

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 22, 1994 in Room 526-S of the Capitol.

All members were present except: Representative Rand Rock, Excused
Representative Kathleen Sebelius, 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: Karl Peterjohn, Executive Director of Kansas Taxpayers Network
Pat McGuigan, Chief Editorial Writer, Daily Oklahoman, Oklahoma City, OK
Karen France, Kansas Association of Realtors
Bill Cravens, Kansas Sierra Club
Debra Leib, Executive Director, Common Cause
Jack Deines, United We Stand
Don Cooper, Shawnee County Commissioner
Jim Edwards, Director, Kansas Chamber of Commerce and Industry
Scott Curry, Equality Kansas
Warren Parker, Kansas Farm Bureau
Ron Smith, Kansas Bar Association and Kansas Society of Executives
Mary Turkington, Kansas Motor Carriers

Others attending: See attached list

The Chairperson opened the hearings on HCR 5036 and HCR 5037, initiative.

Karl Peterjohn, Executive Director of Kansas Taxpayers Network, testified in support of initiative, stating in 1993 in Wichita voter participation increased almost 50 percent in the April municipal election due to the presence of a citizen generated initiative and referendum on that election ballot. (See Attachment #1)

Karen France, Director, Governmental Affairs, Kansas Association of Realtors, testified in support of HCR 5036 and HCR 5037. The Kansas Association of Realtors was heavily involved in trying to resolve the property tax problems caused by the Classification Amendment. One thing we heard was people across the state were shocked to find out the people did not have the right to propose their own amendment to the constitution. (See Attachment #2)

Patrick B. McGuigan, Chief Editorial Writer, Daily Oklahoman, Oklahoma City, Oklahoma, testified in support of HCR 5036 and HCR 5037, stated it would be wise to follow the example set in many of the other initiative states in limiting the reach of any given initiative -- whether statutory or constitutional -- to a single subject. The only word of warning here would be to find ways to encourage the judiciary, in interpreting this provision, to be generous in application of the single subject rule, so that an initiative can deal with a broad area of public policy, and not only narrow questions.

Initiative broadens the reach of American democracy. The mechanism gives popular mass movements the ability to develop legislative vehicles and secure a date for verdict from fellow citizens. Initiative is an expression of confidence in ourselves, a reaffirmation of the confidence of the Framers: that free men and

women can govern themselves. (See Attachment #3)

William Craven, Legislative Coordinator, Kansas Sierra Club, testified in support of HCR 5036 and HCR 5037 stating that people are informed on issues as are their representatives. Environmental protection ranks high in public opinion polls, but the legislative response is not very rewarding. (See Attachment #4)

Debra R. Leib, Executive Director, Common Cause of Kansas, was a proponent for HCR 5036 and HCR 5037 which together provide for a constitutional and statutory initiative process. Initiative is a tool which allows voters to establish public policy directly when the legislature is persistently unresponsive to public opinion. Modifications of HCR 5036 which requires that two-thirds of the voters approve the proposed amendment is inordinately high and recommend lowering this figure to refer to a majority of the voters. Also, the provision that would prohibit initiative-generated amendments from addressing the manner in which legislative and other districts are reapportioned should be removed, for it is just that basic kind of procedural question the voters may wish to address directly. (See Attachment #5)

Jack Deines, United We Stand America of Kansas, testified in support of HCR 5036 and HCR 5037, stating that initiative works. It is not a process that wastes money or a process that will enact legislation not wanted by the people of Kansas. It stimulates citizen activity in government and demands an education. (See Attachment #6)

Testimony by Donald J. Cooper, Chairman, Shawnee County Commission, was distributed which stated, by statute, authorized the citizens of a county to utilize a referendum procedure to assist the functions of local government. (See Attachment #7)

Jim Edwards, Kansas Chamber of Commerce and Industry, testified opposing HCR 5036 and HCR 5037, stated a small percentage of all voters is sufficient to amend the constitution or to enact a law. This closes the law drafting process before public input, expert testimony or public debate can occur on the merits of a proposal. (See Attachment #8)

Christy Young, Vice President, Government Relations, Greater Topeka Chamber of Commerce, provided testimony opposing HCR 5036 and HCR 5037. Problems seen in other states have been lengthy questions are not read by the voting public; issue elections are won or lost in the media, depending on the most dollars spent; ramifications of changing or adding new laws are not debated creating unintended consequences; propositions placed on the ballot lack opportunity for amendment; initiative and referendum do not generate greater participation by the electorate, there is documented drop off of voters voting on ballot questions. (See Attachment #9)

Scott Curry, Equality Kansas, opposed HCR 5036 and HCR 5037 stated there have been costly initiative and referendum votes held throughout the Union to take away the fundamental constitutional rights of minority citizens. (See Attachment #10)

Warren Parker, Assistant Director of Public Affairs for Kansas Farm Bureau, stated their members strongly oppose the idea of public initiative. It is believed that initiative and referendum procedure undermines our representative form of government. It will impair legislative responsibility, impair representative government, lengthen the ballot and result in poorly drafted legislation. (See Attachment #11)

Ron Smith, Kansas Bar Association and Kansas Society of Association Executives, testified opposing HCR 5036 and HCR 5037 stating the KBA has an organizational history of promoting the involvement of citizens in those activities that promote the rule of law. Since statehood, lawyers in great numbers have served in this legislature. Initiative is not the strongest form of government in a democracy, nor in a pluralistic society, we believe it does not promote the best form of civic involvement. The Kansas Society of Association Executives primary purposes are to promote the common interests of association executives, to develop and encourage high standards of service and conduct for association executives, to increase public understanding of associations and their economic importance, and promote the accomplishments of voluntary associations. KSAE strongly opposes initiative as the procedure will often not allow for changes or compromises on major state policy matters. (See Attachments #12 and 13)

Mary E. Turkington, Executive Director, Kansas Motor Carriers Association, testified opposing HCR 5036 and HCR 5037 stating that issues affecting public policy in Kansas now can be adequately and appropriately addressed through the legislative process now in place. Kansas can be proud of the system of representative government that permits deliberate, fair and knowledgeable consideration of public policy issues. (See Attachment #14)

The Chairperson closed the hearing on HCR 5036 and HCR 5037 and stated that final action would be taken on Monday, March 7, 1994.

The meeting adjourned at 3:15 PM and the next meeting will be February 23, 1994.

Date: 2/22/94

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
<i>Jim McBride</i>	<i>OP 300 NW</i>	<i>TOPEKA</i>
<i>MARY E. TURKINGTON</i>	<i>Ks Motor Carriers Assn</i>	<i>Topeka</i>
<i>Karl Pfeiffer</i>	<i>Ks Taxpayers Union</i>	<i>Wichita</i>
<i>DON LINDSEY</i>	<i>OUTU</i>	<i>OSAWATOMIE</i>
<i>Cedric Moegge</i>	<i>Kans. for Equal P&P Taxes</i>	<i>Topeka</i>
<i>Pat (Stefan) McBrigan</i>	<i>The Daily Oklahoman P.O. BOX 25125 OKC, OK 73125</i>	
<i>Kay Shull</i>	<i>Public Interest</i>	
<i>KAREN FRANCE</i>	<i>Ks. Assoc. of REALTOR</i>	<i>TOPEKA</i>
<i>LARRY MAGILL</i>	<i>Ks. Assn. of INS AGENTS</i>	<i>"</i>
<i>Nancy Kinsling</i>	<i>LWV Ks</i>	
<i>Bill Craven</i>	<i>Sierra Club</i>	<i>Topeka</i>
<i>Dan Finch</i>	<i>KWIC</i>	
<i>Scott Curry</i>	<i>Equality Kansas</i>	<i>Topeka</i>
<i>Bruce Grover</i>	<i>KNEAS</i>	<i>TOPEKA</i>

Date:

Feb 22, 1994

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Darrel King	United We Stand Am.	609 SE. 33rd CITY
Nancy Kending	LWV Ks	
Janis H. Ziden	Observer	Topeka
Roy Berler	Wichita Creche House Prot	Wichita
Marty Vanier	Kansas Hg Alliance	Manhattan
Russ Frey	KVMA	Topeka
J. Johnson	KRC	Topeka
Janet Chubb	KRC	Topeka
Art J. Menckel	KRC	TOPEKA
James Snel	KRC	Topeka
Jim Allen	Camptown	"
Jim Edwards	KCCI	"
Donna Wittenstein	Rep Sebelius Intern	
Dan Fitch	KWIC	
Frank P. Spertine	Concerned Citizens	Topeka

Date: 2/22

FEDERAL and STATE AFFAIRS COMMITTEE

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KANSAS TAXPAYERS NETWORK
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Testimony on HCR 5036 to
House Federal & State Affairs Committee
Kansas Taxpayers Network
Karl Peterjohn, Executive Director

The Kansas Taxpayers Network supports voter empowerment through initiative and referendum elections. In 1993 in Wichita voter participation increased almost 50 percent in the April municipal election due to the presence of a citizen generated initiative and referendum on that election ballot. The Governor's eloquent discussions of this topic deserve praise.

However there are a number of significant problems with this amendment.

- 1) HCR 5036 requires 2/3 vote of approval to enact a constitutional amendment. This is much too high. I know of no other initiative states with this sort of restriction. Using this criteria the 1993 initiative election in Wichita would have failed, instead of passing by roughly 60%.
- 2) The distribution requirement is way too high (page 2, line 9) and should be reduced to 40 percent or less. A quick survey of initiative states indicates that most do not have this type of provision.
- 3) The single topic provision should be struck (page 1, line 28-9). In Florida the single topic provision has been used to prevent taxpayer initiatives from appearing on that state's ballot. Most initiative states do not have this provision.
- 4) Limiting the number of initiatives to three per election is excessively restrictive and should be increased (page 2, line 24). In the extremely unlikely event of a tie vote in favor of two separate ballot initiatives, both should not be thrown out by this tie. A provision enacting the initiative with the higher percentage should be added, if any provision is actually needed.
- 5) Referendum provisions, such as those contained in HCR 5017, should be added to this proposal. Referendum provisions are even more important than initiative since it provides voters with an immediate path for responding to new state statutes. Referendums are a key part of government in well governed countries like Switzerland.

Voter referendums should be automatic whenever there is any sort of revenue raising measure approved by any state or local legislative body.

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Opponents of initiative will claim that voters can't decide questions which are excessively complicated or detailed. This is misleading at best and wildly incorrect. If the people are unable to decide initiative questions, why has there been and continue to be initiative provisions under municipal statutes in Kansas? Are municipal issues less complicated than state? I would answer that both municipal and state issues can be equally complicated or straightforward.

Opponents of initiative and referendum should be forced to answer this question, why are voters competent to elect state officials but supposedly incompetent to vote on initiatives or referendums? Opponents of initiative and referendum distrust the citizenry.

Initiative and referendum are two critical tools which every Kansan should be able to exercise as part of their role in this state's government. I urge this committee to improve the Governor's proposal by amending this proposal in the five areas outlined in this testimony.

ANSAS TAXPAYERS NETWORK
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Testimony on HCR 5037 to
House Federal & State Affairs Committee
Kansas Taxpayers Network
Karl Peterjohn, Executive Director

The Kansas Taxpayers Network supports voter empowerment through initiative and referendum elections. KTN is working with national and state groups like the National Taxpayers Union, Americans for Tax Reform, United We Stand America, National Referendum Movement, and Citizens Against Government Waste to promote initiative and referendum voting in Kansas.

Many of the problems I stated on HCR 5036 also apply to this amendment.

- 1) The distribution requirement is way too high (page 2, line 10) and should be reduced to 40 percent or less.
- 3) The single topic provision should be struck (page 1, line 39).
- 4) Referendum provisions should be added to this proposal.
- 5) Any initiative approved by voters should be allowed to stand without legislative amendment. In Kansas municipal initiative statutes there is a ten year time limit before amendments are allowed. KTN suggests that you consider a provision requiring a voter referendum before voter enacted statutes are amended.
- 6) Apply these provisions to all political subdivision of the state. This would eliminate a variety of statutes which vary and quite frankly, confuse most voters. This proposal could establish a statewide set of uniform provisions so citizens would not only be empowered at the state level, but also at the local government levels.

Initiative and referendum are two critical tools which every Kansan should be able to exercise as part of their role in this state's government. I urge this committee to improve the Governor's proposal by amending this proposal in the areas outlined in this testimony.



KANSAS ASSOCIATION OF REALTOR

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TO: HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: FEBRUARY 22, 1994

SUBJECT: HCR 5036, HCR 5037 LEGISLATIVE AND CONSTITUTIONAL INITIATIVE

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear today to support the constitutional amendments presented to you.

As many of you may be aware, our association was heavily involved in trying to resolve the property tax problems caused by the Classification Amendment. We came to know first hand the frustration people experienced with the limitations on making changes to the Kansas constitution. Of the hundreds of people we talked to across the state about the property tax problem, one common thing we heard was that they were shocked to find out the people did not have the right to propose their own amendment to the constitution.

They found it hard to understand that the people had to first, convince the legislature that created the Classification Amendment to admit they had made a mistake. Then, they had to wait for the legislators to agree to some sort of alternative to the amendment by a 2/3 vote in each house. Then, they had to wait until either a primary or general election or perhaps a special election if the legislators would grant it.

While some may point to the Classification experience as an example of when the people voted on a constitutional amendment which they later found to be a mistake. However, if initiative were in place, the people could have proposed a solution to the problems, rather than having to blame the legislature.

The concept of the right of initiative is not a new one. But, perhaps it is an idea whose time has come in Kansas. The people are asking for more and more control over their government. While property taxes or term limits might have brought it to a head for some people, it is a feeling which has been brewing for a long time.

Some of you may not agree with the specific form of initiatives presented by the Governor in these proposals. There are many areas of the amendments which can be fine tuned, such as, limiting the topics which initiatives may address, increasing the number of signatures needed and also providing for some legislative amendment powers for the legislative initiative proposal. We would be happy to work with you to get them into a more palatable form that develops a reasonable system for initiative in this state.

Some of you may feel that initiative is dangerous, that you, as legislators, will lose control of the lawmaking function of this state. We look at it as sharing control. If it is dangerous to let the people bring proposals to the ballot which the citizens feel have not been handled by their elected officials; if it is dangerous to let the people vote on issues brought to the ballot directly by the people; then perhaps the real danger is forgetting what a representative democracy is all about.

We are willing to have the people share the government with the Legislature. We hope that you will be willing to share it also.

Testimony of Patrick B. McGuigan
Before the House Committee on Federal and State Affairs,
Kansas State Legislature

February 22, 1994

Thank you for this invitation. Although I've been away from regular coverage of direct democracy for three years, as a daily journalist I monitor developments constantly, and in my present job at *The Oklahoman* I comment on the wide range of questions facing Oklahomans in direct yes/no votes.

While in Washington, D.C. at the conservative Free Congress Foundation, a research organization, I edited the *Initiative and Referendum Report* (later called the *Family, Law & Democracy Report*), a monthly non-partisan publication.

Although I am neither a legislative draftsman nor an attorney, I hope my brief comments about your proposed initiative provisions will be useful.

Encouraged by Gov. Joan Finney, you are considering House Concurrent Resolution No. 5036 and House Concurrent Resolution No. 5037.

For the integrity of the process, it is essential that verdicts rendered by your citizens actually reflect their sentiment on a given issue, at a given time. Therefore, you are wise to

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follow the example set in many of the other initiative states in limiting the reach of any given initiative -- whether statutory or constitutional -- to a single subject. My only word of warning here would be to find ways to encourage your judiciary, in interpreting this provision, to be generous in application of the single subject rule, so that an initiative can deal with a broad area of public policy, and not only narrow questions.

The proposals would restrict the number of initiatives in a given election cycle to three. The drafters no doubt wish to keep ballots from becoming crowded. Certainly, when a ballot gets full of candidate races and a couple of dozen propositions (as has happened in some of the statewide California and Oregon votes), I'd agree it is too crowded. However, consider the role that referred measures -- constitutional or any other proposals submitted to the people by the Legislature -- play in ballot overcrowding. Should restrictions also be placed on these referred measures?

For the rest, the proposals for creating a constitutional and statutory initiative process in Kansas are quite straight-forward. In terms of the number of signatures required, your requirements would put the state in the middle of active initiative states. The pre-circulation and pre-election review requirements, involving the attorney general and the secretary of state, seem to me similar to those in other states.

I would plant one idea, without offering a solution. I wish a way could be found to prevent an expanding trend in the politics of direct democracy, one which has even affected the process in Oklahoma: the relatively recent phenomenon of pre-election judicial review of duly-qualified initiatives.

In Oklahoma, this prevented popular consideration of a measure regulating taxpayer funding of abortion. Opponents contended the measure was unconstitutional, so they sued before citizens ever voted on it. In an unwise decision creating a worrisome precedent for the future, the initiative was stripped from the ballot.

This decision represented a trend I first wrote about in my 1985 book. The courts have begun to seize the initiative, robbing the people of their opportunity to register political judgments on important issues. Imagine the reaction if a court kept this committee hearing from ever being held, or if a proposal which passed this committee was prevented, by judicial edict, from being considered by the full Legislature.

That is what is happening, too often, with the initiative around the country. It would be a blessing if such could be prevented in Kansas, should you create an initiative process. Post-election review, of course, is entirely within the legitimate domain of the judiciary, so long as jurists restrict themselves to interpreting, and not making, law.

Now, let me offer several broad observations about this process, and how it operates across our country. Then, I would be glad to take your questions.

Direct Democracy has to some extent always been a part of the American political fabric. Most states, for example, required popular approval of their original constitutions. In this century, through the initiative device, "citizen legislators" have gained the ability directly to write laws, circulate petitions calling for a popular vote and, if the requisite valid names are garnered, gain a statewide verdict from their fellow citizens. In some states, initiatives have come to play a major, if not dominant, role in setting the political agenda.

Alexis de Toqueville once asserted that eventually every important question of public policy in America becomes the subject of a lawsuit. McGuigan's corollary to that observation might be this: If an issue is being considered in a legislative body anywhere in the country, expect it to become (if it's not already) the subject of a state or local ballot proposition somewhere in the country. Virtually every significant issue of regulation, taxation, social justice, or morality has been -- or will soon be -- a subject of direct popular concern somewhere in the United States.

In part this is true because of the sheer extent of direct

democracy in the country. In his book on direct legislation (David Magleby, *Direct Legislation: Voting on Ballot Propositions in the United States*, Baltimore and London: The Johns Hopkins University Press, 1984, p. 36), Professor David Magleby of Brigham Young University provided the best short sketch of direct democracy's "spread" in the contemporary United States:

"Twenty-six states currently provide for some form of initiative or popular referendum; of that number, twenty-one provide both, three provide (popular) referendum only, and two provide only the initiative. Of states having initiative, twenty-one permit the statutory initiative and seventeen permit the constitutional initiative. Five states have both the direct initiative and the indirect initiative, while fifteen have only the direct initiative and three only the indirect initiative. Popular referendums are permitted in twenty-five states and are generally limited to statutes, but every state except Delaware submits all legislatively derived constitutional amendments to a vote of the people."

To expand on this a bit, the way words are used in descriptions of ballot activity is often confusing. For example, the word referendum has precise dictionary meaning, but in application its meaning is nebulous. In essence, any yes/no vote of the people is a referendum (or, as it is sometimes called, a plebiscite). The term referendum means, simply, a vote of the

people. Referendum, thus, is often used to refer to all ballot measures -- but for purposes of clarity most analysts now use the terms "ballot measures" or "ballot questions" or even "ballot propositions" when speaking of referenda in general, and one of the more specific terms (defined below) when discussing the types of ballot measures.

Referred measures are those ballot questions which come to the ballot as a result of legislative action, constitutional edict, or some mandate of state government. Such proposals can be constitutional amendments, statutes, bonds, advisory questions or other sorts of issues. Referred measures are by far the most common type of ballot propositions.

Initiatives are those ballot questions which come to the ballot as a result of citizen petitioning. Such proposals can be either constitutional or statutory, depending on the provisions of the particular state or locality in which the proposal originates.

Perhaps the rarest of all forms of direct democracy is the popular referendum (often, and confusingly, called simply a referendum). Those states and localities which have the popular referendum allow citizens to circulate petitions calling for a vote of the people on legislation already passed by the legislature.

A variety of democratic mechanisms confront voters with yes/no

choices which, while not considered referenda, form a vital part of American governance.

As an example, the recall mechanism (which is part of Kansas law) is even less understood than the initiative. Under recall provisions, a sufficient number of valid signatures can force a yes/no popular vote on the retention of a public official. Although seldom utilized, this is one of the most powerful political devices available. Its potential was demonstrated in the Michigan legislative recall drives of 1983-84 (which actually switched control of one legislative chamber) and, with absolute clarity, in the recall against Arizona Governor Evan Mecham in 1987-88. A threatened recall drive against Arizona U.S. Senator Dennis DeConcini sparked by both his pro-gun control votes and involvement in the Keating 5 scandal -- never came to fruition in 1990, but dominated political discussion in the state for a time.

Closely related to the recall mechanism -- which is triggered as a result of citizen activism is the provision of reconfirmation or popular retention votes. Simply put, this device gives the electorate a chance, after a designated term, to decide whether or not an elected or appointed official should continue for another term of office. (For an understanding of the recall device, see especially Thomas E. Cronin, *Direct Democracy: The Politics of the Initiative, Referendum and Recall*, Harvard University Press: 1989,

pp. 125-156. This is in my opinion the best book ever written on the politics of direct democracy.)

The town meeting, the American version of a community decision making process which still prevails in Switzerland, continues as the preferred method of governing in some new England jurisdictions. At these meetings, any adult citizen comes to annual meetings at which the community decides upon pending local issues in a relatively free forum.

Americans regularly face a variety of ballot propositions at the state and local levels which impact on business, regulation of the marketplace, and other conservative concerns. During the 1980s, there were frequent propositions across America impacting taxation and utilities/environmental concerns. However, Equal Rights Amendments were frequent ballot questions in the 1960s and 1970s -- and since the latter half of the 1980s both homosexual rights and abortion propositions have faced popular scrutiny. In 1982, America had a sort of "national referendum" when several states considered the nuclear weapons freeze concept. Since 1990, the term limits movement has been a major factor in initiative politics, and in 1992 it resulted in a second nearly-national referendum.

The upward trend in utilization of the initiative device over the past decade and a half is compelling evidence of declining

citizen confidence in the traditional processes of representative government. In fall 1982, the year of the nuclear weapons free campaign, 52 statewide measures on fall ballots were citizen petitions. The total dropped off to 40 in 1984, nudged up to 42 in 1986, and jumped to 54 in 1988. In 1990, some 68 measures in all came to the fall ballots as a result of citizen petitions.

Direct democracy activism is part of a bigger picture. Meaningful activism through the processes of the initiative, referendum and recall is but a subset of practical political activism at all levels -- federal, state and local.

As former House Speaker Tip O'Neill, the Massachusetts Democrat, often put it, "All politics is local." This maxim might seem to contradict the previous point, but it shouldn't. The political culture of a state -- its traditions as well as its current political realities can have as much to do with the success of a particular initiative as anything else. In the late 1970s, after California voters passed the landmark Proposition 13 tax cut, tax reduction activists all over America crafted "copy cat" initiatives and pushed them in their states. Nearly all of them failed. The tax reduction initiatives which have succeeded in the past decade-and-a-half have been those tailored to the political and fiscal realities of a particular state.

Direct democracy has political dynamics which are similar to

those in other aspects of American politics, but which in some respects are unique. One factor contributing to the unpredictable nature of this branch of politics is the wide range of regulation - or lack thereof -- found in the various states. Twenty-six states have one aspect or another of direct democracy state-wide, and most of the remainder have it at the local level. Signature requirements vary from as little as 2% of voters in North Dakota to as much as 15% of the votes cast in the last election in Wyoming.

The time frames for initiative campaigns vary widely. Procedural hurdles in states such as Maine and Alaska necessitate that initiative petitions be turned in as early as January of an election year, in order to get on the November ballot. In Florida and Nevada, initiatives turned in as late as August can theoretically make the November ballot. Most states fall somewhere in between -- but increasing legal challenges make it more and more common for initiative activists to submit their names to state officials early.

Signature verification methods vary widely in the states. Typically, names are turned into the secretary of state's office. In some states, an initiative text must be approved in advance (in fact, if a state's initiative system operates honestly, this will save activists the grief of having collected signatures, only to have them invalidated due to a technical violation in the initiative text).

Methods for signature gathering (or petition circulation) vary from state to state. In Oklahoma and Colorado, initiatives can still get to the ballot with largely volunteer petition gatherers. In California, however, most campaigns use a mix of professional signature collection firms and grass roots activists. For most of the country, a typical initiative petition campaign (especially at the local level) is still a grass roots oriented, low dollar affair, featuring door-to-door signature gathering in urban neighborhoods, and petition tables at county and state fairs, or big city shopping malls.

The processes of direct democracy are ideologically neutral. Further, the electorate is generally more sympathetic to legislatively referred measures than to initiatives. Over time, two out of three referred measures pass. Only one out of three initiatives pass. With any status quo changing initiative, proponents face the burden of proof in most voters' minds: They will be inclined to vote no, unless given compelling reasons to vote yes.

Voter turnout, and therefore the timing of an election, may have a significant impact on a proposal's success or failure. Voter "drop off" or fatigue may hurt, or help. Drop off is the term used to describe the reality that fewer voters generally cast their ballots on propositions than on such "top of the line" races

as the presidency, U.S. Senate, gubernatorial or other statewide races.

Some studies have found this drop off is about 12%, but often it is much greater than that. Occasionally it is less: More citizens voted in the June 1978 California Proposition 13 vote than in the gubernatorial primary that same day. Similarly, Oklahoma voters have on several occasions participated in higher numbers in propositions than in candidates races. Generally, however, there is a drop off for propositions.

Campaign spending and disclosure requirements vary dramatically from state to state, and sometimes the disclosure rules for propositions are different than for candidate races.

Initiative campaign spending is accelerating. Spending will not guarantee victory historically, money can be a contributing factor in opposing initiatives, with the evidence murkier when it comes to support spending.

Any serious initiative activism in this day and age must take into account the pervasive role the courts are playing in direct democracy. In 1984, a half dozen duly-qualified conservative-leaning initiatives were stripped from statewide ballots, even though they had gained ballot status under the rules existing at the time. In 1990, anti-initiative judicial activism

had a dramatic effect on the course of initiative politics. This trend seems to be continuing. Even those with carefully planned legal and initiative strategies may get stripped from the ballot.

In Oklahoma, Tulsa businessman Lloyd Noble II anticipated from the start that his aggressive and historic term limitation initiative would face serious legal challenge. He garnered the pro bono help of two bright conservative "good government" lawyers (one of whom was a legislator) to draft and re-draft his initiative before it ever entered the field seeking signatures. The result of this process was perhaps the most carefully crafted (and surprisingly short) initiative in Oklahoma history, so well-written, in fact, that its foes despaired of a successful legal challenge, and let the proposition go to a popular vote. It prevailed, and started the national terms limits movement.

Many conservatives in non-initiative states oppose the initiative device because they fear out-of-control voters will impose socialism through the ballot box. But you'll rarely hear this particular criticism from conservatives in initiative states. By and large, and on the whole, the impact of direct democracy has been no more, perhaps less, deleterious to business interests (and to conservative social, cultural and other interests) than -- for instance, high-powered and "creative" litigation from the nation's trial lawyers, regulatory schemes promoted by professional bureaucrats in state and local governments, sustained activity in

legislative bodies on the part of anti-business/anti-conservative politicians such as Ohio Democrat Senator Howard Metzenbaum, and outrageous anti-democratic edicts from all levels of the American judiciary.

The point is, as both a journalist and a conservative, I'll stack up the results in direct democracy against the results in legislative bodies, in the litigious society and in the regulatory state. Any day. Any year.

Whether you are conservative or liberal, however, some basic observations about the initiative seem beyond argument.

Inexorably, in less than a century, the initiative has become a part of America's political reality. Regardless of how one views its merits, it must be examined as an increasingly integral part of American politics.

The years ahead will be dynamic and endlessly fascinating. You do not have to be a fan of direct democracy to hope that the future for America can be better than the past, that our children may enjoy the blessings of freedom and the continued fruits of liberty. In a uniquely American way, the initiative can contribute to the "flowering" of the system of self-government.

The initiative broadens the reach of American democracy. The

mechanism gives popular mass movements the ability to develop legislative vehicles and secure a date for verdict from fellow citizens. In a manner unmatched in any nation other than Switzerland, the initiative is an expression of confidence in ourselves, a reaffirmation of the confidence of the Framers: that free men and women can govern themselves.

I believe that confidence remains justified. I wish you well as you consider broadening the reach of democratic governance in the great state of Kansas.

Patrick B. McGuigan is chief editorial writer at *The Daily Oklahoman* in Oklahoma City.

While at the Free Congress Foundation 1980-90, he edited the nation's only regular source of information on the politics of direct democracy, the initiative, referendum and recall. A member of the American Political Science Association, McGuigan has participated frequently in sessions of the Direct Democracy Research Group, and has written many articles on direct democracy in scholarly and general interest publication, including *The Wall Street Journal*, *Detroit News*, *Policy Review* and many other publications.

He is the author of *The Politics of Direct Democracy: Case Studies in Popular Decision Making* (Washington, D.C.: Free Congress Foundation, 1985). Portions of this testimony are adapted from that book, and from scholarly and other articles he has written since 1980.

With Dawn M. Weyrich, McGuigan is author of *Ninth Justice: The Fight for Bork* (Free Congress Foundation with University Press of America, 1990). He is also editor of six books on legal policy issues. A seventh edited compilation, focusing on civil justice, is awaiting publication.



SIERRA CLUB

Kansas Chapter

Testimony of William Craven
Legislative Coordinator,
Kansas Sierra Club

HCR 5036 and 5037

Thank you, Mr. Chairman, for an opportunity to testify on this important matter which will give citizens a chance to make policy for the state in which they live. My remarks will be very brief. First, I think it is important to realize that citizens often have different ideas than legislators or lobbyists. And the fact is there is no real way to tell who is "right" or "wrong" on many of these questions. For example, many Kansans who have strong moral opposition to the death penalty would certainly lose if the question of capital punishment were put to a vote of the people. Permitting the people to vote on the death penalty doesn't mean that capital punishment is good penal policy or a deterrent or anything else. Opponents of capital punishment aren't "wrong." And the people who support capital punishment aren't "wrong" either. A death penalty enacted by public vote simply means that the people want it to be in existence as the ultimate sentencing option.

Second, I believe that the people are--or can be--as informed on issues as are their representatives here under the dome. As an example, thousands and thousands of Kansans are aware of the many problems with the property tax system in Kansas, yet the Legislature has been unable to satisfy those concerns, although some legislators have certainly tried.

Third, I'd like to make a statement on environmental issues, which are the issues I work on the most. The fact of the matter is that environmental protection ranks high in public opinion polls, but the legislative response is not very rewarding, to say the least. I think that is at least partially a consequence of lobbying by the industries who are most responsible for pollution in Kansas. If the people had a chance to express their opinions directly on the questions of whether Kansas should have hazardous waste incinerators, or participate in a low level radioactive waste compact that will build a dump in the middle of some wetlands in Nebraska, or whether the livestock industry should be accountable for the damage it causes to our streams and rivers, or whether and how the litigation involving the Board of Agriculture should be resolved, I think you all know what the answer would be. In too many categories Kansas ranks at or near the bottom of how states protect the environment, and it is not

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because the people choose it to be that way. I picked those just as examples. There are others just as pertinent.

In sum, the people have even more right than legislators to make public policy and even to err when making public policy. But I am not that much of a pessimist. I believe that the people, if given a chance, will make correct decisions, and if they do make mistakes, they will correct them. In other words, the public initiative and referendum system will look much like the legislative process.

The public initiative and referendum is an effective way to educate and inform citizens on important public policies, and to increase citizen participation in their government. Instead of fearing that prospect, you should welcome it and endorse it.

Thank you for the opportunity to testify.

Testimony to the Committee on Federal and State Affairs
Kansas State House of Representatives

February 22, 1994

by

Debra R. Leib
Executive Director, Common Cause of Kansas

Mr. Chairman and members of the House Federal and State Affairs Committee, my name is Debra Leib and I am the executive director of Common Cause in Kansas. I want to thank you for the opportunity to testify on House Concurrent Resolution Nos. 5036 and 5037, which together provide for a constitutional and statutory initiative process.

Common Cause is a nonprofit, nonpartisan citizens' lobbying organization that works to make our government more open, accountable and accessible to ordinary men and women. We have over 2,100 members in Kansas and our state board includes members from Dodge City to Overland Park and from Marysville to Wichita.

Initiative is a tool which allows voters to establish public policy directly when the legislature is persistently unresponsive to public opinion. Common Cause supports the incorporation in our state constitution of well-designed constitutional and statutory initiative provisions.

Generally speaking, we believe both these proposals to be well-drafted and neither too loose nor too strict in their provisions. The exceptions we would note concern provisions in H.C.R. No. 5036, which we believe should be modified.

First, the requirement that two-thirds of the voters approve the proposed amendment is inordinately high and we recommend lowering this figure to refer to a majority of the voters. Second, the provision that would prohibit initiative-generated amendments from addressing the manner in which legislative and other districts are reapportioned should be removed, for it is just that basic kind of procedural question the voters may wish to address directly.

One of the main arguments against initiative is that wealthy special interest groups will have an advantage in the process. We believe, however, that they will have no greater advantage than they presently enjoy under the current system. Special interest groups pour millions of dollars into the current system through campaign contributions, hundreds of thousands of dollars for entertaining members of the legislature, and thousands of dollars for gifts to public officials.

To reiterate, with the changes mentioned, we support both proposals. Again, thank you for the opportunity to testify. I'd be happy to answer any questions you might have.

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TESTIMONY IN SUPPORT OF HCR 5037 AND HCR 5038

UNITED WE STAND AMERICA of KANSAS

MR. CHAIRMAN. MEMBERS OF THE COMMITTEE AND FELLOW CITIZENS, MY NAME IS JACK DEINES. I AM A RETIRED IBM'R LIVING IN MERIDEN KANSAS. I REPRESENT THE MEMBERS OF UNITED WE STAND AMERICA OF KANSAS. WE SUPPORT HCR 5036 AND HCR 5037 AND REQUEST YOU APPROVE THIS LEGISLATION AND RETURN IT TO THE FLOOR OF THE HOUSE FOR PASSAGE.

I THANK YOU FOR ALLOWING ME TO GIVE TESTIMONY BEFORE YOUR COMMITTEE. AS CITIZENS OF KANSAS WE HAVE RIGHT TO PRESENT OUR VIEWS ON ANY LEGISLATION YOU ARE CONSIDERING. WE HAVE OTHER RIGHTS. TWO OF THEM ARE; THE RIGHT OF PETITION AND THE RIGHT TO VOTE. THE CURRENT CONSTITUTION OF KANSAS LIMITS THESE RIGHTS BY NOT ALLOWING THE CITIZENS OF KANSAS TO PETITION AND VOTE ON LAWS OF THEIR CHOOSING. BY PASSING THESE RESOLUTIONS YOU WOULD BE LEGALIZING RIGHTS THE CITIZENS OF KANSAS ALL READY HAVE.

INITIATIVE WORKS. IT IS NOT A PROCESS THAT WASTES MONEY OR A PROCESS THAT WILL ENACT LEGISLATION NOT WANTED BY THE PEOPLE OF KANSAS. IT STIMULATES CITIZEN ACTIVITY IN GOVERNMENT AND DEMANDS AN EDUCATION PROCESS THAT WILL FURTHER THEIR KNOWLEDGE OF GOVERNMENT. WE ARE COMPLETELY SURROUNDED BY STATES THAT HAVE INITIATIVE. WHY NOT KANSAS. THERE HAS BEEN MILLIONS OF DOLLARS SPENT BY THE MAJOR LOBBY GROUPS TRYING TO STOP INITIATIVES THAT THEY DID NOT WANT. WE THINK THIS IS EXCELLENT, IT'S BETTER THAT THEIR MONEY IS PUT INTO THE ECONOMY THAN INTO SOME LEGISLATORS CAMPAIGN FUND.

INITIATIVE WORKS. IT ALLOWED THE CITIZENS OF OKLAHOMA TO PASS LEGISLATION THAT REQUIRES ALL TAX INCREASES TO BE PLACED ON THE BALLOT FOR APPROVAL BEFORE THEY CAN BE ENACTED INTO LAW. INITIATIVE HAS ALLOWED THE CITIZENS OF MISSOURI TO PASS LEGISLATION THAT RESTRICTS GOVERNMENT SPENDING AND THAT CREATED THEIR WILDLIFE CONSERVATION DEPARTMENT. I LIVED IN CALIFORNIA FOR ELEVEN YEARS AND SAW INITIATIVE AT WORK. WITH IT, THE CITIZENS OF CALIFORNIA LOWERED PROPERTY TAXES AND PUT A SCARE INTO THE INSURANCE COMPANIES WHEN THEY TRIED TO CAP THEIR RATES. CALIFORNIA HAS HAD INITIATIVES THAT I WOULD CLASSIFY AS A LITTLE "FAR OUT" BUT I CANNOT REMEMBER ONE OF THOSE BEING ENACTED INTO LAW.

IT REALLY OFFENDS ME WHEN I HEAR THE STATEMENT "THE VOTERS OF KANSAS ARE NOT INTELLIGENT ENOUGH TO BE ABLE TO UNDERSTAND THE MEANING AND THE IMPACT AN INITIATIVE WOULD HAVE". THE CITIZENS OF KANSAS ARE NOT DUMB. THEY ARE VARY INTERESTED IN WHAT HAPPENS IN THEIR GOVERNMENT AND ARE BECOMING MORE ACTIVE EVERY DAY. WHO WOULD HAVE EVER GUESSED THAT 27% OF THE VOTERS OF KANSAS, IN THE LAST ELECTION, WOULD VOTE FOR A CANDIDATE THAT WAS NEITHER REPUBLICAN OR DEMOCRAT.

THE PEOPLE WANT THEIR GOVERNMENT BACK. THEY WANT AN ACTIVE VOICE THAT CAN BE HEARD WHEN THEY WANT, NOT ONCE EVERY TWO YEARS AT ELECTION TIME. GIVE US OUR RIGHTS, PASS THE INITIATIVE LEGISLATION. THANKS.

W. J. (JACK) DEINES
STATE SECRETARY
UNITED WE STAND AMERICA of KANSAS

Jack FSA
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Testimony of
Donald J. Cooper
Chairman, Shawnee County Commission
February 22, 1994

The State of Kansas has, by statute, authorized the citizens of a county to utilize a referendum procedure to assist the functions of local government. K.S.A. 19-101(c) allows citizens of a county to petition action taken on a county charter resolution.

A charter resolution exempts a county from all or part of an act of this legislature. By allowing citizens the opportunity to initiate a referendum, the legislature has, in effect, stated it is good policy to allow direct participation in the functioning of their government.

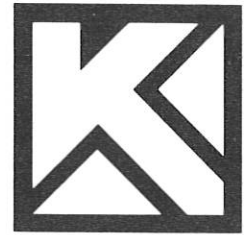
Other areas of local government other than a county are subject to citizen referendum. Shawnee County school districts have been subject to recent referendums on the local option issue. The local option was protested by citizens of the school district by gathering the necessary number of signatures on petitions, resulting in the issue being placed on the ballot for a public vote.

The proposal before you only extends what you approved in 1974 to now apply to State issues. Referendum has worked well and has proven to be a positive force for local government. I urge you to consider making initiative and referendum a positive force for State lawmakers. Why not subject the State to the same standards you subject other governmental entities?

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LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

HCR 5036 and HCR 5037

February 22, 1994

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Federal and State Affairs Committee

by

Jim Edwards

Director, Chamber & Association Relations

Chairman Graeber and members of the Committee:

I thank you for the opportunity to appear before you today to express KCCI's opposition to both HCR 5036, which proposes to amend the Kansas Constitution and provide for constitutional initiative and referendum, and HCR 5037, which proposes to amend the Kansas Constitution and provide for statutory initiative and referendum.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

In preparing this testimony, I thought that my best approach would be to address the arguments that the proponents of the initiative and referendum most likely will use in their promotion of the issues.

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- **Other states permit the use of initiative and referendum.**

True, 23 states (see attachment #1) have permissive legislation authorizing the use of initiative and referendum. However, more states prohibit the use of initiative and referendum than permit it. Since 1918, only four states have adopted legislation that would permit the use of initiative and referendum. This, by any stretch of the imagination, is not a ground swell of support for the issue in other states.

- **Initiative and referendum increases persons interested in voting.**

The number of persons voting on ballot issues is almost always lower than those voting for the top candidate. In fact, states that permit the use of initiative and referendum describe this vote difference as the drop-off rate. The average drop-off rate is greater than 10% for all states. We only have to look to our neighbors in Missouri to fully understand this point. One ballot issue, which would determine utility rates, had 17.6% fewer persons voting on it than the top candidate on that same ballot. By the way, when Kansas voters voted on the classification amendment in the 1986 general election, the drop-off rate was 6.3% (see attachment #2). In fact, close to one-fifth of the registered voters in Kansas did not even vote in this general election.

- **The process allows "common persons" access to issues.**

The truth is that initiative and referendum is most often used today by individuals or groups of persons that have a single issue and can fund their issue with large sums of money. In fact, a recent report published by the California Commission on Campaign Financing showed "Money plays too important a role in initiative qualification and campaigns." In fact, initiative and referendum is commonly known now as **legislation through media blitz**.

- **Most Kansans want initiative and referendum.**

We have all heard the statement that 90% of Kansans want initiative and referendum. Let me assure you that the organizations that appear before you today in opposition to these issues represent almost all segments of the Kansas economy and its people and stand united in their opposition. The only persons that seem to be enamored by initiative and referendum are those that don't like the outcome on their pet issue in the legislative process and want a quick fix.

- **Voters will have no problem understanding the issues.**

Once again I would refer to the recent study completed by California. They found that "Ballot pamphlets often fail to communicate information accurately and concisely.", "Media campaigns disseminate incorrect or deceptive information.", and "Initiatives are frequently too long and complex." While most issues are long and complex, they also provide no alternative. It is interesting, Governor Finney, the driving force behind these proposals, recently questioned whether polls on the death penalty were really conclusive because they provided for no alternative. Unfortunately, initiative and referendum offer no alternative. It is pass or fail...up or down.

In closing I would ask you, as members of the Federal and State Affairs Committee of the Kansas Legislature if you believe that a good lawmaking process is one that:

1. permits poorly crafted laws and a cluttered constitution?
2. provides narrow interest groups the power to design a law or constitutional amendment behind closed doors, then to veto any efforts to amend it?
3. makes it virtually impossible for persons to argue their concerns unless they commit substantial wealth to the task?

4. closes the law drafting process before public input, expert testimony or public debate can occur on the merits of a proposal?
5. provides that a small percentage of all voters is sufficient to amend the constitution or to enact a law?
6. substitutes reliance on one-sided, oversimplified advertising campaigns for open debate and conversation?
7. assumes that every voter will have sufficient time, information, expertise and interest to reach sound decisions on complex proposals?
8. removes the powers given to you to represent your constituents in our representative democracy?

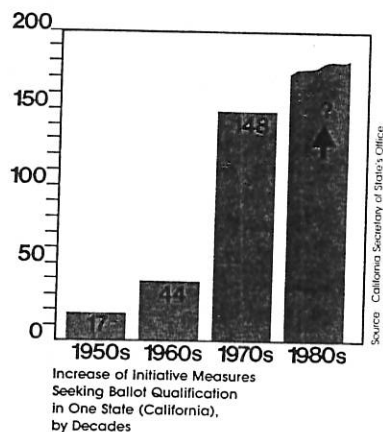
We don't think you believe the above constitutes good government, nor do we. We would urge you to kill these two measures.

Thank you for the opportunity to present this testimony. I would be pleased to answer questions you might have.

Responding to the Challenge: The National Center for Initiative Review

What is the Center?

The National Center for Initiative Review (NCIR) is a non-profit corporation with headquarters in Denver, Colorado. It was formed early in 1981 as a response to the unprecedented explosion of initiative activity in recent years.



The purpose of the Center is to provide information and assistance to those working for reform of the initiative process. It seeks to ensure that the lessons of America's 80 years of initiative experience, particularly the decade of the 1970s, are brought to bear on decisions for the future.

NCIR is governed by a distinguished bipartisan Board of Directors. Its officers and staff include seasoned political professionals. It is funded by voluntary contributions from a wide range of supporters.

Who is served by the Center?

NCIR seeks to serve the general public, the business and labor communities, minority organizations, lawmakers, the judiciary, and academia. It is affiliated with no political party or ideology. Its focus is not on specific ballot issues, but on the broader questions raised by the initiative process as a whole.

The Center as a clearinghouse

NCIR will gather, evaluate, and distribute the latest information, including:

- How the initiative process is structured in states and localities, effects of such structure and regulation, effects of ballot length and complexity

- Citizen participation in the process: its extent and quality
- How the process affects legislatures, public administration, the judiciary, and politics generally
- Quality of laws passed through the initiative compared with those passed by legislatures
- Analysis of court cases relating to initiative propositions and the process itself

The Center as an action base

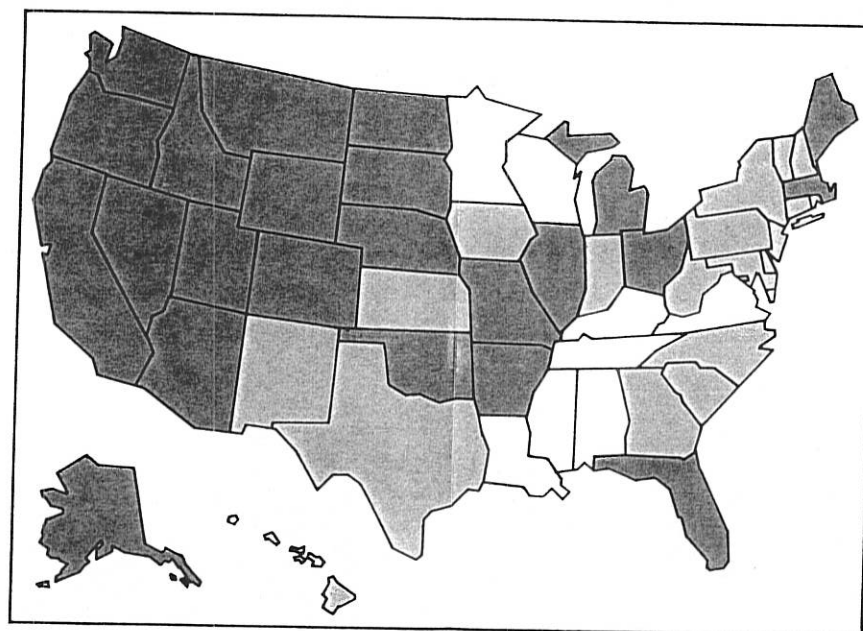
NCIR will take an active role in efforts to improve the initiative process by:

- Assisting individuals and groups who seek initiative reform
- Sponsoring seminars and conferences
- Issuing regular and special publications
- Testifying at public hearings
- Commissioning original research

The Need is Clear

More and more voters now face complex ballot questions at each election. More and more states that have experience with the initiative process are seeing the need to improve it. More and more governmental units are weighing whether to establish the process and, if so, how to structure it.

In this climate, the need for the National Center for Initiative Review is urgent and clear. Several decades' experience with the initiative now exists, and the Center seeks to make the lessons of that experience, along with data from new research, available to all who need them.



1986 General Election

(1,158,738 registered to vote)

(1,942,635 eligible to vote)

Voted in Governor's Race

840,605

(17.5% of registered voters did not vote)

(56.7% of those eligible to vote did not vote)

Voted on Classification Amendment

787,922 (6.3% drop-off)

Voted on Lottery Amendment

807,304 (4% drop-off)

Voted on Liquor by the Drink Amendment

815,151 (3.1% drop-off)

Voted on Pari-mutuel Wagering Amendment

808,087 (3.9% drop-off)

Voted on Education Amendment

750,328 (10.8% drop-off)

Source: Election Statistics
State of Kansas
1986 Primary and General Elections

Facts on States With Initiative

State	Constitutional	% to Qualify	Statutory	% to Qualify
Alaska			X (D)	10 LTV
Arizona	X (D)	15 LGV	X (D)	10 LGV
Arkansas	X (D)	10 TV-LGE	X (D)	8 TV-LGE
California	X (D)	8 LGV	X (D)	5 LGV
Colorado	X (D)	5 LSV	X (D)	5 LSV
Florida	X (D)	8 LPV		
Idaho			X (D)	10 LGV
Illinois	X (D)	8 LGV		
Maine			X (I)	10 LGV
Massachusetts	X (I)	3 LGV	X (I)	3 LGV
Michigan	X (D)	10 LGV	X (I)	8 LGV
Missouri	X (D)	8 LGV	X (D)	5 LGV
Montana	X (D)	10 LGV	X (D)	5 LGV
Nebraska	X (D)	10 LGV	X (D)	7 LGV
Nevada	X (D)	10 LTV	X (I)	10 LTV
North Dakota	X (D)	4 VAP	X (D)	2 VAP
Ohio	X (D)	10 LGV	X (I)	3 LGV
Oklahoma	X (D)	15 LHV	X (D)	8 LHV
Oregon	X (D)	8 LGV	X (D)	6 LGV
South Dakota	X (D)	10 LGV	X (I)	5 LGV
Utah			X (D) (I)	10 LGV
Washington			X (D) (I)	8 LGV
Wyoming	X (D)	15 LTV	X (D)	15 LTV
States - 23	Direct - 17 Indirect - 1	Ave. - 9.3	Direct - 13 Indirect - 6 Both - 2	Ave. - 7.3

TV-LGEtotal votes cast at last election at which office of Governor was included

LGVtotal votes cast for all candidates for Governor in last election

LSVtotal votes cast for Secretary of State in last election

LPVtotal votes cast for President in last election

VAPvoting age population in last federal census

LHVtotal votes cast for office receiving highest vote total in last election

LTVtotal votes cast in last general election

RVregistered voters

Source: National Center for Initiative Review

**Greater Topeka
Chamber of Commerce**
120 SE 6th Avenue, Suite 110
Topeka, Kansas 66603-3515
913/234-2644
Fax: 913/234-8656



The Honorable Clyde Graeber
Chairman
House Federal and State Affairs Committee

Chairman Graeber and Members of the Committee:

The Greater Topeka Chamber of Commerce would like to go on record in opposition to the resolutions for initiative and referendum, HCR 5036 and HCR 5037.

The Topeka Chamber recognizes the frustration individuals feel when an issue is not resolved by the legislature to that person's satisfaction. Our chamber has also been discontent at times. However, we firmly believe in the representative form of government and the process involving information gathering and debate that the legislature pursues as it considers changes to the Kansas constitution and statutes. Safeguards, within the representative system, creating checks and balances are not included in initiative and referendum; rather, they are "popular" elections.

The Topeka Chamber of Commerce and individual businesses in the Topeka/Shawnee County community have many opportunities for input to our delegation, legislative committees, other legislators and the governor's office. Whether we have found agreement or not, our concerns and positions on issues have always been heard. We have never had one complaint from a business person that their representatives have not been accessible and willing to listen. I am sure this level of access and willingness to listen occurs all across our great state.

As we look at other states who have initiative, we see the difficulties this form of government causes: lengthy questions are not read by the voting public; issue elections are won or lost in the media, depending on the most dollars spent; ramifications of changing or adding new laws are not debated creating unintended consequences; propositions placed on the ballot lack opportunity for amendment; initiative and referendum do not generate greater participation by the electorate, there is documented drop off of voters voting on ballot questions. Tom Peters, author of "In Search of Excellence" quotes in his newspaper column (June 26, 1992): "Teledemocracy, The New Republic magazine says, means "the Madisonian system would be replaced by the Geraldo system; checks and balances by applause meter." Frankly, the costs to business in defending itself from ballot questions is of great concern.

Kansas businesses are faced with the realities of a global market and global competition. Now is not the time to divert precious resources away from capital improvements and human resources to battle issues in the electronic and print media. Our Kansas citizens currently have access to their government and the ability to shape Kansas laws and regulations. It is not necessary or timely to embrace the initiative process of government. We respectfully request HCR 5036 and HCR 5037 be voted down.

Christy Young
Vice President Government Relations

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Atch #9

Testimony of Opposition to Initiative and Referendum

Scott Curry for Equality Kansas

February 22, 1994

The organization I represent here today, Equality Kansas, has noticed an alarming trend. **There have been costly initiative and referendum votes held throughout the Union to take away the fundamental constitutional rights of minority citizens.** In many places, the initiatives have succeeded.

In Colorado, the majority of those voting passed Amendment 2, which was put forth to limit the constitutional rights of Gays and lesbians in Colorado. There is a possibility it was passed because the populace didn't understand the wording of the initiative. It was a basic "vote no for yes, vote yes for no" amendment. Add to this that a media-blitz ad campaign whipped to fever pitch the emotions of Colorado citizens, and it is little wonder it passed.

As with many media political campaigns of late, much of the information disseminated was stereotypical, hysterical, and simply untrue. **There were no mandatory forums held whereby the populace could gain access to the information necessary to form an informed, educated decision** on the issue. The battle was waged through the media, and those with the most money won. Terms were redefined. Equal rights, which supposedly belong to everyone in our country, were relabeled "special rights," at least when they related to Gay men and Lesbian women.

The minority voice didn't have the resources to counteract the media images the opposition fed into the living rooms of the majority. As a result, there was **an uneducated, yet emotional, majority who was willing to take away the fundamental constitutional rights of a minority. And through a referendum and initiative procedure, they voted to do just this.**

The Amendment has thus far proven to be unconstitutional. But **the spiritual and financial costs to the state have been staggering**, and the fallout has not yet cleared. Will the constitution be put to a vote before the majority rule to make certain the rights of a minority are destroyed? It's a very real possibility.

The majoritarian model of government assumes that citizens are knowledgeable about government and politics, that they want to participate in the political process, and that they make rational decisions in their voting. The framers of our Constitution believed that the majority has neither the time, nor the motivation, to truly educate themselves on most issues. Their belief has proven true. In the United States today, only 22 percent "follow what's going on most of the time" in their government. **Fully 40 percent said they followed politics "only now or then" or "hardly at all."**¹ Furthermore, voter turn-out in *presidential* elections has fallen to around one-half the eligible electorate.

¹M. Margaret Conway, *Political Participation in the United States*, 2nd ed. (Washington, D.C.: Congressional Quarterly, 1991), p.44

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Our founders further understood that because of this lack of fundamental motivation and knowledge, there would be times when the emotions of a majority would run high. They knew that during such times, intellect, logical reasoning, and a full understanding of the issues would be lost.

James Madison, arguing for representational government, concluded, "... that a pure democracy ... who assemble and administer the government in person, can admit of no cure for the mischiefs of faction." He defined faction as "a number of citizens...who are united and actuated by some common impulse of passion ... adverse to the rights of other citizens ..." Madison, with foresight of an Amendment 2 type of situation, continued to state, "A common passion or interest will, in almost every case, be felt by a majority of the whole, and there is nothing to check the inducements to sacrifice the weaker party. Hence it is that such democracies have ever been spectacles of turbulence and contention ..." ²

To counteract this, the framers built many frustrating, but necessary, checks and balances into the constitution. The result is the representational government we enjoy today.

Critics state that this representational government is elitist. It is not. It is pluralist. This pluralistic method of government, the government I plead for, and the government initiated by the framers of the constitution, allows for the voice of the minority to be heard in a way that would be impossible under a populist majoritarian model of government. My being here today is proof of this. I am allowed to be heard. Because of the checks and balances, I am able to state my position clearly, with a certain degree of assuredness that those voting on my future will hear me. If our system of government was one of true democracy, rather than representational democracy, my voice would not be heard. **Under a system where the majority votes on an issue, unless I have access to the money necessary to appear on the media, my voice will not be heard.** Because most minorities do not have the resources necessary to be heard under a majoritarian system, their voices will also be silenced.

As a gay man, who is in very real danger of losing his constitutionally guaranteed equal rights, I speak today for the hundreds of thousands of Kansans who are also gay men or lesbian women. I speak for members of all minorities who ask, very simply, for access to our government.

And isn't that what initiatives and referendums are supposed to be about? Access - by the people, of the people, and for the people -- to our government? I submit we have that now. **I implore you, in the spirit of justice and fairness, not to take away my right to be heard, through the guise of providing me with access to my government.**

²James Madison, *The Federalist*, No. 10 (1787)



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

Re: HCR 5036 and HCR 5037 - Public Initiative

February 22, 1994
Topeka, Kansas

Presented by:
Warren Parker, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Mr. Chairman and members of the Committee:

My name is Warren Parker, I am the Assistant Director of Public Affairs for Kansas Farm Bureau. We appreciate this opportunity to express the views of our farmer and rancher members in each of the 105 counties in Kansas.

Our members have told us clearly that they strongly oppose the idea of Public Initiative. The Farm Bureau policy position adopted by the voting delegates at our Annual Meeting in November is attached to this testimony.

We believe there is a lengthy list of reasons that only a handful of states have adopted Public Initiative since the turn of the century, and that very few, if any have adopted it in the last twenty years.

There are the often mentioned debacles in California, Massachusetts and other states where expensive media campaigns, misinformation, and lengthy, hard to understand ballots have not served the electorate. The Kansas Legislature wisely rejected a proposal similar to the one before you not so long ago, as have other Kansas legislatures dating back decades. These lawmakers have realized that Public Initiative provides the danger of a well financed

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frustrating the opposition and misleading the public into passing bad and dangerous law. Public Initiative allows for law by emotion, rather than reason. It is ironic that some of those who claim to favor Public Initiative because it gives power to the people would actually hand over that power to the most well financed special interests, the ones with the most bucks and the best ad campaigns. That doesn't sound much to us like good public policy.

Our members believe you as legislators represent your constituents with a tremendous amount of information at your disposal. You do not make decisions based on one sides' ability to generate a "catchy 30 second sound bite". We think your ability to discern information, and the fulfillment of your duty as representatives of your constituencies, makes for much better law.

Our representative form of government should not be put at risk. The checks and balances of the Executive, Legislative, and Judicial branches of government exist for good reason. If we truly believe in what our founding fathers created, Public Initiative will not be a part of our Constitution. Thank you for your time.

Farm Bureau Policy

Initiative and Referendum

Gov - 6

We believe the initiative and referendum procedure undermines our representative form of government. We respect and believe in the checks and balances now in place for the Executive, Legislative and Judicial branches of government in Kansas. We oppose the use of the initiative and referendum procedure because it will impair legislative responsibility, impair representative government, lengthen the ballot and result in poorly drafted legislation.

The Media Benefits

The major beneficiaries of initiative and referendum are newspapers and other media who are paid to air or print the campaign advertising. The Governor's current \$200,000 media campaign on this topic is a classic example.

Special Interests Benefit

Contrary to popular belief, special interest power *increases* through initiative. Dependence on modern campaigns on media advertising means those campaigns which spend more will prevail much of the time.

Safety Valve

Proponents argue initiative is a safety valve, for the political "outs." We submit that is the purpose of a general election. In recent ones we've seen:

- Governor Finney was elected in 1990, the first woman governor in Kansas;
- A third of the House of Representatives and Senate elected in 1990 were new;
- In 1992, another third of the House turned over and new faces were seen;
- In 1992, Ross Perot took 27% of the Kansas popular vote.

That is hardly the result you would expect in a state whose voters feel powerless to change their future.

Power Points.

There are three power points in the creation of public policy in a democracy. They are the legislature, the governor and the people, generally. In my experience when any two of those three power points get together and truly unite on a course of action, things happen.

Conclusion

Absent a showing that the Kansas legislature is historically unresponsive to the people it serves, we do not believe initiative and referendum is needed nor is it desirable.

For these reasons KBA opposes initiative and referendum.



Legislative Information for the Kansas Legislature

TO: *House Federal & State Affairs Committee*

FROM: *Ron Smith, General Counsel, KBA*

SUBJ: *HCR 5036 & 5037
Initiative and Referendum*

February 22, 1994

SUMMARY:

The KBA opposes initiative and referendum.

BACKGROUND

KBA has existed as an association since 1882. We have an organizational history of promoting the involvement of citizens in those activities that promote the rule of law. Since statehood, lawyers in great numbers have served in this legislature.

Initiative is one form of governing in Kansas. With all due respect to the proponents, it is not the *strongest* form of government in a democracy, nor in a pluralistic society like ours, we believe it does not promote the *best* form of civic involvement.

Responsiveness

Initiative and referendum is valid only if the Kansas legislature can justly be criti-

cized as unresponsive. That is not the history of this legislature. This state pioneered workers compensation legislation in the 1900s. We were among the first to enact a line item veto in 1902.

Thus we believe the need for initiative is invalid.

A democracy?

It is significant the U.S. Constitution nowhere mentions the word "democracy." It is not a *democracy* that is preserved by our constitution. It is a *republican form of government*, that is, a representative democracy.

In 1792 as part of his writings on the First Amendment's petitioning clause and remembering the unchecked powers of English Parliaments, James Madison urged the 13 states to adopt a written federal constitution.

Madison felt such written guarantees were needed because the body politic...

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often produce undesirable results if permitted to govern exclusively by majority rule.

Madison preferred a system of elected lawmakers exercise their best collective judgment, and that those lawmakers not be bound to petitions and instructions from home.

In that regard, the federal constitution disallows initiative and referendum, preserving instead a "republican" form of government.

Even though he felt that way about the federal government, Madison felt the states should be free to adopt other forms of government.

Initiative and referendum began in the populist era when legislatures were perceived as being unresponsive to the needs of the time. That is not, and has not been, the history of Kansas.

Generally this state has had a very responsive legislative system. Kansas territorial lawmakers took up the issues of slavery and universal suffrage long before other states did. While some Kansans believe the legislature may not have always acted in their best interest, they can rarely point to legislation that was necessary that was not enacted because the legislature was controlled by "special interests."

Initiative and referendum is not the answer to those who

feel a legislature has not done the right thing.

The answer is a general election.

The Governor's Role

Initiative often diminishes the governor's role. In 1902 Kansas adopted a line item veto allowing our governors a sharper scalpel in trimming the cost of government.

The veto power sometimes is needed to trim a run-away legislative power. The veto power is unavailable in the true initiative process.

Other States

The least valid reason to enact initiative and referendum is the number of other states with the law. In states with initiative and referendum it often leads to ballot confusion. Sometimes contradictory issues are on the same ballot, and pass not on their merits but because voters were confused.

Anti-minority?

A study of initiatives in California, Massachusetts, Oregon and Rhode Island in the 1970s found the issues averaged nearly 1,600 words and using standard measures of readability, meant it took someone with 18 years of education -- high school plus six years of college -- to understand the issues.

Initiative voting patterns

show a drop off in participation between those who vote for candidates and those who continue down the ballot and vote for the initiatives. We believe this means voters generally are more interested in their ability to choose good persons to represent them than to make direct choices on legislation in general.

In spite of the notion of the proponents that everyone is included and everyone can participate in initiative and referendum, one also can conclude from this study that initiative can be designed to exclude the less-well educated or minority voter.

Costly government

If we are not going to fund judicial salaries or university programs and if we are slashing other government programs, why would this House want to create a system whereby people can not only create new government programs but also lock in minimum appropriation levels?

On the other hand, if you write controls into the initiative resolution -- disallowing the drafting of appropriations to fund an initiative law -- you and I know that the legislature will defeat successful initiatives simply by not funding them.

Fear campaigns

The concept also can be lead to extreme positions by the majority of voters react to fear campaigns.

We also see use of initiative and referendum to limit the political activities of minorities or unpopular groups.

As was stated by the National Association of Attorneys Generals in a 1988 position paper on individual rights: "It is an unfortunate fact of American history that if the rights of blacks, Indians, women, Hispanics, Italians, or Jewish citizens were put up to a popular vote at particular stages of history, the results would be catastrophic."

Whether or not you agree with what happened in recent Oregon and Colorado initiatives impacting the gay and lesbian community, the purpose of those initiatives was to constitutionally disenfranchise minority groups from the political process. Those are precisely the types of important issues that should be resolved by legislators after hearing all the facts.

A deliberative and representative legislative body is not a guarantor against discriminatory results. However, legislators can be held accountable for discriminatory votes.

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February 22, 1994

TO: House Federal and State Affairs Committee

FROM: Jeanne Patterson, Executive Director, Kansas Society of Association Executives

RE: Position Statement in Opposition to Initiative and Referendum (HCR 5036 and HCR 5037)

The Kansas Society of Association Executives (KSAE) is an individual membership organization made up of over 350 association executives and suppliers. Our professional members represent 100 different trade, professional, philanthropic and advocacy organizations.

KSAE's primary purposes are to promote the common interests of association executives, to develop and encourage high standards of service and conduct for association executives, to increase public understanding of associations and their economic importance, and promote the accomplishments of voluntary associations. The society will occasionally adopt a policy position regarding state legislative and/or regulatory issues affecting association management.

KSAE has reviewed and discussed the Initiative and Referendum issue and has adopted a policy in opposition to such proposals. It's apparent that an initiative or Referendum constitutional amendment would have a major impact on the management of trade and professional voluntary organizations.

KANSAS SOCIETY OF ASSOCIATION EXECUTIVES

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Individual associations play a vital role in the policy process in the Kansas Legislature. Our members constantly compile and supply information to their members and to lawmakers as they study and draft legislation.

Input by associations frequently allow legislators to consider amendments and clarification to our statutes. The Initiative procedure will often not allow for changes or compromises on major state policy matters.

Many of our individual members have small budgets to represent their association's views in the legislative arena. These members will find it even more difficult if they are forced to participate in statewide massive public information campaigns to tell their side of the story. We are frightened by the prospect of having to generate millions of dollars on initiative proposals that can more effectively be addressed by well-informed legislators elected by the people of Kansas.

In summary, KSAE supports the current representative form of government in Kansas and strongly opposes Initiative and Referendum proposals.

STATEMENT OPPOSING INITIATIVE AND REFERENDUM

KANSAS MOTOR CARRIERS ASSOCIATION

Mary E. Turkington - Executive Director

Presented to the House Committee on Federal and
State Affairs, Rep. Clyde Graeber, Chairman;
Statehouse, Topeka, February 22, 1994.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the highway transportation industry and the Kansas Motor Carriers Association, I wish to express our strong opposition to the proposed initiative and referendum proposals represented by HCR 5036 and HCR 5037. We oppose such departures from representative government for the following reasons:

1. Issues affecting public policy in Kansas now can be adequately and appropriately addressed through the legislative process now in place. Kansas can be proud of the system of representative government that permits deliberate, fair and knowledgeable consideration of public policy issues.
2. Initiatives are most often used by well-financed, single-issue organizations. Voters have to accept issues as they appear on the ballot with no opportunity for debate, discussion, or compromise. The vote has to be "yes" or "no". Most important public policy issues are not that clear-cut nor would the people voting have an opportunity for input. The current legislative process offers citizens a far greater opportunity, through their elected representatives, to have a voice in the enactment of laws that govern their actions.

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3. Initiatives also can result in a costly process for informing voters fully about an issue to permit the voter to make an intelligent decision when the voter casts his or her ballot. Valuable resources often must be committed to defeat an unsound proposal or controversial proposals that are repeatedly submitted. The process simply represents a waste of money, time and related resources when such matters can more properly be addressed through existing legislative channels.
4. Initiatives provide "taxation without representation" opportunities. The people who now elect their representatives and have access to those elected officials, have a voice in fiscal choices. Initiatives can impose increased spending requirements without providing for revenues to pay for such ballot choices. The risks such a system generates are not protective of the "public's interest."
5. The solution is not to draw a narrow initiative authorization. That would be like declaring one "just a little bit pregnant." Initiatives can be expanded by initiatives. The process should not be authorized.
6. The diversified interests of the people of Kansas can only be well served through wise and informed representative government exercised through the legislative process. We respectfully ask you to reject HCR 5036 and HCR 5037. The people of Kansas will thank you.

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