, because ballot propositions are decided individually, they are frequently difficult to integrate into an overall assessment of popular will, or even a coherent public policy. Voters are not required to integrate their opinions on one issue with their opinions on others and could, on the one hand, vote to reduce taxes and, on the other, to increase salary levels (Magleby, page 183).

Information about Ballot Measures

Proponents argue that civic knowledge and pride will increase as people educate themselves about the issues so that they can responsibly exercise their power to make policy choices. The argument proceeds as follows: people will gather information from public news sources and discuss the political choices with their family, friends, and co-workers. Furthermore, such private discourses will produce more intelligent decisions on initiative and referendum questions (Wisconsin LRB, page 18). For instance, substantial news media coverage on initiatives concerning nuclear power (1976), taxes (1978-1986), and the nuclear weapons freeze (1982) raised voter awareness nationwide (Schmidt, page 29). In a study on media coverage, Professor Zisk noted that ballot question coverage by major regional newspapers in mostly large metropolitan areas was quite comprehensive during many campaigns, at least on controversial issues. Most of these newspapers carried extensive background features, articles supporting or opposing measures, news items on press conferences and rallies, and multiple editorials on legal issues (Zisk, page 247).

Opponents argue that, with respect to civic pride, states without direct democracy mechanisms have citizens whose pride matches those with such mechanisms. With respect to information sources, one study on Proposition 15 in California (1976) revealed that 46 percent of those who voted received their information from television advertising. This percentage exceeded that of newspapers (31 percent of voters) and voters' pamphlets (13 percent) (Magleby, page 132). Advertising has been used to confuse voters by relying heavily on emotionally loaded slogans which can be misleading and lead to policy based on appeals to emotions rather than rational argument. This is apparently true of advertising associated with both one-sided and two-sided high spending campaigns (Cronin, page 119). In addition, television and radio, unlike many newspapers, devote little time to news or editorial coverage of issues except for colorful and highly controversial events (Zisk, page 247). Finally, voters' pamphlets, which are touted by many advocates of direct democracy to be an objective means of educating voters on ballot issues, did not, at least in Michigan, create a markedly different kind of campaign or set of outcomes than would have been expected without the availability of such pamphlets (Zisk, page 246).

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[6] There seems to be consensus about the difficulty for most voters to understand state voters' pamphlets. See Betty Zisk, page 153 and David Magleby, pages 166-167.

Racial and Ethnic Minority Rights

An argument by **proponents** maintains that since 1900, when direct democracy procedures were enacted in several states, few measures that would have the effect of narrowing civil rights and liberties have been put before voters, and most have been defeated. On those occasions when limiting or narrowing measures have been approved, there is little evidence that state Legislatures would have acted differently and some evidence that state legislators or Legislatures actually encouraged the result (Cronin, page 92).

Opponents contend that a bias toward better educated voters of a higher socio-economic class and well-funded special interest groups (a minority of voters who are not representative of most of the population in this country) is inherent in direct democracy, which lacks the safety valves of the checks and balances of a governmental system. Racial and ethnic minorities are most likely to suffer the consequences of such bias. An example is a law prohibiting racial discrimination by realtors and owners of apartment houses and homes built with public assistance, which was passed by the California Legislature in the early 1960s. California's real estate interests, which had opposed the legislation, sought the repeal of the law with a heavily funded 1964 initiative campaign. The realtors won a two-to-one victory, with almost 96 percent of Californians voting on the measure (Cronin, page 94).

On a more philosophical note, the argument is made (akin to the one under the category of "voters' acceptance of government") that the practice of direct legislation runs counter to representative democracy envisioned by the founding fathers. It was intended that representative democracy minimize the impact of momentary and transitory majorities. Direct democracy does just the opposite. It elevates a momentary majority to a pre-eminent position, exacerbates the problem of factionalism, and in a real sense institutionalizes "mob rule" (Magleby, page 30).

Legislative Responsiveness and Systemic Flexibility

Proponents note that consumer and reform groups are forced into the initiative process, when it is available as a recourse, because of frequent defeats of bills they support which oppose a particular industry or threaten legislators' personal political interests (Jost, page 464). Moreover, there are some issues that defy compromise and that are very controversial and are unlikely to be resolved by Legislatures (Jost, page 465). Examples include the following: women's suffrage, which was approved in several western states via the initiative process; abolition of poll taxes; and in more recent times, nuclear power and tax reduction issues (Cronin, page 199). Legislatures also make faulty decisions that result in further amendments to enacted legislation. Indeed, one third of each new legislative session is spent amending legislation passed during previous sessions; courts also have thrown out as unconstitutional hundreds of measures passed by state and local Legislatures (Jost, page 473).

Opponents take the position that lawmakers can construct compromises between competing pieces of proposed legislation, whereas voters can only choose between "yes" or "no" when confronted with initiatives on the ballot. They further point out that institutions that require compromise make better laws (Jost, page 465). With respect to controversial legislation, the availability of direct legislation might actually encourage legislative inertia in that legislators know they can leave decisions on controversial issues to voters (Benenson, page 786). Alternatively and perhaps ironically, legislators may even resort to initiatives and referenda to bypass the legislative process, particularly if Legislatures have refused to act on their pet policies (Cronin, page 203).

Moreover, legislators are elected to look into the details of issues and have more information available to them than does the average citizen (Jost, page 465). Finally, the language of proposed laws can be amended during a legislative session, which it often is, but an initiative cannot be changed once it is on the ballot (Benenson, page 786-7).

Frequency of Use

Proponents claim that, even at peak use, the initiative is a relatively rare legal device; in fact, the electorate, through the initiative process, passes on average less than one state law per state in any given election year (Schmidt, page 39). Most efforts to qualify initiatives for the ballot fail; and voters reject approximately half or more of the initiatives (Jost, pages 463-4).

Opponents argue that initiatives are a tactic used too often and that it is too easy to get measures on the ballot (Jost, page 463). This is particularly the case in states which have low signature thresholds. The findings of one study disclosed that high signature thresholds will generally limit the number of initiatives qualifying for the ballot, and low thresholds will likely mean that greater numbers of initiatives will qualify (Magleby, page 42). For example, in North Dakota, where the signature threshold is 2 percent for statutory initiatives and petition referenda and 4 percent for constitutional initiatives, 67 initiative and petition referendum measures (more than in any other state authorizing one or more such mechanisms) have appeared on the ballot within the period, 1950-1980 (Magleby, page 43).

Special Interest Spending

Even assuming that, on occasion, well-financed special interest groups can affect voters' decisions, **proponents** argue that lobbyists also have potential to sway legislative decisions and that, when compared to nonlobbyists, they enjoy disproportionate access to the Legislature. In addition, according to one study, campaign spending could be judged a decisive factor in only about 23 or one-eighth of all campaigns. In commenting on this point, one author noted:

> Money, or the lack of it, is certainly a factor in the outcome of all Initiative campaigns, but other factors -- like the strength of initial public support for the Initiative, the credibility of opponent and proponent groups, and advertising strategy -- are usually more decisive than money alone (Schmidt, pages 35-36).

Initiatives can overcome well-financed industry campaigns and may sometimes offer the only way to overcome entrenched business lobbies. As examples, proponents point to the success of the tobacco tax measure on the California ballot in 1986, the passage of Proposition 103, the auto insurance rate rollback, in 1988 (Jost, page 464), and the failure of efforts to repeal and modify rent control laws in 1980 (Cronin, page 109).[7] Other examples include Michigan's mandatory bottle

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[7] One example, that of the 1980 proposal to limit local rent control in California, is discussed in detail in Betty Zisk's book (pages 117-118). This issue involved a one-sided campaign on behalf of a proposition favoring business interests. As Professor Zisk noted, supporters espousing business interests outspent opponents by 37:1, but the supporters lost decisively, in part because their campaign strategies backfired.

deposit initiative in 1976 and anti-nuclear initiatives in Montana in 1978 and in Oregon in 1980, all of which succeeded against lopsided spending to oppose such initiatives (Jost, page 467).

The counterargument by **opponents** is that special interests dominate the initiative process by using their superior financial resources to mount media campaigns that can defeat popular ideas on Election Day. Examples of "one-sided spending" which resulted in defeat of measures include the 1978 anti-smoking measure and the 1980 "Tax Big Oil" campaign, both in California. Another example is the expenditure of $2 million for a campaign waged in 1987 in Washington, D.C. against the mandatory bottle deposit initiative which was defeated by a 10 percentage point margin (Jost, page 464). Possession of considerable resources appears to carry most weight when "big money" opposes a poorly funded ballot measure, in which case the wealthier side has a 75 percent or better chance of prevailing (Cronin, page 109). This point is confirmed by Professor Zisk's study of 50 measures in four states. In 40 of the 50 measures (or 80 percent), the high-spending side won at the polls. This outcome occurred, for the most part, regardless of whether campaign spending exceeded $500,000 or was less than $50,000. Moreover, in 17 of 32 cases (1976-1980) where poll information was available for purposes of that study, voter preferences were reversed in the high-spending direction during the campaign. In all but two cases, this was enough to change the outcome (Zisk, page 108). In California in recent years, well financed "Vote No" campaigns have succeeded in defeating measures 80 to 90 percent of the time (Cronin, page 215).

State efforts to impose limitations on individual or corporate spending for campaigns for a given proposition have been struck down by the U.S. Supreme Court, as have state prohibitions against payments for signature gatherers (see Attachment V). With respect to unlimited campaign contributions, it is argued that "big money" could exercise a disproportionate amount of influence on an election. With respect to prohibitions against payment for signature gatherers, it is argued that, particularly in states like California, petition by paid professionals has become a profit-making big business; therefore, signatures should be gathered by volunteers (Cronin, page 242). Signature gathering firms usually charge a flat fee per signature and have become adept at qualifying almost any proposal for the ballot (Wisconsin LRB, page 20).[8] While they acknowledge that there has been a trend toward greater professionalism in ballot measure campaigns, proponents contend that this

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[8]Indeed, given the difficulty initiators of propositions have in reaching the required minimum threshold for signatures in California and other populous states, professional firms have become more instrumental in gathering signatures, thus displacing volunteer efforts. Moreover, the growth of these businesses has occurred simultaneously with a dramatic increase in the average cost of qualifying an initiative from $81,668 in the 1976 general election to between $780,000 and $1.1 million per initiative in all four elections (two primary and two general) in 1984 and 1986 (Berg and Holman, page 456). Well-financed sponsors can afford to use direct mailings to collect signatures. Prior to the 1978 general election in California, not more than 4 percent of all funds spent on qualifying ballot measures was expended for professional services. This percentage increased to 76 percent in 1978 and 91 percent in 1989 (Berg and Holman, page 459). However, one might argue, with some plausibility, that the expenses incurred in California to qualify measures would most likely not apply to Kansas. In a panel discussion on this and other issues, David Schmidt speculated: "The initiative industry has reached its full extent in California, but will probably be seen occasionally in some other states as well in the coming years. Still, I predict the grass roots initiatives will continue to be the norm except in states with the very highest petition requirements (Ohio and California)" (McGuigan, pages 109-110). This observation was echoed by the Secretary of State in Nebraska, Allen J. Beermann in a telephone conversation with staff on January 7, 1991.

is a reality for modern politics in general and likewise affects candidate races. However, this trend dilutes the "grass-roots" rationale for initiatives and referenda.

Finally, litigation involving voter initiatives offers a way for a well-financed opponent of an initiative to drain resources from a poorly financed initiative campaign. Many challenges in the courts relate to compliance with state requirements concerning signatures and subject matter ("Assessing the Initiative Process," page 25).

Popular Reaction to the Initiative Process

Proponents note that the initiative process enjoys popular support. A Gallop Organization survey conducted in 1987 found that two-thirds of the 1,009 persons surveyed believed that voters should be able to vote directly on some state and local laws. In California, a poll conducted by Common Cause and the University of Southern California's Institute of Politics and Government in 1985 found that 71 percent of those surveyed opposed elimination of the initiative system (Jost, page 470). An earlier poll conducted in 1979 by the Field Institute revealed that 85 percent of Californians considered initiative elections to be a good idea (Magleby, page 9).[9]

Other surveys and polls, however, point to a position taken by **opponents** who criticize direct democracy. For example, a poll by the Eagleton Institute of Politics at Rutgers University found that two-thirds or more of the respondents agreed that the job of making laws should be left to elected representatives, that many people would not be able to cast an informed vote, that many issues were too complicated for a yes or no vote, and that special interests would gain power through the initiative process by spending more money. In another survey conducted in California, it was disclosed that two-thirds of those responding believed elected representatives were better suited than voters to decide highly technical or legal policy matters. Only 27 percent viewed the voting public as better suited for this task (Magleby, pages 8-9).

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[9]A recent poll taken of 614 California adults (August, 1990) revealed that 66 percent of Californians feel that initiative elections are a good idea. While still a majority of Californians express this sentiment, it is definitely a decline from the earlier poll (The Field Institute, September 13, 1990).

SECTION IV: LEGISLATIVE POLICY DECISIONS

The first policy decision the Legislature needs to make is whether it wants to enact a concurrent resolution to amend the *Kansas Constitution* since referenda and initiatives are not presently authorized by the *Constitution*. This resolution must be adopted by at least two-thirds of the legislators in each chamber. As required by Section 1, Article 14 of the *Constitution*, this resolution must contain the proposed amendment to the *Constitution*. In addition to the proposed amendment and in accordance with Section 1, Article 14, the concurrent resolution must contain a title and a brief nontechnical statement expressing the intent or purpose of the proposition and the effect of a vote for and a vote against the proposition.

The proposed amendment may include general policy and authorize the Legislature to enact legislation to implement the policy. Alternatively, the resolution could be very specific in setting forth terms for implementation so that further legislation might not be needed. (This option is addressed further in No. 21, below.) Historically, the Kansas Legislature has chosen to adopt concurrent resolutions amending the *Constitution* which have set forth policy guidelines. In ensuing sessions, legislation generally has been enacted to address specific provisions. Although there have been numerous attempts to have resolutions on this issue adopted in Kansas, no resolution has ever been adopted to date by committees in both houses.[10]

Whether contained in the concurrent resolution or in ensuing legislation, certain issues must be addressed concerning implementation. The first policy issue (below) is perhaps the most important because it can affect the ensuing policy decision issues which deal with the process of qualifying measures and setting up a mechanism for voter response. Before these issues are raised, a few words about the initiative and referendum process may be in order.

In most states the process follows these steps. Proponents of a measure (initiative or petition referendum) file a copy of the proposal with the secretary of state or some other state official. The proposal is then given a title and a short description that is required to be on the petition. In some states, proponents are responsible for assigning titles and preparing summaries; in other states, these tasks fall to assigned agencies. Petitioners are then given a certain amount of time to collect signatures, which are in many states subject to validation and which are counted by a designated entity to ensure that the number of signatures meets specified threshold requirements. The petition is also certified by a designated entity before the proposal can appear on the ballot, usually in summarized form. Many states specify when an election for an initiative or referendum can be held, as well as the procedure to be used for contesting results. The list of decision points below is not exhaustive but it does attempt to highlight the major policy issues that will have to be addressed in drafting a resolution on initiatives or referenda, or subsequent legislation for the administration of the direct democracy process, if needed. Much of the information about states' practices and requirements in this section is derived from *The Book of the States 1990-1991 Edition*. The sources of the information compiled in *The Book of the States* are the various state election administration offices, which are most commonly part of secretary of state's offices. The information presented in this section is based on reports by states and, therefore, may not be a complete compilation of all state implementation activities with respect to initiatives and referenda.

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[10]H.C.R. 2, which was adopted in 1909 by the House and died in Senate Committee, would have authorized direct initiatives and referenda.

1. Measure to be Authorized. **The Legislature must decide what measure or measures it wishes to allow on the ballot. Does it want to authorize initiatives? If it does, should those initiatives pertain to changes in the *Kansas Constitution*, or statutes, or both? Should initiatives be direct or indirect or both? Does the Legislature want to authorize petition referenda, legislatively-generated referenda, or contingent or advisory referenda? Should the outcome of a proposition ballot election be binding on or only advisory to the Legislature?**

There are many different options to consider for the implementation of these mechanisms. In Kansas, for example, two of the most recent concurrent resolutions introduced on initiatives and referenda took very different approaches. 1989 H.C.R. 5022, which was referred to the House Federal and State Affairs Committee and died in Committee, would have authorized voters of the state to propose laws and amendments to the *Kansas Constitution* and enact or reject these proposals at the polls. This bill would have provided that the voters' actions take effect unless they were rejected by a majority of each body of the Legislature within a specified period of time during the following Legislative Session. By contrast, 1990 S.C.R. 1635, which was adopted by the Senate Elections Committee and died on General Orders, would have authorized voters to initiate proposals for amendments to the *Kansas Constitution* (only the Legislature can initiate such amendments at present). Unlike H.C.R. 5022, this resolution did not address statutory changes, nor did it grant the Legislature any authority to override voters' decisions at the polls.

Implications. Most of the debate revolves around what role, if any, a Legislature should have in the initiative and referendum process. Advocates of indirect initiatives or legislatively-generated referenda, which by definition are subject to some sort of legislative action, contend that the mechanisms allow an opportunity for hearings, legislative input, and possible elimination of drafting problems and resulting confusion. Five states authorize another procedure for legislative involvement. In the states of Maine, Massachusetts, Michigan, Nevada, and Washington, the Legislatures are authorized to place a substitute proposition on the referendum ballot whenever an initiative proposition appears on the ballot (Zimmerman, page 22). Moreover, in the case of initiatives, if the Legislature decides to adopt a proposal, the cost of an expensive ballot campaign would be avoided. Opponents argue that legislative involvement often results in delays which can reduce support for an initiative. Moreover, there is a concern that legislative activity could subvert the original intent of a measure.

Another decision needs to be made on whether the outcome of elections on initiative or referendum measures should be advisory or binding. For example, Illinois allows petitions for advisory questions of public policy to be submitted to voters of the entire state. These petitions must be signed by at least 10 percent of the registered voters in the state. Such public policy petitions are advisory to the Legislature. Massachusetts authorizes the Legislature to place "advice seeking" questions on the ballot for an opinion vote of the people. Such questions are nonbinding and require further action for implementation. An example of a measure of this type which appeared on the 1990 ballot was a question referred by the Legislature asking whether the people favor or oppose requiring radio and television broadcast outlets to give free and equal time to all

certified candidates for public office in the state. Wisconsin also authorizes advisory referenda. Two examples are a 1982 referendum regarding a reduction of and moratorium on nuclear weapons and a 1983 election regarding the location of a nuclear waste site. In support of advisory measures is David Magleby who notes: "The advantage of this approach is that the public can indicate its preference and the Legislature can handle the statutory or constitutional steps necessary for the implementation and administration of the policy" (Magleby, page 195). Voters would be encouraged to provide policy guidance but the Legislature would be responsible for drafting and formulating specific laws. An argument against this approach is that there is no assurance that the Legislature will implement desired legislation.

2. Subject Matter of Legislation. **The Legislature must decide what restrictions, if any, it wishes to impose on subject matters permissible for initiatives or referenda.** Most states that authorize petition referenda restrict the subject matter of legislation that may be referred to voters. Only Arkansas, Idaho, and Nevada do not have restrictions. Most states exempt emergency legislation and appropriations from referenda. In addition, slightly less than half the states which permit initiatives restrict the subject matter to be voted upon. The most common examples of such restrictions are that initiatives must cover only one subject matter and that they cannot concern the judiciary (Magleby, page 45).

Implications. If, on the one hand, the Legislature does not limit subject matters, petitioners will have great latitude in determining the types of issues to bring to the ballot. By restricting issues that may appear on the ballot, the Legislature preserves more control over the policy-making process. With respect to limiting ballot measures to one subject, voters would be placed less often in the position of deciding for or against certain measures, including some they may oppose along with some they support. (Admittedly, this problem also could occur even if a proposition is limited to one subject.) However, as Daniel H. Lowenstein, author of a legal journal article on ballot propositions, wrote about the single subject limitation, "it is impossible to conceive of a measure that could not be broken down in parts, which could in turn be regarded as separate subjects" (LWV, page 63).

3. Criteria for Signatures. To initiate legislation through the initiative or petition referendum process, citizens must demonstrate that the proposal has a certain minimal level of support among the electorate. Evidence of support must assume the form of signatures given by eligible voters.[11] The basis used by states for calculating the required number of signatures could be a prescribed percentage of: the state's total resident population; the total number of eligible voters; the

[11]Some states with indirect initiatives have a two-phase petition drive. The first phase involves gathering signatures to submit the proposal to the legislature. The second phase involves placing it on the ballot if the legislature fails to take action. In Massachusetts, Ohio, and Utah, additional signatures must be collected (part of the second phase) prior to placing a proposition on the ballot (Zimmerman, page 20).

number of votes cast in the immediately preceding general election; the number of votes cast in a designated election, either for governor or secretary of state; or the total number of votes cast for the office receiving the highest number of votes in the immediately preceding general election.

The Legislature needs to determine the basis for calculating required signatures and the minimum percentage of signatures required to qualify a measure for the ballot. The most common requirement for proposed constitutional initiatives is 10 percent of the votes cast in the most recent gubernatorial election, but it is 5-8 percent for statutory initiatives. However, the percentage requirement varies considerably among states with, at one end of the spectrum, only 2 percent of the voting-age resident population required for proposed statutory initiatives in North Dakota, and, at the other end of the spectrum, 15 percent of the number of total votes cast in the last general election for proposed statutory initiatives in Wyoming.

The most common requirement for the petition referendum is 5 percent. As with initiatives, states vary in their range of signature requirements with respect to referenda from 2 percent of the total population (North Dakota) to 15 percent of the total votes cast in the last general election (Wyoming).

In addition to determining the percentage of acceptable signatures and the type of election upon which such percentage is based, the Legislature might consider requiring signatures to be tied to geographic distribution criteria. At least nine states permitting the initiative and referendum require some form of geographic distribution for petition signatures. Massachusetts, for example, stipulates that no more than 25 percent of the signatures may come from any one county. Arizona requires that 5 percent of signatures come from 15 different counties. In Montana, for statutory initiative measures to qualify, signatures must be collected from five percent of the voters in at least a third of the state's legislative districts. Nebraska requires that a minimum of 5 percent of the electorate come from each of two-fifths of the counties in the state.

Implications. A signature threshold higher than 8 percent may restrict ballot access, particularly to grass-roots organizations without large funding sources. It is assumed that high signature thresholds serve to keep off the ballot those initiatives that are frivolous and lacking in wide appeal. In states with high thresholds those measures that make it onto the ballot are more likely to be acceptable to voters. However, in states where measures are allowed easier access to the ballot, voters have historically rejected a higher percentage of initiatives. The number of propositions submitted to voters can be expected to increase when a low signature threshold is adopted (Magleby, pages 42-44).

The type of election upon which to base the percentage threshold for signatures can likewise affect the number of measures which qualify for ballots. For example, an 8 percent threshold requirement based upon the last gubernatorial race might translate into a far larger number of required signatures than would the same threshold if it were based on the last secretary of state's race.

Finally, an argument in support of geographic requirements is that, in the absence of such requirements, more populated parts of a state could exercise a disproportionate amount of influence in the initiative or referendum process, one far exceeding the locality's representation in the state Legislature. An argument against such a requirement is that it makes the initiative and referendum more difficult and expensive to use (Cronin, page 236). It also may place a burden on certain low budget grass-root efforts (Zisk, page 262).

4. Number of Measures on the Ballot. **The Kansas Legislature may wish to limit the number of initiative and referendum measures that can appear on a ballot at any given election.** For example, a limit of three measures could be set and the secretary of state could be authorized to certify the first three valid petitions which are submitted within a specified period of time. Those measures which are submitted thereafter would be rendered null and void.

Implications. A limit on the number of measures that can appear on a ballot at any given election might reduce voter confusion and allow voters to focus more carefully on just a few issues. For example, one of the criticisms of Californians with the direct democracy process in that state is the number of initiatives on the ballot (The Field Institute, September 13, 1990). Arguments against this type of restriction are the following:

a. Some timely issues might be submitted too late to appear on the ballot and could be subject to a delay of one or two years. From the sponsors' perspective, the issue to be addressed by the proposed measure might become even more problematic and more difficult to resolve at a later time.

b. "Grass roots" organizations, which are not well financed, might be limited in their access to the process because better financed organizations could afford to hire signature collectors to gather the requisite number of signatures.

5. Signature Validation Procedures, Petition Certification. **The Kansas Legislature must first decide on an acceptable procedure for signature verification (designated verification entity, time frames, provisions, if any, for incomplete or unacceptable petitions) and for certification of petitions. In addition, the Kansas Legislature might want to consider a requirement for random sample surveys of collected signatures as a means of ensuring authentication of such signatures.** For example, California, Oregon, Missouri, and North Dakota are authorized to conduct random sample surveys of signatures for verification purposes. Oregon will do a random check of 10 percent of the signatures on a petition, followed by a second random check of 25 percent of signatures if there is a possibility that the number of valid signatures on a petition are insufficient.

With the exception of North Dakota, which does not register voters and which permits all citizens to sign initiative petitions, all states which authorize initiatives, referenda, or both stipulate that only registered voters may sign petitions to place

such measures on the ballot. To be counted as valid, signatures must be attested to by designated public officials. In most states the responsibility of signature verification falls to local officials, such as county clerks or county registrars who carry out their tasks under the general oversight of the secretary of state's office. However, in some states this responsibility is assigned to the secretary of state, sometimes in conjunction with another agency. Some states require a time frame within which signatures must be validated by the designated party and within which an incomplete or unacceptable petition may be completed after it has been filed. Moreover, most states designate some entity, usually the secretary of state, to certify a petition for ballot. Certification occurs when the required number of signatures for an initiative or referendum have been submitted by the filing deadline and are determined to be valid.

Implications. Requirements for validation procedures ensure, to the greatest extent feasible, that those individuals who sign petitions are registered to vote in the state in which the issue will appear on the ballot. However, validation procedures cost money and the more elaborate the procedure, the higher the cost. The time period allowed for validation is also a consideration. For example, a staff contact at the Secretary of State's office in Colorado reported that 21 days for signature verification places great pressure on the office to comply. In states with time limitations, such limitations range from 2 weeks in Illinois and Massachusetts to as many as 105 days in California. (California reports a range of 25 to 105 days allowable for verification.)

6. **Titles and Summaries-Petitions. The Kansas Legislature needs to determine whether it should require a title and summary for petitions on initiatives and referenda and, if such determination is affirmative, the entity or entities to be designated to write titles and summaries.**

In some states the petition initiators are allowed to title and describe their own proposals. However, most states require the organizers of the petition to file the complete text of the proposal with the secretary of state or other designated official. After that submittal, the proposal is referred to the attorney general, secretary of state, or other state officer who gives it an official title and writes a summary. Nineteen states report requirements for the imposition of titles for initiatives. In at least nine states the title is determined solely by the attorney general; the remaining ten states authorize the proponents of the initiatives, other agencies, or more than one agency (sometimes in conjunction with the attorney general) to determine titles for the petition. Eighteen states report designating an entity or entities to write the summary of the initiative proposition for the petition. In at least ten states, the summary is the exclusive responsibility of the attorney general; in the remaining states, this responsibility is delegated to others or to the attorney general in conjunction with others.

Title and summary requirements for petitions on referenda are similar to those for initiatives, although the secretary of state's office appears to play a much greater role with respect to referenda. Both the offices of the secretary of state and attorney general are most frequently responsible for titles and summaries.

Implications. If petition initiators are assigned responsibilities for determining titles and writing summaries, they could conceivably consider it in their best interest to mislead the public about their intentions in an effort to garner more support. However, if these responsibilities are delegated to other parties, inaccuracies might result. An example is a title given by California's Attorney General in 1972 to an initiative related to pollution which resulted in misleading voters (Magleby, page 54).

7. Voters' Handbooks. **The Kansas Legislature might want to consider a requirement for the distribution of voters' handbooks to address any and all direct democracy measures proposed by the Legislature. If the Legislature decides to require the dissemination of handbooks, a subsequent decision needs to be made on mechanisms to determine its content.**

The states of Arizona, California, Idaho, Illinois, Massachusetts, Montana, North Dakota, Oregon, and Washington require the distribution of voters' handbooks which contain a description of the propositions on the ballot, as well as arguments in support of and in opposition to such propositions.[12] In California and Oregon, for example, handbooks even contain an estimated cost to the state for enforcing given propositions.

Implications. By requiring such handbooks all eligible voters are ensured, at least in theory, of receiving information about both sides of the issues appearing on the ballot. As has been discussed in Section III, the arguments against requirements for handbooks relate to their readability level and their relatively low level of use. In addition, handbooks can be very expensive. In Oregon, the cost of printing and disseminating the most recent batch of handbooks exceeded $800,000.

8. Time Period Allowed for Petition Circulation. **The Kansas Legislature needs to determine if time requirements should be imposed on sponsors for gathering signatures. If it is determined that such requirements be needed, should the time frames vary with respect to the kind of measures adopted?**

Fifteen states report requiring a maximum time period within which petitions on initiatives may be circulated for signatures prior to being filed with the secretary of state or, in the case of two states, the lieutenant governor. The petition circulation period begins when petition forms have been approved and provided to sponsors (those individuals granted permission to circulate a petition and assume responsibility for the validity of each signature on a given petition). In two states (Nevada and Washington) that limitation varies according to the type of initiative. For the most part, states authorize sponsors one year or up to two years to gather the requisite number of signatures. The shortest period of time is 90 days (Oklahoma), followed by six months (Colorado and Washington, with

[12]Other states, such as Maine, issue voters' handbooks but only a limited number are printed and distributed upon request.

respect to direct initiatives, only). With respect to referenda, 12 states report requirements for time period limitations. The shortest period of time is 90 days after enactment of a bill (California, Massachusetts, and South Dakota) and, in the case of three states (Alaska, Arizona, and Washington) the time frame must be within 90 days after their respective legislative sessions.

Implications. By limiting the number of days for petition circulation to a short period of time (*i.e.*, for initiatives, 90 days or six months) issues might be more timely to voters. However, a longer petition circulation period might assist grass-roots efforts which are not so well financed in gathering support for their proposals.

9. Removal of Signatures from Petition. **The Kansas Legislature needs to determine if it wants to take a position on authorizing or, conversely, prohibiting the removal of signatures from petitions.** With respect to initiatives, 11 states report authorizing the removal of signatures from petitions; one (Oklahoma) does not. With respect to referenda, eight states report authorizing the removal of signatures from petitions; three states (Oklahoma, Oregon, and South Dakota) do not have such authorization. In all states with this authorization, individuals who wish to remove their names from petition would need to make that request in writing to the official with whom the petition is filed.

Implications. On the one hand, authorization for removal of signatures from petitions permits voters who did not understand a proposition when they signed it to remove their signatures if they later realize that the proposition does not reflect their views. On the other hand, such a provision could make the process of signature counting and validation more cumbersome and costly.

10. Time Period Required between Filing of Petition and Election. **The Kansas Legislature needs to determine if a requirement should be imposed for the minimum period of time a completed petition for initiative should be filed prior to election. With respect to referenda, a determination needs to be made which would tie submittal of a petition to a specified number of days after a legislative session has ended or to a specified number of days prior to a general election.**

At least 18 states specify how many days are allowed for the filing of a completed petition for an initiative prior to an election on that proposition. In most states, the requirement is three to four months, with the shortest period being 60 days (Wyoming) and the longest period being one year (South Dakota, initiatives related to amending the *Constitution*). Requirements for referenda are different; most states (15) reporting authority to hold referenda require petitions to be filed within 90 days after their respective legislative sessions have ended. Three states condition filing upon a set period of time prior to the next general election.

Implications. A longer time period prior to an election might facilitate matters for state agencies charged with implementation of the validation and review processes. According to a staff person at the Secretary of State's Office in Colorado, the requirement to have a completed petition filed three months prior

to the election is insufficient. However, a shorter time period serves to expedite the process and ensure the timeliness of the proposition under consideration.

11. Penalty for Falsifying Petitions. **The Kansas Legislature needs to decide whether to impose penalties for petition falsification.** Eleven states report the imposition of penalities with respect to initiatives for petition falsification. These penalties vary considerably. They are considered misdemeanors in three states, a class IV felony in one state, and fines coupled with jail terms in seven states. The degree of severity of penalties ranges from, on the one hand, $500 and a six months jail term in Montana to, on the other hand, $10,000 and one to ten years imprisonment in Nevada. At least 12 states impose penalties with respect to referenda for petition falsification. In most states, the same penalties apply to falsification of petitions for referenda as they do to falsification of petitions for initiatives.

Implications. Assuming that such penalties function as a deterrent, they might prevent sponsors of petitions from misrepresenting or making false statements about their petitions and for filing petitions known to contain false signatures.

12. Deposits for Circulating Petitions. **The Kansas Legislature might consider the need for and desirability of requiring fee deposits.** Three states report that they require deposits after permission to circulate a petition has been granted. Alaska and Wyoming require a $100 fee for petitions on both referenda and initiatives and California requires a $200 fee for initiatives. The filing fee is refunded when the completed petition has been filed correctly.

Implications. A filing fee might discourage frivolous or publicity-seeking petitions. However, a counterargument is that it makes it more costly for petition initiators to get an issue on the ballot.

13. Reports on Financial Contributions. **The Kansas Legislature should make a determination as to the need for disclosure requirements. In doing so, consideration might be given to requirements which address the timing for such disclosures (*i.e.*, a sufficient fixed time period prior to the election; final disclosures after the election; and immediate disclosures for large contributions). The Legislature might decide to extend the Kansas Campaign Finance Laws (K.S.A. 25-4180 *et seq.*) to campaigns on these measures.**

In the vast majority of states, a list of financial contributors and the amount of their contributions must be submitted to the specified state officer with whom the petition for an initiative or a referendum is filed. With respect to initiatives, 20 states report that they require disclosure of financial contributions; two states (Arkansas and Utah) do not have reporting requirements. Nevada requires reports only on expenditures made in excess of $500 for the purpose of advocating the passage or defeat of a measure. In North Dakota, reports are only required if the amount is over $100 in aggregate for a calendar year. With

respect to referenda, 19 states report that they require financial disclosure and two (Arkansas and Utah) do not.

Implications. In support of disclosure, arguments can be made that the public has the right to know who is supporting and who is opposing a ballot measure. The public has the right to know the size and source of income for a measure so that excessive influence of money on election outcomes can be prevented (Cronin, pages 238-239). The counterargument to disclosure requirements is that some of the heaviest spending occurs immediately prior to or after the election which is too late to have much impact on voter decisions. In addition, even when extremely high levels of spending have been publicized, as in the multimillion dollar campaigns involving tobacco, bottling, or gun manufacturers, there has been, for the most part, no major public reaction to such spending (Zisk, pages 262-3).

14. **Drafting Advice on Language for Proposition. The Legislature may wish to assign a board or agency the responsibility of reviewing the language of measures prior to their placement on the ballot. This could be either a binding or nonbinding form of assistance.**

Some states, such as Colorado, provide a review board to examine draft language and eliminate language which could prove misleading, confusing, or potentially unconstitutional. The attorney general's office or a legislative counsel or reference service might likewise offer that service.

Implications. In support of binding or nonbinding arrangements for assistance is the argument that poor drafting might be avoided. This could reduce the level of confusion voters might experience at the polls and the number of contestations of measures, as well as prevent litigation and court intervention after the election (Cronin, pages 234-235). A survey of 614 California adults, conducted by the Field Institute in August, 1990, disclosed that by a 69 percent to 23 percent ratio, the public favored the idea of requiring sponsors to first submit their initiative to the Secretary of State for review and comment. The Secretary would check conformity with present state law and evaluate the clarity of the initiative's language before a petition for that measure could be circulated for signatures (The Field Institute, September 13, 1990). The opposing position, particularly if a drafting arrangement is binding, is that it could be construed as advance censorship (Zisk, page 259). Moreover, it is argued that a potential conflict of interest exists, particularly if the attorney general assumes this responsibility. Apparently even more objectionable to some opponents is Massachusetts' practice of giving its attorney general the power to seek judicial review of an initiative before a vote (Jost, page 471). Opponents of drafting advice requirements also argue that initiatives are generally not that poorly written because sponsors have an incentive to draft them well so that the opposition does not use minor language flaws in the proposition as campaign ammunition. As one writer reported, of 40 state-level initiatives passed by voters in 1980-1982, only two were ruled wholly unconstitutional, and only one was ruled unconstitutional in part (Schmidt, page 34).

15. Conditions for Approval of Initiatives and Referenda. **The Kansas Legislature needs to decide if conditions other than that of a majority affirmative vote should be the basis for approval of initiatives and referenda.**

As a condition for passage, propositions in six states are subject to certain requirements in addition to approval by a majority of those voting on a proposition. In Massachusetts, Nebraska, and Washington, not only must there be more affirmative votes than negative votes but the affirmative votes cannot be less than 30 percent, 35 percent, and 33 percent, respectively, of those who turn out to vote. Idaho requires a majority of the number of votes cast for governor. Maine requires an affirmative vote of a majority of those who turn out. Wyoming requires an affirmative vote equal to at least 50 percent of the total vote in the preceding general election (Magleby, page 46).

Implications. Such requirements ensure that decisions are legitimate expressions of the popular will, at least to the greatest extent feasible. The counterargument may be made that in most candidate elections in the United States, only a plurality is needed to win an election. Elected officials may win with less than 50 percent of the vote if they receive more votes than their opponents. Therefore, additional requirements to approval by majority vote for propositions may seem excessive.

16. Ballot Titles and Summaries. **The Kansas Legislature needs to determine whether it should require a title and summary on ballots for initiative and referendum measures and, if such determination is affirmative, the entity or entities to be designated to assume those responsibilities.**

In some states the ballot titles and summaries will differ from those on petitions. In addition, in a few states, parties involved in making determinations on ballot titles and summaries will differ from those assigned to such responsibilities for petitions. An example is Nevada, where the proponent is responsible for the title and summary for the petition on an initiative but those responsibilities are assigned to the Secretary of State and Attorney General for purposes of the ballot. As with petitions, responsibilities for ballot titles and summaries seem to be the domain of the secretary of state and attorney general in the majority of states.

Implications. Establishing requirements for titles and summaries on ballots have the same implications as those of establishing requirements for petitions. (Also see Section IV, No. 6.)

17. Timing of Elections. **The Kansas Legislature might wish to make a determination on when elections on initiative and referendum measures should be held.** Most states report having requirements for when elections are to be held on initiative and referendum measures. Eighteen states report requirements for initiatives to be voted upon at general elections (in two states general elections are one option of two or more permissible types of elections). In four of those states, certain conditions govern that requirement. The other states with

such requirements for elections are either not specific about the type of election but use instead time criteria (next biennial election -- Colorado; or the first statewide election at least 120 days after a legislative session -- Alaska) or allow for elections other than general elections. The majority of states report requirements for referenda to be voted on at general elections. Fifteen states require that the vote take place on referenda exclusively at general elections. In particular, petition referendum propositions appear only on the general election ballot (Zimmerman, page 20). The option for special elections exists in five states with other requirements governing the policies of two states.

Implications. Confining votes on these measures to general elections would: (a) save money if special elections are not held; and (b) result in a higher voter turnout. The counterargument is that general elections tend to have many issues on the ballot and propositions therefore might get "short shrift." For example, in such states as California a restriction to hold only general elections for these measures would be totally unworkable (Jost, pages 470-471).

18. Disposition of Approved Initiatives. **The Kansas Legislature needs to decide what policy, if any, it wishes to adopt concerning the disposition of approved initiatives, the refiling of rejected initiatives, and the number of days which are required to elapse (if any) before a measure can take effect after voter approval.**

Many states have implemented policies concerning the disposition of initiatives after voter approval. Ten states report authorization for approved initiatives to be amended by the Legislature after they take effect.[13] Two states impose conditions. In North Dakota the amendment must be made within seven years of approval and in Washington, measures cannot be amended for at least two years after voter approval. At least 18 states expressly prohibit a gubernatorial veto of an approved initiative. Only Massachusetts reports authorization for vetoes. At least 11 states expressly authorize repeal by the Legislature of an approved initiative although four of those states impose time constraints. Four states expressly prohibit repeal by the Legislature of voter-initiated laws. Finally, 17 states report that refiling of defeated initiatives is permissible, although four of those states condition that refiling upon some type of time limitation.

States also vary with respect to the effective dates of approved initiative or referendum measures. For example, in Arizona and Oklahoma, initiative and referendum measures are reported to take effect immediately after voter approval. Other states require that a certain number of days elapse between the election and the date an approved measure takes effect. This ranges from only one day in South Dakota to as many as 90 days for initiative measures in Wyoming.

Implications. On the one hand, restrictions for and prohibitions against legislative amendments and authorization for gubernatorial vetoes and repeals by

[13]Certain states, such as California, which report authorization for legislative amendments to initiatives restrict such amendments to statutory initiatives.

the Legislature might be considered inappropriate on the premise that a direct vote of the people is the most accurate expression of public will and should not be tampered with by the Legislature and the executive branch. On the other hand, such restrictions or prohibitions reduce potential for checks and balances. If there are problems with an initiative, it might be very difficult to address them. For example, in some states, voters might have to be called upon to make changes, however minor, to statutes adopted by initiative years earlier (LWV, page 71). The argument against unlimited ability to reinitiate defeated proposals is that voters may have recently rejected a proposition and there is no reason to believe that the outcome will change within a short period of time. An argument for granting such authority is that sponsors should be allowed the opportunity to amend a proposed measure to respond to objections raised in an earlier campaign on the same or a similar proposal.

19. Contestation of Election Results on Referenda. **The Kansas Legislature should consider whether to specify a time period within which election results can be contested.** Fourteen states report the number of days allowed for individuals to contest the results of a referendum vote. The number of days permitted for contestation after a given election vary from as few as two days (Michigan) to as many as 60 days (Arkansas). Of the states which set time limits, seven require that the election be contested within ten or fewer days and the other half require election results to be contested within 15 days (one state), 30 days (three states), 40 days (two states), and 60 days (one state). In Alaska, an individual has five days to request recount with appeal to the court within five days after recount.

Implications. Electoral results should not be contested after too much time has elapsed and a measure has been implemented because if there is a change in outcome, it might be cumbersome and costly to halt program implementation.

20. Requirements for Hearings. **The Kansas Legislature might consider requiring legislative hearings on direct initiative proposals.** Indirect initiatives involve legislative input but if the Kansas Legislature opts for direct initiatives, it might require legislative hearings on all ballot measures once petitions for them get the necessary number of valid signatures. In California, for example, efforts have been made in recent years to hold hearings (in fact, the California Elections Code requires that such hearings be held), but these efforts, according to some observers, have not lived up to expectations (Cronin, page 237; LWV, page 37).

Implications. An argument in support of requirements for hearings is that the Legislature could explore the arguments in support of or against the measure under consideration, the fiscal implications of the measure, and its potential impact on policies and laws already in effect. Hearings could also play a useful educational role, assuming that they are reported in the media. A counterargument is that legislative hearings on a measure may delay the referendum process and might not be taken very seriously by the Legislature, especially if the Legislature is not authorized to approve, amend, or reject the initiative.

21. **Constitutional Provisions for Initiative and Referendum. The Kansas Legislature needs to decide whether constitutional provisions for these measures should provide a bare framework or whether they should be self-executing and sufficiently detailed to allow for implementation without additional statutory provisions.**

Ten states were reviewed: Alaska, Arizona, Arkansas, California, Colorado, Florida, Maine, Nebraska, Oklahoma, and Oregon. Of those states, three (Florida, Nebraska, and Oklahoma) have constitutions which contain only the most basic provisions for initiative and referendum. However, all ten states have enacted at least some statutory provisions relating to initiative and referendum. Four of the states (Arizona, Arkansas, Colorado, and Nebraska) have constitutional provisions stating that they are self-executing.[14] All states but one (Arizona) authorize supplementing legislation. In addition, three other states (Alaska, California, and Oklahoma), which are not self-executing, authorize enactment of additional legislation.

The constitutions of the ten states researched have in common certain features:

a. all contain the required number of petition signatures, a deadline for filing the petition, and the effective date of the initiative and referendum measure;

b. with the exception of Florida, all states deal with the question of whether initiative or referendum measures are subject to veto, amendment, or repeal;

c. six states (Alaska, Arizona, Arkansas, California, Nebraska, and Oklahoma) contain exceptions or limits as to subject matter, or specify that there are none; and

d. five states (Arizona, Arkansas, California, Maine, and Nebraska) specify the method of resolving conflicting provisions adopted by initiative or referendum.

Implications. On the one hand, if state constitutional provisions contain only a bare framework, time would be allowed for interim review by the Legislature prior to enactment of statutory provisions governing most aspects of implementation. On the other hand, self-executing constitutional provisions may expedite implementation of the initiative and referendum processes.

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[14]The term "self-executing" means that the constitutional amendment authorizing initiative or referendum mechanisms would take effect, if approved by voters, even if the Legislature fails to pass implementing legislation. Apparently, the Legislature did not pass implementing legislation in Idaho. Because there was no self-executing provision in that state's constitution, no initiatives were placed on the ballot for 25 years (Schmidt[a], page 13).

SECTION V: FISCAL IMPACTS OF IMPLEMENTATION IN OTHER STATES

This section briefly summarizes the implementation procedures for initiatives and referenda in the states of Oklahoma, Nebraska, Oregon, Colorado, and Maine. The fiscal impacts of implementation of these mechanisms also are addressed. Fiscal impacts can vary considerably within a state from one fiscal year to another depending upon the number of ballot measures, the length of a proposition's text, the number of challenges regarding a ballot measure, and other factors. The states were selected because they present different implementation schemes and because three of the states are contiguous to Kansas. These states also were chosen because, unlike more notorious examples as California and Massachusetts, they have smaller populations and some significant rural populations.

1. Oklahoma

In Oklahoma, both laws and constitutional amendments can be initiated by voters. In addition, laws can be referred to the voters either by petition or by the Legislature. The basis used for signatures for initiatives and petition referenda is the total votes for office receiving the greatest number of votes cast in the last general election. Percentage thresholds are: for constitutional initiatives, 15 percent; for statutory initiatives, 8 percent; and for petition referenda, 5 percent.

All signatures necessary for an initiative petition must be gathered within 90 days from the date of filing an approved and accepted ballot title with the Secretary of State. A petition referring legislation to the voters must be filed with the Secretary of State within 90 days after adjournment of the Legislature. The Secretary of State conducts a preliminary review of the signatures to "weed out" nonsignatures or signatures from other states. There is no signature validation procedure unless the validity of signatures is called into question. In that case, the validation procedure would be undertaken by the Oklahoma Supreme Court. The Supreme Court counts the signatures to ensure that the number of signatures meets the required percentage threshold. The Supreme Court directs the Secretary of State to publish, within at least one newspaper of general circulation in the state, a notice of filing and instructions for the procedures to be followed in cases of protest.

Before a measure can appear on the ballot, a ballot title must be submitted to the Attorney General for final review. (The sponsors of a measure suggest the ballot titles.) This title is subject to appeal to the Supreme Court. Once a decision has been made on the title, the Secretary of State notifies the Governor who, in turn, issues a proclamation which describes the measure and the date on which the vote is to take place (this can be at a special election). The Secretary of State must publish once in two newspapers of opposite political persuasion issued in each county (if there are two such newspapers in each county) a copy of all ballot measures and an explanation of how to vote for or against ballot measures.

The Governor notifies the State Election Board which is responsible for arranging the election (general or special). The Board also is required to keep a record of all election returns.

In the past ten years, six or seven special elections were held on ballot issues. The cost of holding a special election in Oklahoma is approximately $675,000.[15] Other identifiable costs are those incurred by the Secretary of State in determining the sufficiency of signatures on a petition and in publishing notices about the propositions, as required by law. In particular, the requirement to publish notices in two papers with opposing political persuasions in each county (there are 77 counties) has resulted in expenditures of $40,000 related to four initiatives for the first half of FY 1991. (This is apparently an atypical year; ballot activity is usually less hectic. Moreover, the Legislature appropriated only $10,000 for this purpose.) Costs incurred by the Secretary of State for counting signatures for "weeding" purposes have totaled in FY 1991 over $3,000 to date. The Supreme Court and Attorney General also incur costs but these are not easily identifiable. The Supreme Court uses existing staff to count or, if needed, validate signatures, hear protests against the measures, challenge petitions, and other matters. The Attorney General reviews ballot titles and sometimes evaluates the wording of questions on propositions. (Contact: Kathy Jekel, Secretary of State; Lans Ward, State Election Board; Howard Conyers, Courts)

2. Nebraska

Authorized measures include direct constitutional and statutory initiatives and petition referenda. The basis used for signatures for the referendum is total votes cast for governor at the last election. For initiatives it is eligible voters. Percentage thresholds are: for constitutional initiatives, 10 percent; for statutory initiatives, 7 percent; and for referenda, 5 percent. There also is a geographical restriction that 5 percent of votes must be received for each measure from two-fifth or 38 of all 93 counties.

Petitioners are required to file copies of signed petition forms with the Secretary of State. Validation of signatures is primarily the responsibility of county clerks and election commissioners who must compare all the signatures on the petition with voter registration records and certify them. The Secretary of State totals the valid signatures and determines if they are sufficient to satisfy the signature threshold requirements. If the requirements have been met, the Secretary of State certifies the petition. The Attorney General establishes the ballot title, which is subject to appeal, and also prepares a summary for each measure. The Secretary of State places the measure on the general election ballot. (Initiative and referendum measures can be voted on only at general elections.) Initiative petitions are filed with the Secretary of State not less than four months prior to a general election. Petitions invoking referenda are filed with the Secretary of State within 90 days after adjournment of the Legislature, which had acted upon the referred measure.

Immediately preceding any general election at which a ballot measure is to be submitted to voters, the Secretary of State publishes in all legal newspapers in the state once each week for three weeks a copy of a title and complete text for each measure.

In contrast to Oklahoma, Nebraska delegates counting and validation of signatures on petitions to counties. In addition, counties print their own ballots. These costs are not readily

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[15] In Kansas, the Secretary of State estimates that it would cost $120,000- $170,000 to add to the ballot a proposal to amend the *Kansas Constitution*, authorizing initiative and referendum measures in the state, if that proposal is voted upon at the presidential primary election in April, 1992 and if the proposed constitutional amendment can be written on the same ballot as the other measures. If a special election is held for this purpose, however, it would be much more expensive.

identifiable but are covered by the counties. For its administrative activities, the Secretary of State expends approximately $5,000 to $7,000 in preparation for an election. In addition, the Secretary of State expends approximately $200,000 every other year to publish titles and texts of ballot measures in 220 legal newspapers throughout the state over a period of three weeks. According to the Secretary of State, FY 1990 was unusual because there were seven measures (including a very lengthy one) on the ballot[16] and newspaper expenditures totaled approximately $600,000.

The Attorney General also expends several hundred dollars to determine titles and prepare summaries. (Contact: Allen J. Beermann, Secretary of State)

3. Oregon

In Oregon, both laws and constitutional amendments can be initiated by the voters. Laws can be referred to the voters either by petition or by the Legislature. The basis for signatures used for initiatives and referenda is the total votes cast in the last election for governor. The percentage thresholds for signatures are: for constitutional initiatives, 8 percent; for statutory initiatives, 6 percent; and for petition referenda, 4 percent.

Oregon requires petitioners to file a prospective petition for a state measure with the Secretary of State, including a statement declaring whether the signature gatherers are to be paid for their services. Once the prospective petition has been filed with the Secretary of State, the Secretary authorizes the circulation of another petition for signatures. An initiative petition must be filed with the Secretary of State not less than four months before an election on the proposed measure. A referendum petition must be filed with the Secretary of State not more than 90 days after the end of the session during which the act is passed. The Secretary of State also sends two copies of the approved prospective petition to the Attorney General who provides a draft title for the measure. (With respect to referred measures, the Legislature may prepare ballot titles.) Ballot titles are subject to appeal to the Oregon Supreme Court.

Once the Secretary of State receives a copy of the ballot title, the Secretary provides a statewide notice of the measure and requests written comments. County clerks are responsible for verifying signatures with voter registration records and notifying the Secretary of State of the results. The Secretary of State then processes petitions using a statistical sampling technique and determines whether the required number of signatures have been submitted to meet the threshold requirements. Another responsibility of the Secretary is that of preparing voters' pamphlets. As a means of informing the public about a measure, the Secretary is authorized to supplement the use of these pamphlets with radio and television.

All ballot measures are voted upon at a regular biennial election unless the Legislative Assembly orders another date.

The cost of implementing the process, at least with respect to signature verification and providing information, is higher in Oregon than in many other states. This is in large part due to the

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[16]The Secretary of State's observation appears to be confirmed by the historic use of these measures in Nebraska. According to David Schmidt, "Nebraskans have been infrequent Initiatives users, placing 27 such measures on state ballots in 70 years - an average of less than one per election." (page 250)

high level of ballot activity in the state. Historically, Oregon has held records for the greatest aggregate number of statewide initiatives (244 from 1902 to 1990, 92 of which have been adopted). Since 1902, voters in Oregon have challenged laws adopted by the Legislature 50 times through petition referenda. Seventeen of the referred measures have been adopted. In 1990, 11 initiatives and two referenda appeared on the ballot.

The Secretary of State has expenditures for: developing forms for ballots; writing manuals for prospective petitioners on formulating initiatives; drafting ballot titles (this is the responsibility of the Attorney General but the Secretary of State pays that office $100 per hour for the service); making public announcements and issuing news releases about measures; payments to courts and for attorney fees if a measure is challenged, and preparing the voters' handbook. It is estimated that manuals on how the process works and forms each cost $3 for printing alone. Processing costs associated with prospective and completed petitions are estimated at $1,000 for the biennium, FY 1990 and FY 1991.[17] The cost of printing and disseminating the most recent batch of voters' handbooks was $813,160. They were disseminated to 1,402,000 households at a cost to the state of $.58 each. The state recouped slightly more than 10 percent of total expenditures from candidates and individuals who submitted arguments in favor of or in opposition to a measure, for inclusion in the voters' handbook. Three existing staff positions (one manager, one public service representative, and one clerical support staff) devote a portion of their time to responsibilities associated with initiatives and referenda. (Contact: Dorothy Pick, Secretary of State's Office)

4. Colorado

Colorado authorizes direct statutory and constitutional initiatives, petition referenda, and legislatively-generated referenda. The basis for signatures for initiatives and referenda is the total number of votes cast for the Secretary of State. The percentage threshold is 5 percent for both types of initiatives and petition referenda.

Initiative petitions are filed with the Secretary of State at least three months prior to the next biennial election. Petitions for referenda are filed with the Secretary of State not more than 90 days after the adjournment of the Session during which the bill was enacted. Petition sponsors are required to file with the Secretary of State the names and addresses of all circulators who are paid to circulate any section of the petition. An original draft of the text of the proposed constitutional amendment or law is submitted to the Legislative Council and the Office of Legislative Legal Services for review and comment. These comments, which are not binding on sponsors of the measure, are rendered to proponents no later than two weeks after submission of an original draft. The ballot title is determined after comments have been rendered.

The Secretary of State then convenes a board composed of the Secretary of State, the Attorney General, and the Director of the Office of Legislative Legal Services or designee to determine a ballot title, formulate a submission clause, and prepare a summary, which contains an estimate of the fiscal impact with an explanation of that impact. Provisions are included in the statutes for hearings, appeals, and rehearings of titles, submission clauses, and summaries. The

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[17] This estimate is calculated upon 100 hours of staff time at $10 per hour. It includes staff time involved after the prospective petition has been filed but not staff time prior to the filing of the prospective petition. It does not include staff time outside the Secretary of State's office, nor costs associated with postage and photocopying for mailings or inquiries.

Secretary of State has ultimate responsibility for both the verification of signatures and the certification that the number of signatures are sufficient to meet the signature threshold requirements.

The fiscal impact of implementation of the initiative and referendum process has been estimated to date at $350,000 in FY 1991. There were five issues on the ballot in November, 1990 (three initiatives and two legislatively-generated referenda). The major expense incurred by the Secretary of State was for publications to notify the public about the propositions ($250,000). The Secretary of State also hired approximately 20 temporary personnel (working two shifts per day for 21 days) to verify all signatures at a rate of $6.20 per hour. In contrast to Oregon's law, Colorado's law makes no provision for sampling of signatures, thus making the signature verification procedure more costly. Total expenditures for signature verification in FY 1991 were $75,000-$100,000. Finally, an undetermined amount in expenses were incurred to prepare for and hold hearings on the proposed titles, submission clauses, and summaries. (Donnetta Davidson, Secretary of State's Office)

5. Maine

Authorized measures include indirect statutory initiatives (allowing for legislative action prior to measures appearing on the ballot), petition referenda, and legislatively-generated referenda. No direct initiatives are authorized, nor are indirect initiatives authorized for constitutional amendments. The basis for signatures for initiatives and referenda is 10 percent of total votes cast for governor in the last election.

Petitions for referenda are filed with the Secretary of State within 90 days after the legislative session during which the bill was enacted. Signatures are validated at the local level but the Secretary of State is responsible for counting signatures to ensure that the number of signatures meets the required threshold. Ballot issues must be voted upon at general elections unless otherwise authorized by the Legislature.

The Secretary of State assumes primary responsibility for implementation of the initiative and referendum process. Implementation responsibilities include, among others, administering prefiled applications, reviewing and approving petition forms, drafting ballot questions, providing instructions to be placed on the petitions, issuing voters' manuals, and notifying the public about ballot measures. It is estimated that a ballot with up to six questions costs $95,000 to prepare (includes all printing costs associated with ballot forms, notification, and manual on proposition). If there are more than six questions on the ballot, the estimated cost of each additional question is $65,000. The voter's manual is not distributed to each voter but only upon request. There are, on average, 4,000-5,000 copies printed for a total cost of $1,500-$2,000. These manuals contain the proposition text, explanation, and fiscal impact. In addition, it costs approximately $15,000-$20,000 to place notification of all ballot questions, explanations, and fiscal impacts in seven newspapers throughout the state. No additional staff are hired to administer the processes associated with initiative and referenda. The Attorney General's involvement is essentially confined to addressing legal questions. (Contact: Lorraine M. Fleury, Secretary of State's Office)

6. Conclusion – State Profiles

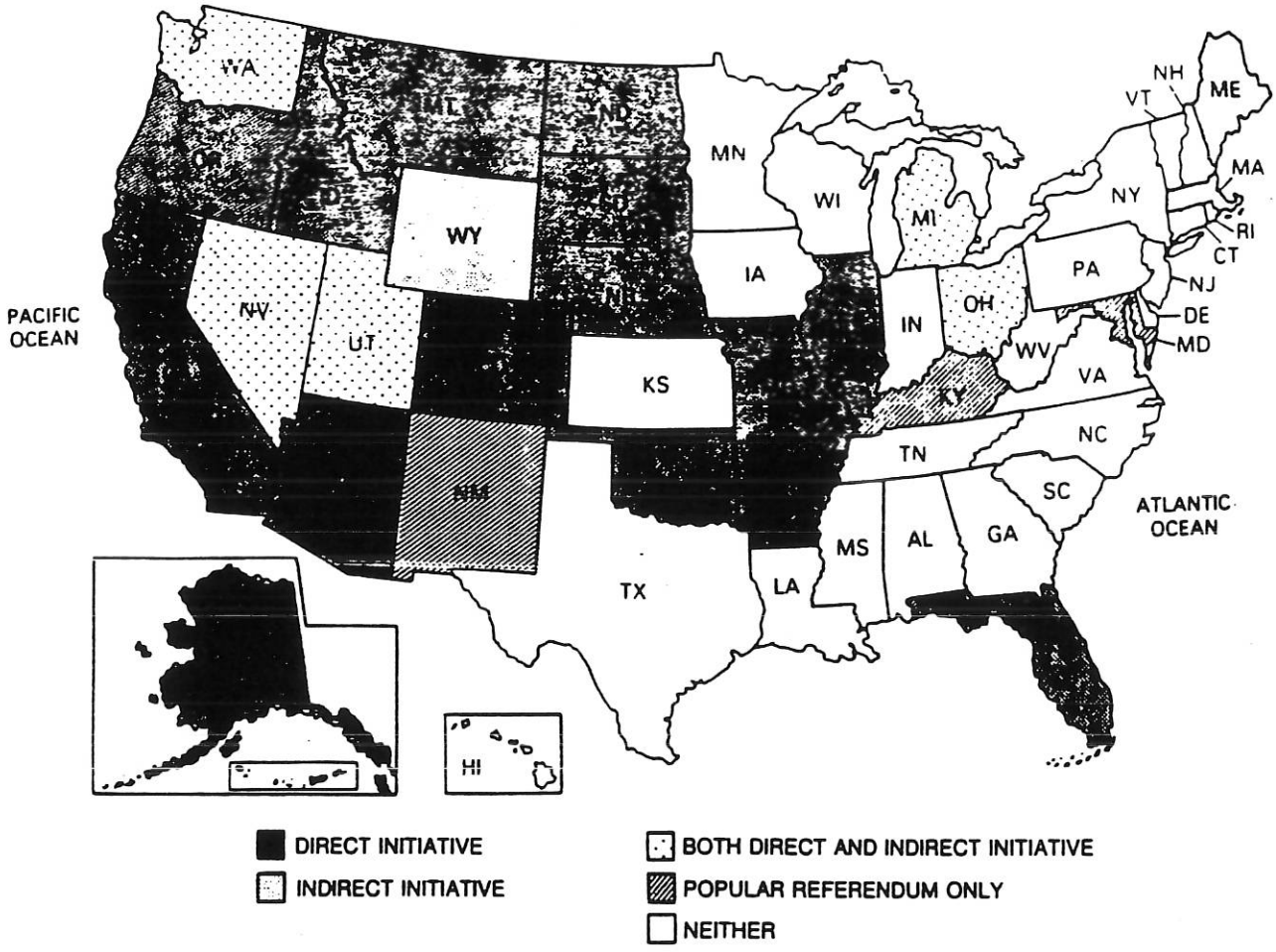
To conclude, Oklahoma and Colorado authorize direct constitutional initiatives and statutory initiatives, as well as petition referenda and legislatively-generated referenda. Nebraska and

Oregon authorize both types of direct initiatives but only petition referenda. Maine, like Oklahoma and Colorado, authorizes both types of referenda but, unlike the other four states, authorizes indirect statutory initiatives. Of the five states, Colorado offers a basis for signature validation (5 percent of all votes cast for the Secretary of State) which is most hospitable to sponsors of initiatives and referenda. Maine and Oklahoma have the most stringent criteria in that regard. (in Maine, 10 percent of total votes cast for governor in the last election; in Oklahoma, 15 percent for constitutional initiatives and 8 percent for statutory initiatives.)

Each of the five states has a different procedure for implementing the initiative and referendum process. Nevertheless, in all five states, the Secretary of State has major responsibilities, such as involvement in the signature counting or validation process and in notification of the public about ballot propositions. In Maine and, to a lesser extent, Oregon, implementation activities appear to be centralized largely within the Secretary of State's office. In Oklahoma, Colorado, and Nebraska, these activities seem to be shared with other state agencies or, in the case of Nebraska, with local units of government. All the states, with the occasional exception of Oklahoma, hold referenda on ballot issues at general elections. For all states, the greatest operating expenditure for implementing the initiative and referendum process is printing associated with notification and, in the case of Oregon, with the voters' manual. To a lesser degree, the states incur expenses for signature counting and validation. Because these activities are mostly undertaken by existing personnel, the costs are difficult to segregate.

91-58/lh

ATTACHMENT I



PROVISIONS FOR INITIATIVE AND POPULAR REFERENDUM IN THE UNITED STATES

ATTACHMENT II

CITIZENS' INITIATIVE

State	Constitutional	Statutory	Direct or Indirect*
Alaska		x	D
Arizona	x	x	D
Arkansas	x	x	D
California	x	x	D
Colorado	x	x	D
Florida	x		D
Idaho		x	D
Illinois	x		D
Maine		x	I
Massachusetts	x	x	I
Michigan	x	x	B
Missouri	x	x	D
Montana	x	x	D
Nebraska	x	x	D
Nevada	x	x	B
North Dakota	x	x	D
Ohio	x	x	B
Oklahoma	x	x	D
Oregon	x	x	D
South Dakota	x	x	D
Utah		x	B
Washington		x	B
Wyoming		x	I

*D = direct; I = indirect; B = both. *(Source: David B. Magleby,* Direct Legislation *(Baltimore MD: Johns Hopkins University Press, 1984), pp. 38-39.*

ATTACHMENT III

State adoptions of initiative and referendum, 1898–1977

Year	State
1898	South Dakota
1900	Utah
1902	Oregon
1904	Nevada (referendum only)
1906	Montana
1907	Oklahoma
1908	Maine, Missouri
1910	Arkansas, Colorado
1911	Arizona, California, New Mexico (referendum only)
1912	Idaho, Nebraska, Nevada (initiative only), Ohio, Washington
1913	Michigan
1914	North Dakota
1915	Kentucky (referendum only), Maryland (referendum only)
1918	Massachusetts
1959	Alaska
1968	Florida (constitutional initiative only), Wyoming
1970	Illinois (constitutional initiative only)
1977	District of Columbia

Note: During the past 20 years Alabama, Connecticut, Delaware, Georgia, Hawaii, Kentucky, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island, and Texas have considered direct legislation devices at constitutional conventions or in legislative debates and hearings. Governors in Alabama, Minnesota, New Jersey, and Texas have endorsed these measures. Voters in both Minnesota and Rhode Island came very close to adding the initiative and referendum to their constitutions in the 1980s.

ATTACHMENT IV

VOTER APPROVAL RATES FOR INITIATIVES AND LEGISLATIVE PROPOSITIONS FOR ALL STATES, 1898–1978

State	*Proposed by Legislatures*			*Proposed by Popular Petition*		
	Number Proposed	*Number Approved*	*Percentage Approved*	*Number Proposed*	*Number Approved*	*Percentage Approved*
Statutory proposals						
Alaska	4	2	50%	6	3	50%
Arizona	14	6	43	71	28	39
Idaho	4	3	75	11	5	45
Maine	124	89	72	12	4	33
Michigan	7	3	43	4	3	75
Montana	43	25	58	26	15	58
Nebraska	11	5	45	9	1	11
Ohio	16	3	19	6	2	33
Oklahoma	11	9	82	26	6	23
Oregon	35	18	51	119	39	33
Subtotal	269	163	61%	290	106	37%
Constitutional proposals						
Arizona	105	67	64%	46	19	41%
Arkansas	79	37	47	56	27	48
California	476	294	62	90	24	27
Michigan	93	59	63	34	8	23
Nebraska	243	167	69	15	7	47
Ohio	113	74	65	38	8	21
Oklahoma	159	73	46	42	10	24
Oregon	238	138	58	88	28	32
Subtotal	1,506	909	60%	409	131	32%
Total proposals	1,775	1,072	60%	699	237	34%

Sources: Austin Ranney, "United States," in Butler and Ranney, *Referendums*, 77. Much of Ranney's data are drawn, in turn, from Graham, *A Compilation of Statewide Initiative Proposals Appearing on Ballots through 1976.*

BIBLIOGRAPHY

"Assessing the Initiative Process." *State Policy Reports*, Volume 8, Issue 22, November 1990, pages 24-25.

Benenson, Robert. "Initiatives and Referendums," *Editorial Research Reports*. Congressional Quarterly, Inc., Volume 11, No, 15, October 1982, pages 775-792.

Berg, Larry L. and C. B. Holman. "The Initiative Process and its Declining Agenda-Setting Value." *Law & Policy*, Volume 11, No. 4, October 1989, pages 451-469.

The Book of the States: 1990-91 Edition. Lexington: The Council of State Governments, Volume 28, 1990.

Cronin, Thomas E. *Direct Democracy: The Politics of Initiative, Referendum, and Recall*. Cambridge: Harvard University Press, 1989.

DiCamillo, Mark and Mervin Field. California Poll 1566. The Field Institute, San Francisco California, October 24, 1990.

Dresang, Dennis L. and James J. Gosling. *Politics, Policy and Management in the American States*. New York: Longman, Inc., 1989.

Field, Mervin and Mark DeCamillo. California Poll 1557. The Field Institute, San Francisco, California, September 13, 1990.

Jaksha, Edward A. "State Laws, Court Cases, Exhibits." *Of the People: Democracy and the Petition Process*. Omaha: Simmons-Boardman Books, 1988.

Jost, Kenneth. "Initiatives: True Democracy or Bad Lawmaking?" *Editorial Research Reports*. Congressional Quarterly, Inc., Volume 1, No. 20, August 17, 1990, pages 462-475.

Keast, John P. "Seizing the Initiative." *Empowerment*. January 1991, pages 1-2.

League of Women Voters of California, *Initiative and Referendum in California: A Legacy Lost*. Sacramento, 1984.

Magleby, David B. *Direct Legislation: Voting on Ballot Propositions in the Unites States*. Baltimore: Johns Hopkins University Press, 1984.

McGuigan, Patrick B. *The Politics of Direct Democracy in the 1980s: Case Studies in Popular Decision Making*. Washington, D.C.: Institute for Government and Politics, 1985.

Schmidt, David D., (editor)[a] *Ballot Initiatives: History, Research, and Analysis of Recent Initiatives and Referendum Campaigns*. INR Special Report. Arlington: Capitol Publications, Inc., 1984.

Schmidt, David D. *Citizen Lawmakers: The Ballot Initiative Revolution*. Philadelphia: Temple University Press, 1989.

State of Wisconsin Legislative Reference Bureau. *"Let the People Decide" - Initiative and Referendum in Wisconsin and Other States*. Information Bulletin LRB-90-3, April 1990.

Zimmerman, Joseph F. "Initiative, Referendum, and Recall: Government by Plebescite?" *Intergovernmental Perspective*, Volume 13, No. 1, Winter 1987, pages 20-24.

Zisk, Betty H. *Money, Media, and the Grass Roots: State Ballot Issues and the Electoral Process*. Newbury Park, California: Sage Publications, 1987.

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ATTACHMENT V

Regulation of Money Expended for Initiative and Referendum Measures

Two issues which arise with regard to money expended on initiative and referendum measures are the issue of paid petition circulators and the issue of expenditures and contributions in campaigns to promote or defeat initiative or referendum measures.

With regard to the first issue, some states have attempted to prohibit payment of persons who circulate initiative or referendum petitions. However, a Colorado statute making it a felony to pay persons to solicit signatures for an initiative petition was struck down by the United States Supreme Court in 1988. Meyer v. Grant, 486 U.S. 414 (1988). The court, in a unanimous decision, ruled that circulation of such a petition is a form of political expression clearly protected by the First Amendment guarantee of freedom of speech. In addition, the court found that the state's interests in assuring grass-roots support for an initiative measure and protecting the integrity of the initiative process are insufficient to justify the restraint on free speech.

The second issue, expenditures and contributions in initiative and referendum campaigns, has also been the subject of state restrictions. Among those have been prohibitions against or limitations on corporate expenditures in initiative campaigns. One such law was a Massachusetts statute prohibiting corporate contributions to campaigns not materially affecting the corporation's property, business or assets. In First National

Bank of Boston v. Bellotti, 435 U.S. 765 (1978), the U.S. Supreme court held such a prohibition to be a violation of free speech which was not justified by the state's interests in promoting active individual citizen participation and protecting rights of shareholders whose views were different from those of corporate management. The decision of the court was split 5-4, indicating a much less clear violation of free speech than in the Meyer case, but a violation nevertheless.

Another type of campaign restriction is one limiting the amount that a person may contribute to support or oppose an initiative measure. In Citizens Against Rent Control v. Berkeley, 454 U.S. 290 (1981), the court reviewed a city ordinance containing such a limit on contributions to committees formed to support or oppose ballot measures. The court, in an 8-1 decision, held the limit to be an unconstitutional infringement on freedom of speech and the right of association and distinguished the limit in this case from those imposed on contributions to candidates and candidate committees.

In summary, it appears that there are few restrictions on initiative and referendum campaign contributions and expenditures that would be constitutional. Requiring reporting of contributions and expenditures is one alternative that would aid detection of any abuses that may occur. But if abuses do in fact occur, it may be difficult to respond to them.

STATEMENT
OF THE
KANSAS RACING COMMISSION

Before the House Committee on
Federal and State Affairs
The Honorable Clyde Graeber, Chair
February 17, 1994

Chairman Graeber and members of the committee:

I am Janet A. Chubb, executive director of the Kansas Racing Commission. Thank you for allowing me to present the commission's proposed amendments to the simulcasting section of the Kansas parimutuel racing act. These amendments affect the definition section of the racing act at K.S.A. 74-8802(bb) and (cc) and the substitutive provisions for simulcasting at K.S.A. 74-8836, as follows:

The definition of "recognized greyhound owners' group" is amended to require that the election of the group be conducted in accordance with rules and regulations of the commission and that the members must be elected by a majority of those voting in the election. Furthermore, the commission may designate an organization, such as the National Greyhound Association of Abilene, Kansas, to conduct the election. Similar amendments are proposed for the definition of "recognized horsemen's group" in subparagraph (cc) except that the commission does not propose language for designation of an organization to conduct the election for the horsemen's group.

The primary reason for the proposed amendments is that the licensed greyhound owners are not an organized body. They do not have organizational documents, rules of order and, to the commission's knowledge, have never conducted a meeting. The licensed owners, therefore, have not been in a position to conduct an election or to determine how vacancies on the recognized greyhound owners' group might be filled in the case of resignations.

Immediately after simulcasting was passed in 1991, the commission assisted the racetrack facilities in conducting elections for the licensed greyhound owners and drafted a proposed regulation setting out basic rules of order for the conduct of such an election. However, the commission was advised by counsel it had no authority to impose such requirements for the licensed greyhound owners. At one Kansas racetrack two of three members of the recognized greyhound owners' group resigned leaving the greyhound owners, commission, and the track without a method to fill the vacancies. For almost a year and one-half, one person has acted as the recognized greyhound owners' group at that racetrack facility. When the one member of the recognized greyhound owners' group

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and racetrack could not reach agreement on simulcasting schedules, simulcasting became almost nonexistent at the track. The purpose of the commission's purposed amendment is to provide for an organized and lawful election of a recognized greyhound owners' group.

After drafting the amendments for the recognized greyhound owners' group, the commission determined it should make the same minimal standards applicable to the recognized horsemen's group. However, the commission did not feel it needed to designate an organization to conduct the election for the recognized horsemen's group. Therefore, they propose adding language that an election should be conducted in accordance with rules and regulations of the commission and that the majority should be of those voting in the election. To date, the commission is not aware that any member of a greyhound or horse owners' group has been elected by a majority of the constituency.

The third proposed amendment to the racing act concerning simulcasting is the addition of subparagraph (k) to K.S.A. 74-8836. The proposed paragraph reads as follows:

> "(k) If the simulcasting licensee and the recognized horsemen's group or recognized greyhound owners' group, are unable to agree concerning a simulcasting question, the matter may be submitted to the commission for determination at the written request of any party in accordance with rules and regulations of the commission."

The commission does not want to micro-manage the drafting of simulcast applications or their negotiation among the parties. However, it feels there must be some method for a party to petition the commission for assistance in case of impasse. The proposed amendments provide that the issue must be presented to the commission in a written request and that the procedure must be established by rules and regulations of the commission before it is implemented.

Thank you for your attention to the commission's request. I am happy to address questions.

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Session of 1994

HOUSE BILL No. 2836

By Committee on Federal and State Affairs

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AN ACT amending the Kansas parimutuel racing act; relating to simulcast races; amending K.S.A. 74-8802 and 74-8836 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 74-8802 is hereby amended to read as follows: 74-8802. As used in this act unless the context otherwise requires:

(a) "Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds:

(1) A multiple of $.10, for parimutuel pools from races conducted in this state; and

(2) a multiple of such other number of cents as provided by law of the host jurisdiction, for interstate combined wagering pools.

(b) "Commission" means the Kansas racing commission created by this act.

(c) "Concessionaire licensee" means a person, partnership, corporation or association licensed by the commission to utilize a space or privilege within a racetrack facility to sell goods.

(d) "Dual racetrack facility" means a racetrack facility for the racing of both horses and greyhounds or two immediately adjacent racetrack facilities, owned by the same licensee, one for racing horses and one for racing greyhounds.

(e) "Executive director" means the executive director of the commission.

(f) "Facility manager licensee" means a person, partnership, corporation or association licensed by the commission and having a contract with an organization licensee to manage a racetrack facility.

(g) "Facility owner licensee" means a person, partnership, corporation or association, or the state of Kansas or any political subdivision thereof, licensed by the commission to construct or own a racetrack facility but does not mean an organization licensee which owns the racetrack facility in which it conducts horse or greyhound racing.

(h) "Financial interest" means an interest that could result directly or indirectly in receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a business

entity or activity or as a result of a salary, gratuity or other compensation or remuneration from any person.

(i) "Greyhound" means any greyhound breed of dog properly registered with the national greyhound association of Abilene, Kansas.

(j) "Horsemen's association" means any association or corporation:

(1) All officers, directors, members and shareholders of which are licensed owners of horses or licensed trainers of horses, or both;

(2) which is applying for or has been issued a facility owner license authorizing ownership of Eureka Downs; and

(3) none of the officers, directors, members or shareholders of which holds another facility owner license or is an officer, director, member or shareholder of another facility owner licensee.

(k) "Horsemen's nonprofit organization" means any nonprofit organization:

(1) All officers, directors, members or shareholders of which are licensed owners of horses or licensed trainers of horses, or both; and

(2) which is applying for or has been issued an organization license authorizing the conduct of horse races at Eureka Downs.

(l) "Host facility" means the racetrack at which the race is run or, if the race is run in a jurisdiction which is not participating in the interstate combined wagering pool, the racetrack or other facility which is designated as the host facility.

(m) "Host jurisdiction" means the jurisdiction where the host facility is located.

(n) "Interstate combined wagering pool" means a parimutuel pool established in one jurisdiction which is combined with comparable parimutuel pools from one or more racing jurisdictions for the purpose of establishing the amount of money returned on a successful wager in the participating jurisdictions.

(o) "Intertrack wagering" means wagering on a simulcast race at a licensed racetrack facility or at a facility which is licensed in its racing jurisdiction to conduct live races.

(p) "Intrastate combined wagering pool" means a parimutuel pool which is combined with comparable parimutuel pools from one or more racetrack facilities for the purpose of establishing the amount of money returned on a successful wager at the participating racetrack facilities.

(q) "Kansas-whelped greyhound" means a greyhound whelped and raised in Kansas for the first six months of its life.

(r) "Minus pool" means a parimutuel pool in which, after deducting the takeout, not enough money remains in the pool to pay

the legally prescribed minimum return to those placing winning wagers, and in which the organization licensee would be required to pay the remaining amount due.

(s) "Nonprofit organization" means:

(1) A corporation which is incorporated in Kansas as a not-for-profit corporation pursuant to the Kansas general corporation code and the net earnings of which do not inure to the benefit of any shareholder, individual member or person; or

(2) a county fair association organized pursuant to K.S.A. 2-125 *et seq.* and amendments thereto.

(t) "Occupation licensee" means a person licensed by the commission to perform an occupation or provide services which the commission has identified as requiring a license pursuant to this act.

(u) "Off-track wagering" means wagering on a simulcast race at a facility which is not licensed in its jurisdiction to conduct live races.

(v) "Organization licensee" means a nonprofit organization licensed by the commission to conduct races pursuant to this act and, if the license so provides, to construct or own a racetrack facility.

(w) "Parimutuel pool" means the total money wagered by individuals on one or more horses or greyhounds in a particular horse or greyhound race to win, place or show, or combinations thereof, as established by the commission, and, except in the case of an interstate or intrastate combined wagering pool, held by the organization licensee pursuant to the parimutuel system of wagering. There is a separate parimutuel pool for win, for place, for show and for each of the other forms of betting provided for by the rules and regulations of the commission.

(x) "Parimutuel wagering" means a form of wagering on the outcome of horse and greyhound races in which those who wager purchase tickets of various denominations on one or more horses or greyhounds and all wagers for each race are pooled and the winning ticket holders are paid prizes from such pool in amounts proportional to the total receipts in the pool.

(y) "Race meeting" means the entire period of time for which an organization licensee has been approved by the commission to hold live or simulcast horse or greyhound races at which parimutuel wagering is conducted or to hold horse races at which parimutuel wagering is not conducted, including such additional time as designated by the commission for the conduct of official business before and after the races.

(z) "Racing jurisdiction" or "jurisdiction" means a governmental authority which is responsible for the regulation of live or simulcast

racing in its jurisdiction.

(aa) "Racetrack facility" means a racetrack within Kansas used for the racing of horses or greyhounds, or both, including the track surface, grandstands, clubhouse, all animal housing and handling areas, other areas in which a person may enter only upon payment of an admission fee or upon presentation of authorized credentials and such additional areas as designated by the commission.

(bb) "Recognized greyhound owners' group" means the duly recognized group elected *in accordance with rules and regulations of the commission* by a majority of the Kansas licensed greyhound owners at the racetrack facility *voting in the election. The commission may designate an organization such as the national greyhound association of Abilene, Kansas, to conduct the election.*

(cc) "Recognized horsemen's group" means the duly recognized group, representing the breeds of horses running at a racetrack facility, elected by a majority of the licensed owners and trainers at the racetrack facility *voting in the election.* If the licensee does not have a recognized horsemen's group, the commission shall designate as the recognized horsemen's group one that serves another organization licensee, but not one that serves a county fair association organization licensee.

in accordance with rules and regulations of the commission

(dd) "Simulcast" means a live audio-visual broadcast of an actual horse or greyhound race at the time it is run.

(ee) "Takeout" means the total amount of money withheld from each parimutuel pool for the payment of purses, taxes and the share to be kept by the organization licensee. Takeout does not include the breakage. The balance of each pool less the breakage is distributed to the holders of winning parimutuel tickets.

(ff) "Totalisator licensee" means any person, partnership, corporation or association licensed by the commission to provide totalisator equipment or services to an organization licensee.

Sec. 2. K.S.A. 74-8836 is hereby amended to read as follows: 74-8836. (a) Any organization licensee that conducts at least 150 days of live racing during a calendar year or a county fair association that conducts fewer than 22 days of live racing during a calendar year may apply to the commission for a simulcasting license to display simulcast horse or greyhound races and to conduct intertrack parimutuel wagering thereon. If the organization licensee conducts races at a racetrack facility that is owned by a facility owner licensee, both licensees shall join in the application. A simulcasting license granted to a county fair association that conducts fewer than 22 days of live racing shall restrict the county fair association's display of simulcast races to a number of days, including days on which it conducts live

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horse races, equal to not more than twice the number of days on which it conducts live races.

(b) (1) A simulcasting license granted to an organization licensee other than a county fair association shall authorize the display of simulcast races at the racetrack facility where the live races are conducted. If a simulcasting licensee conducts live horse races on a day when simulcast races are displayed by the licensee and the licensee conducts fewer than 10 live horse races on such day, not less than 80% of the races on which wagers are taken by the licensee during such day shall be live races conducted by the licensee. If a simulcast licensee conducts live greyhound races on a day when simulcast races are displayed by the licensee and the licensee conducts fewer than 13 live greyhound races during a performance on such day, not less than 80% of the races on which wagers are taken by the licensee during such performance shall be live races conducted by the licensee.

(2) A simulcasting license granted to a county fair association shall authorize the display of simulcast races at the racetrack facility where the races are conducted only if live races are scheduled for two or more days of the same calendar week, except that the licensee may conduct simulcast races in the week immediately before and immediately after a live meeting if the total number of days on which simulcast races are displayed does not exceed the total authorized in subsection (a). In no case shall the live meet or simulcast races allowed under this subsection exceed nine consecutive weeks. For purposes of this subsection, a calendar week shall be measured from Monday through the following Sunday.

(3) Notwithstanding the provisions of subsection (a), (b)(1) or (b)(2), a county fair association may apply to the commission for not more than five additional days of simulcasting of special events. In addition, the commission may authorize a county fair association to display additional simulcast races but, if such county fair association is less than 100 miles from an organization licensee that is not a county fair association, it must also secure written consent from that organization licensee.

(4) Notwithstanding the provisions of subsection (b)(1), if an emergency causes the cancellation of all or any live races scheduled for a day or performance by a simulcasting licensee, the commission or the commission's designee may authorize the licensee to display any simulcast races previously scheduled for such day or performance.

(5) Notwithstanding the provisions of subsection (b)(1), the commission may authorize the licensee to display simulcast special racing

events as designated by the commission.

(c) The application for a simulcasting license shall be filed with the commission at a time and place prescribed by rules and regulations of the commission. The application shall be in a form and include such information as the commission prescribes.

(d) To qualify for a simulcasting license the applicant shall:

(1) Comply with the interstate horse racing act of 1978 (15 U.S.C. 3001 *et seq.*) as in effect December 31, 1991;

(2) submit with the application a written approval of the proposed simulcasting schedule signed by: (A) The recognized horsemen's group for the track, if the applicant is licensed to conduct only horse races; (B) the recognized greyhound owners' group, if the applicant is licensed to conduct only greyhound races and only greyhound races are to be simulcast; (C) both the recognized greyhound owners' group and a recognized horsemen's group, if the applicant is licensed to conduct only greyhound races and horse races are to be simulcast; (D) the recognized greyhound owners' group, if the applicant is licensed to conduct both greyhound and horse races, only greyhound races are to be simulcast and races are to be simulcast only while the applicant is conducting live greyhound races; (E) the recognized horsemen's group for the track, if the applicant is licensed to conduct both greyhound and horse races, only horse races are to be simulcast and races are to be simulcast only while the applicant is conducting live horse races; or (F) both the recognized greyhound owners' group and the recognized horsemen's group for the track, if the applicant is licensed to conduct both greyhound races and horse races and horse races are to be simulcast while the applicant is conducting live greyhound races or greyhound races are to be simulcast while the applicant is conducting live horse races; and

(3) submit, in accordance with rules and regulations of the commission and before the simulcasting of a race, a written copy of each contract or agreement which the applicant proposes to enter into with regard to such race, and any proposed modification of any such contract or agreement.

(e) The term of a simulcasting license shall be one year.

(f) A simulcasting licensee may apply to the commission or its designee for changes in the licensee's approved simulcasting schedule if such changes are approved by the respective recognized greyhound owners' group or recognized horsemen's group needed throughout the term of the license. Application shall be made upon forms furnished by the commission and shall contain such information as the commission prescribes.

(g) Except as provided by subsection (j), the takeout for simulcast

horse and greyhound races shall be the same as it is for the live horse and greyhound races conducted during the current or next live race meeting at the racetrack facility where the simulcast races are displayed. For simulcast races the tax imposed on amounts wagered shall be as provided by K.S.A. 74-8823 and amendments thereto. The simulcasting licensee shall be entitled to retain sufficient revenue to pay expenses directly related to the simulcast race or performance. The commission, by rules and regulations, shall define what constitutes such expenses. Of the balance of the takeout remaining after deduction of taxes and expenses, 50% shall be paid to the simulcasting licensee. The remainder shall be used for purses, as follows:

(1) For purses for greyhound races conducted by the licensee, if the simulcast race is a greyhound race and the licensee conducts only live greyhound races;

(2) for purses for horse races conducted by the licensee, if the simulcast race is a horse race and the licensee conducts only live horse races;

(3) for purses, as determined by both the recognized horsemen's group and the recognized greyhound owners' group, if the simulcast race is a greyhound race and the licensee does not conduct or is not currently conducting live greyhound races; or

(4) for purses, as determined by both the recognized horsemen's group and the recognized greyhound owners' group, if the simulcast is a horse race and the licensee does not conduct or is not currently conducting live horse races.

(h) Except as provided by subsection (j):

(1) If a simulcasting licensee has a license to conduct live horse races and the licensee displays a simulcast horse race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live horse races.

(2) If a simulcasting licensee has a license to conduct live greyhound races and the licensee displays a simulcast greyhound race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live greyhound races.

(3) If a simulcasting licensee has a license to conduct live racing of only horses and the licensee displays a simulcast greyhound race, unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8822, and amendments thereto, for unclaimed

winning ticket proceeds from live greyhound races. Breakage for such races shall be distributed for use to benefit greyhound racing as determined by the commission.

(4) If a simulcasting licensee has a license to conduct live racing of only greyhounds and the licensee displays a simulcast horse race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live horse races.

(i) The commission may approve a request by two or more simulcasting licensees to combine wagering pools within the state of Kansas pursuant to rules and regulations adopted by the commission.

(j) (1) The commission may authorize any simulcasting licensee to participate in an interstate combined wagering pool with one or more other racing jurisdictions.

(2) If a licensee participates in an interstate pool, the licensee may adopt the takeout of the host jurisdiction or facility, except that the takeout shall not be more than 20% on win, place and show bets and not more than 25% on all other bets. The amount and manner of paying purses from the takeout in an interstate pool shall be as provided by subsection (g).

(3) The tax imposed on amounts wagered in an interstate pool shall be as provided by K.S.A. 74-8823 and amendments thereto. Parimutuel taxes may not be imposed on any amounts wagered in an interstate combined wagering pool other than amounts wagered within this jurisdiction.

(4) Breakage for interstate combined wagering pools shall be calculated in accordance with the statutes and rules and regulations of the host jurisdiction and shall be allocated among the participating jurisdictions in a manner agreed to among the jurisdictions. Breakage allocated to this jurisdiction shall be distributed as provided by subsection (h).

(5) Upon approval of the respective recognized greyhound owners' group or recognized horsemen's group, the commission may permit an organization licensee to simulcast to other racetrack facilities or off-track wagering or intertrack wagering facilities in other jurisdictions one or more races conducted by such licensee, use one or more races conducted by such licensee for an intrastate combined wagering pool or use one or more races conducted by such licensee for an interstate combined wagering pool at off-track wagering or intertrack wagering locations outside the commission's jurisdiction and may allow parimutuel pools in other jurisdictions to be combined with parimutuel pools in the commission's jurisdiction for the purpose

of establishing an interstate combined wagering pool.

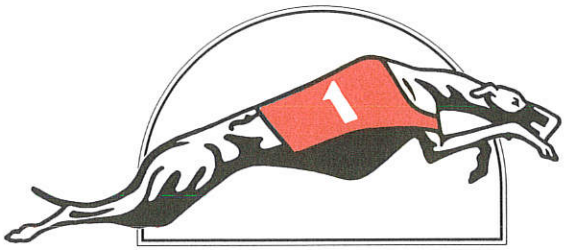
(6) The participation by a simulcasting licensee in a combined interstate wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction which the licensee is physically located.

(k) *If the simulcasting licensee and the recognized horsemen's group or recognized greyhound owners' group are unable to agree concerning a simulcasting question, the matter may be submitted to the commission for determination at the written request of any party in accordance with rules and regulations of the commission.*

(l) This section shall be part of and supplemental to the Kansas parimutuel racing act.

Sec. 3. K.S.A. 74-8802 and 74-8836 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.



TESTIMONY BY ROY BERGER RE: HB2836
HOUSE FEDERAL & STATE AFFAIRS COMMITTEE
FEBRUARY 21, 1994

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE . . .

GOOD AFTERNOON. MY NAME IS ROY BERGER AND I'M THE EXECUTIVE VICE PRESIDENT OF WICHITA GREYHOUND PARK. I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY AND ASK FOR YOUR SUPPORT OF HB2836, LEGISLATION SPONSORED BY THE KANSAS RACING COMMISSION.

WHEN PARI-MUTUEL SIMULCASTING WAS PASSED BY THE LEGISLATURE IN 1992 THE INTENT WAS TO BE ABLE TO FURTHER KANSAS RACING BY BRINGING IN OUTSTANDING FEATURE EVENTS AND SUPPLEMENTAL RACING CARDS TO ENHANCE OUR OWN LIVE RACING PRODUCT. THE BILL WAS WRITTEN TO GIVE ALL SIMULCASTING PARTNERS - THE GREYHOUND OWNERS, THE HORSE OWNERS AND THE RACETRACK A SEAT AT THE NEGOTIATING TABLE. THE LEGISLATION CERTAINLY WAS UNIQUE IN RACING STATES AS IT PROVIDED FOR A UNILATERAL VETO PROVISION... IF ANY OF THE PARTIES WERE NOT SATISFIED THE PROPOSED ARRANGEMENT COULD BE DEFEATED WITH NO RECOURSE AT ALL BY THE OTHER TWO INTERESTED PARTIES.

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I'M NOT GOING TO REHASH ALL THE UNPLEASANTRIES OF THE PAST AT WICHITA GREYHOUND PARK... UNFORTUNATELY IT HAS RECEIVED ENOUGH NEGATIVE PRESS IN OUR OWN COMMUNITY AND TOO MANY HOURS SPENT IN PLEAS, BOTH WRITTEN AND VERBAL, WITH THE KANSAS RACING COMMISSION AND TIME DOESN'T PERMIT TOO MUCH DETAIL TODAY.

HOWEVER, I WILL JUST TOUCH ON SOME OF OUR WOES. WICHITA GREYHOUND PARK SOUGHT TO DO CROSSBREED OR HORSE SIMULCASTING ON A LIMITED BASIS... THE KENTUCKY DERBY, THE PREAKNESS, THE BELMONT AND RACING'S BIGGEST DAY, THE BREEDERS' CUP. IN OUR BRIEF HISTORY WITH SIMULCASTING WE HAVE BEEN DENIED THE KENTUCKY DERBY AND PREAKNESS IN 1992 AND THE BREEDERS' CUP BOTH YEARS.

THE HORSE OWNERS GROUP IN KANSAS WERE VERY WILLING TO NEGOTIATE AND IN FACT MADE SOME COMPROMISE OVERTURES THAT WENT ABOVE AND BEYOND FAIRNESS. THE GREYHOUND OWNERS WERE REPRESENTED SOLELY BY A GENTLEMEN FROM BOSTON, MASSACHUSETTS WHO HAD NO GREYHOUND OWNERSHIP INTEREST IN KANSAS. IN FACT THE ONLY INTEREST HE SEEMED TO HAVE IN KANSAS WAS TO MAKE THE NEGOTIATING PROCESS AS DIFFICULT ON ALL CONCERNED PARTIES AS HE POSSIBLY COULD.

THIS APPROACH DENIED SOUTH CENTRAL KANSAS RACING FANS TWO OF THE THREE TRIPLE CROWN RACES IN 1992 AND THE BREEDERS' CUP IN 1992 AND 1993. IF WICHITA AREA RACING FANS WANTED TO BET ON THE SEVEN RACES OF THE BREEDERS' CUP THEY HAD TO GO EITHER TO THE WOODLANDS IN KANSAS CITY OR MOST

PROBABLY TO REMINGTON PARK IN OKLAHOMA CITY WHICH IS CLOSER AND GUARANTEES ALL TAX DOLLARS LEAVE OUR STATE.

THE DENIAL OF THE BREEDERS' CUP AT WICHITA WAS NOT BASED ON ANY MATTER OF REASON. IT WAS OBSTINANCE AT ITS FINEST OR AT ITS WORST DEPENDING ON YOUR PERSPECTIVE AND REALLY CAUSED ALL CONCERNED PARTIES A BLACK EYE. IRONICALLY THE EXECUTIVE SECRETARY OF THE NATIONAL GREYHOUND ASSOCIATION, THE VERY GROUP THAT PROPOSED THIS GENTLEMEN AS ITS REPRESENTATIVE, TOLD ME RECENTLY THAT THE DENIAL OF THE BREEDERS' CUP IN WICHITA WAS A SHAME, IN FACT HE CALLED MAJOR RACING EVENTS LIKE THESE A 'WIN, WIN' SITUATION FOR ALL CONCERNED. WELL THE WICHITA RACING FANS, THE WICHITA GREYHOUND CHARITIES AND THE STATE OF KANSAS WERE PUT INTO A 'LOSE, LOSE' SITUATION BY A NEGOTIATOR SITTING 1,500 MILES AWAY AND SEEMINGLY HAVING A CHUCKLE AT ALL OF OUR EXPENSE.

THERE MAY BE SOME SUNSHINE ON THE HORIZON HOWEVER. IN RECENTLY CONDUCTED ELECTIONS BY THE NATIONAL GREYHOUND ASSOCIATION A NEW GROUP WAS ELECTED BY THE GREYHOUND OWNERS AT WICHITA WITH OUR FRIEND FROM BOSTON FORTUNATELY REMOVED FROM THE PANEL BUT UNFORTUNATELY SITTING AS FIRST ALTERNATE. THERE HAS BEEN SOME MEANINGFUL AND PERHAPS FRUITFUL CONVERSATION HAPPENING BETWEEN ALL PARTIES RECENTLY.

HOWEVER THE PROSPECT OF ANY POTENTIAL PRESENT SUCCESS DOESN'T DIMINISH THE PAST FAILURES OR WHAT COULD AWAIT IN THE FUTURE. HB2836 FROM OUR PROSPECTIVE SIMPLY OPENS THE NEGOTIATING PROCEDURE FOR THE KANSAS RACING COMMISSION TO

GET INVOLVED IN ANY DISPUTES AND PERHAPS HELP REMEDY THE SITUATION IF THEY SO DESIRE.

IRONICALLY THE RACING COMMISSION OVERSEES AND REGULATES JUST ABOUT EVERYTHING THE LICENSEE DESIRES OR DOES. SOME PERHAPS CAN MAKE A CASE FOR OVERREGULATION, BUT IN THE CASE OF SIMULCASTING AND THE DIRECT AFFECT THAT SIMULCASTING HAS ON THE QUALITY AND VARIETY OF RACING THAT IS PUT IN FRONT OF THE WAGERING PUBLIC, THE RACING COMMISSION HAS ITS HANDS TIED!

YOUR SUPPORT OF HB2836 SIMPLY PUTS AN OPENING IN THE DOOR THAT PREVIOUSLY COULD REMAIN BOLTED SHUT WITHOUT ANY RACING COMMISSION INTERVENTION. THIS BILL IN PRESENT AND FUTURE NEGOTIATIONS WOULD GIVE OUR REGULATORY AGENCY THE CHANCE TO OPEN THAT DOOR AND LET SOME LIGHT IN ON OUR INDUSTRY IF THEY DEEM IT IN THE BEST INTERESTS OF KANSAS RACING. IT'S CONSISTENT WITH THE WAY WE OPERATE BEFORE THE RACING COMMISSION ON VIRTUALLY ALL OTHER MATTERS OF PUBLIC INTEREST AND THIS WOULD BE ONE BIG STEP FOR THE CONTINUED ENHANCEMENT OF THE PARI-MUTUEL INDUSTRY IN KANSAS.

WICHITA GREYHOUND PARK AND WICHITA GREYHOUND CHARITIES ASKS FOR YOUR SUPPORT OF HB2836 AND THANKS YOU FOR YOUR TIME AND ATTENTION TODAY.

The Wichita Eagle
Established 1872
Incorporating The Wichita Beacon
Reid Ashe, Publisher

Davis Merritt, Jr.
Editor
Sheri Dill
Executive Editor
David Awbrey
Editorial Page Editor

EDITORIALS

Travesty

Dog leader's intransigence hurts racing, community

Today's the most important day of the year for horse racing in the United States. Many of the best horses in the world will be racing for the biggest money in the world. It's the 10th year of the Breeders Cup. Purses range from $1 million to $3 million. Total pot is $10 million.

Tens of millions of fans around the world will watch and wager on the seven races. The built-in hype and marketing also will mean big crowds and big betting pools in Mid-American hippodromes, such as the Woodlands in Kansas City and Remington Park in Oklahoma City.

But it won't be a big day at the Wichita Greyhound Park. None of the Breeders Cup races will be simulcast into Wichita.

And why is that, when virtually every other track of any size in the country and in the region will be crammed with racing fans fired up about the big day?

Because of the intransigence of one man, David Brosnan of Boston, Mass., who is the putative representative of the greyhound owners at WGP.

Kansas' simulcasting law is unique in the nation. It allows any one of the three parties affected by a Kansas simulcast — the greyhound industry, the horse industry and the track itself — to veto any simulcast proposal. And Mr. Brosnan, in the guise of protecting the greyhound industry's interests, has used his power to wreck the simulcasting potential of WGP.

He has demanded for the kennel owners a higher cut of the purses than state law stipulates. He has demanded guaranteed purses. And he has rebuffed numerous attempts at compromise and reason proposed by WGP boss Roy Berger.

In the process, Mr. Brosnan has denied fans and the community the benefits of racing's top events, including, but not limited to, the 1992 Kentucky Derby, the 1992 Breeders Cup and, of course, this year's Breeders Cup.

This is especially sad and frustrating because every one of the few simulcasting events held so far at WGP has been a winner — for the track, the fans and the pari-mutuel industry.

One of the big losers in the deal is the community itself. Since the Greyhound Park gives away 1 percent of its mutuel handle — WGP offers the best community charity deal in the country — and big racing days generate lots of betting, charities are losing thousands of dollars a year because of Mr. Brosnan's position.

The situation is simply outrageous. Mr. Brosnan is pretending that WGP willfully wants to hurt the Kansas greyhound industry with a flood of horse-race simulcasting when Mr. Berger has never proposed anything more than a very limited program of high-class simulcasting that would benefit all parties.

The Legislature must fix this mess. When it passed the simulcasting law in 1992, understanding that prudent simulcasting is vital to the health of racing, it clearly intended for there to be simulcasting in Wichita as well as Kansas City.

Lawmakers should strip Mr. Brosnan of his unwarranted power in the 1994 session. They should pass a new simulcast law that gives the Kansas Racing Commission power to break simulcasting deadlocks. Wichita has been shut out of the benefits of simulcasting far too many times already.

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Open it up

Racing Commission to aid Wichita track

No question that simulcasting is important to the pari-mutuel industry and that the pari-mutuel industry is important to Kansas. No question the Kansas Racing Commission understands that.

Now the Racing Commission is willing to do something about the ridiculous situation that has hamstrung simulcasting — and thus the potential as a major attraction — at the Wichita Greyhound Park.

A little background:

Simulcasting allows racetracks around the country to bring in special events or entire race cards.

Many of the largest and most successful horse and dog tracks regularly simulcast major races to enhance their live-racing cards. Smaller tracks — which often have more trouble attracting enough animals for live racing — use simulcasting to fill out their cards and add racing days.

Because of its ability to draw more fans and create bigger purses, simulcasting can boost all aspects of Kansas' century-old horse and dog industries: breeding, training and racing.

Simulcast profits from other tracks already are helping put Eureka Downs back in business next spring. And the ability to simulcast is giving the Downs a longer and meatier season to help it survive.

Regardless of the size of the track, through, simulcasting is a valuable tool for an industry that's being damaged by raging competition for the entertainment dollar, and thus needs all the tools it can get.

But, through the manipulations of some elements of the greyhound industry, the Wichita Greyhound Park has largely been denied that tool.

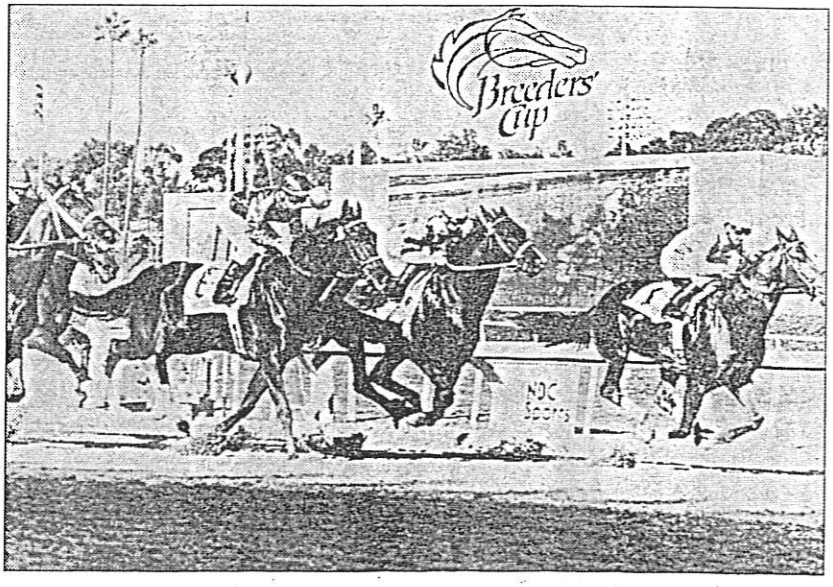
Kansas law, alone among the states, gives veto power to any of the three partners in a simulcast deal — the greyhound owners, the horse owners and the track itself. And the out-of-state representative of the greyhound owners at WGP — ostensibly to protect his industry and its clout — has been using that power to block important simulcast events, the 1993 Breeders' Cup races being the most recent example. This is especially strange because the few major horse races that have been simulcast into WGP have been profitable for all parties, including the dog owners.

Now the Racing Commission wisely wants the Legislature to change the simulcasting law, hoping to open WGP to simulcasts in 1994.

The Greyhound Park — a $15 million facility — is a valuable asset to this community. It draws up to 15,000 racing fans every week.

WGP has created hundreds of jobs. It has paid many millions of dollars in state and local taxes. It has contributed more millions to local charities.

But it will never reach its full potential as a regional attraction unless it's allowed to do what Kansas law intended for it and every other track in the state to do: simulcast prestigious special events to enhance the fine live racing it already offers.



File photo

Betting on Breeders' Cup, racing's biggest day, is blacked out in Wichita.

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TESTIMONY
HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
February 17, 1994

Mr. Chairman, members of the committee, I am Bill Henry. I appear before you today on behalf of the Kansas Thoroughbred Association, in opposition to HB 2836.

As the members of this committee recall, the Kansas Thoroughbred Association offered to meet with all members of the horse industry and members of the Kansas Racing Commission to see if a consensus agreement could be reached on a number of matters relating to racing. We were pleased that Mrs. Chubb, the Executive Director of the Racing Commission, agreed to that meeting but as you learned in the second day of hearings on SB 380 the Kansas Quarter Horse Association declined to join that meeting.

As a result, the Kansas Thoroughbred Association has not had the opportunity to sit down with other members of the racing industry and the Racing Commission to see if differences can be ironed out in this area.

However, on February 3, Richaleen Turpin, Chair of the KTA Legislative Committee did write to Mrs. Chubb about the KTA objections to HB 2836.

Although the changes set out on page four in subsection (bb) in lines 8 through 13 will not affect the definition of a recognized horsemen's group, we believe the language change proposed in subsection (cc) will change the definition of a recognized horsemen's group. The Kansas Thoroughbred Association believes the proposed changes in paragraph (cc) are not necessary and that the current statutory language is satisfactory.

The Kansas Thoroughbred Association is also concerned the change proposed in lines 14 through 17 in (cc) will prohibit non-Kansas residents from voting at normal track elections. Under the current statute, all participants at all tracks have this right to vote. This will have a significant effect on non-residents who are licensed participants at all tracks.

We believe the Kansas Racing Commission through its general licensing powers has sufficient authority to act on this matter now and that the definition of a recognized horsemen's group should not be changed.

The final change the Kansas Thoroughbred Association has objection to is on page nine, lines 6 through 10, (k). We believe this legislative change would conflict with the Kansas Federal Horse Racing Act of 1978. Only two weeks ago Attorney General Reno, in an opinion, stated that the 1978 Act takes precedence over any state action in this area.

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In addition to the conflict with the Federal Horse Racing Act of 1978 we believe negotiations of contracts should be left to the participating individuals at the tracks since any contract will have a definite effect on their status.

Again, this proposed language change in (k) would put the Kansas Racing Industry as operating contrary to every other single state in the United States in regards to its racing simulcasting.

We appreciate this opportunity to express our opinion before the committee.

Respectfully Submitted,

William M. Henry
Attorney at Law