

National Referendum

August 5, 1994

**MEMORANDUM**

To: Bruce Reed, Paul Weinstein  
From: Dacia Toll  
Subject: National Referendum

In the face of declining public confidence in government, U.S. Rep. Pete Hoekstra (R-MI) called for "a new constitutional device that lets voters help set the nation's agenda." With this in mind, he has introduced three pieces of legislation into the 103rd Congress which would provide for some form of national referendum. As per your request, I have cast about to try to discover what's out there on this issue. The simple answer: not much. The following is a broad brush survey of the current congressional activity, the experience of the states with popular referenda and initiatives, their use in Western Europe and commentaries on the subject offered in the legal literature. Rather than address the theoretical reasons for or against a national referendum or offer my own personal verdict, I have intentionally kept this survey broad and preliminary. I would be happy to pursue any further investigating or analysis you might like.

**CONGRESSIONAL ACTIVITY**

There has been limited activity on Capitol Hill, spearheaded and advocated almost exclusively by Rep. Pete Hoekstra (R-MI). Hoekstra introduced H.R. 3835, calling for a national referendum on term limits for members of Congress. The bill was referred to the Committee on House Administration, but is described by a committee staffer as "pretty much dead." Hoekstra also introduced two joint resolutions calling for constitutional amendments. H.J.R. 180 proposes an amendment to give citizens the right to enact and repeal laws by voting on the legislation in a national referendum. H.J.R. 181 would give citizens the right to propose amendments through an initiative process. Both resolutions were referred to the House Committee on the Judiciary, but were described by a committee staffer in this instance as "definitively dead." (I've attached copies of the legislative language of H.R. 3835, H.J.R. 180 and H.J.R. 181).

**H.R. 3835**, the "National Voter Opportunity to Inform Congress Effectively (V.O.I.C.E.) on Term Limits Act of 1994," would provide for a national referendum on congressional term limits. Citing the fundamental rights of citizens to vote and to petition their government, the bill provides for an advisory question to be placed on ballots in every state, territory and the District of Columbia in the next general election. Results would be tabulated and certified according to standard procedures. Although

the verdict would be nonbinding, Hoekstra hopes that "a nationwide debate and vote would clearly have more impact than a mere public opinion poll."<sup>1</sup>

Hoekstra later proposed amendments which would add advisory referenda on the balanced budget amendment, Line Item Veto Act, the Sunshine for Committees Act, the Private Property Protection Act and other miscellaneous reform amendments. Although terms limits are the central focus, the bill explicitly defines as one of its purposes: to provide "an opportunity to study the feasibility of conducting national nonbinding referenda on other important issues in the future."

Initial co-sponsors: Mrs. Fowler (R-FL), Ms. Shepherd (D-UT), Mr. Fingerhut (D-OH) and Mr. Torkildsen (R-MA).

**H.J.R. 180** calls for a constitutional amendment which would allow citizen-sponsored initiatives to repeal or enact federal laws. An initiative must first pass stiff petition rules for being placed on the ballot (must have signatures of at least 3% of the total # of voters in the last presidential election, including at least 3% in each of ten states; all collected within an 18-month time window). Within 90 days, the petition will be certified if the signatures prove valid, and a copy of the proposed law or repeal shall be placed on the ballot in the next election for members of the House of Representatives. If the initiative receives a majority of votes in three-fifths of the states, the proposed law or repeal shall be introduced in the Congress on the first day of the first session following the vote. Congress then has 15 months to enact the proposal, pass similar legislation with amendments, or ignore the bill.

- As President Clinton explained to us on Wednesday night, if Congress approves the bill and the president signs it, it becomes a law! Congress may not overrule or amend the new law without an affirmative vote by two-thirds of each house.

- If Congress ignores the initiative, it is again placed on the ballot in a national referendum. If it again receives a majority of votes in three-fifths of the states, the proposed law or repeal is enacted and will take effect according to its terms (it is not subject to the approval of the president).

- If Congress passes a different but related bill, both versions go back to the people for a second vote. The measure that receives the most votes becomes law. If neither receives a three-fifths vote, the initiative fails (once again, any bill which receives a majority in three-fifths of the states is not subject to the approval of the president -- in this instance, that could prove problematic if Congress uses the amended version as an outlet to challenge presidential power).

Initial co-sponsor: Mr. Hutchinson (R-AR)

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<sup>1</sup> as quoted in Policy Review, Summer 1994.

**H.J.R. 181** calls for a constitutional amendment to allow citizens to propose amendments through an initiative process. A citizen-initiated constitutional amendment proposal must meet the same rigorous petition and voting requirements as described in H.J.R. 180. If the proposed amendment receives a majority of the votes cast in three-fifths of the states, the amendment is sent to the states for ratification. At this stage, the ratification procedures outlined in Article V are triggered.

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As an aside, the only current use of referenda on the federal level which I came across was by the Department of Agriculture. In making certain decisions, USDA uses mail ballots to determine the opinion of the affected population. For example, USDA held a referendum of eligible producers to determine whether they favor or oppose marketing quotas. According to the U.S. Code, if the Secretary determines that 60 percent or more of the producers voting in the referendum approve marketing quotas, the Secretary shall proclaim that the marketing quotas will be in effect for the specified period.

## THE EXPERIENCE OF THE STATES

Certainly the most extensive laboratory for testing the use of popular referendums in the U.S. has been the states. Forty-three states allow their legislatures to submit referendums to a vote of the people, and 24 states allow citizens to sponsor initiatives through a petition process.<sup>2</sup> In 1992, 63 initiatives qualified for the ballot around the country, the most in any one year since 1932. "There's no question that the initiative and referendum process is increasing nationwide .... The initiative process is alive and well and motivated largely because government is not dealing with basic problems," said Dick Woodward, a partner in Woodward McDowell, one of the most successful initiative and referendum consulting firms.<sup>3</sup> State and local initiatives have tackled term limits, taxes, abortion, euthanasia, welfare reform, the death penalty, school choice, a variety of minority rights concerns and many other issues.

The obligatory referendum on amendments to state constitutions proposed by state legislatures was first adopted by Connecticut in 1818 and has now become the prevailing method for amendment of all state constitutions. Some states require a referendum on bond issues.

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<sup>2</sup> The states with no provisions for initiatives or referenda are Delaware, Minnesota, Pennsylvania, South Carolina, Tennessee, Texas and Vermont.

<sup>3</sup> quoted in Campaigns and Elections, May 1994.

In many cases, referenda results have challenged gridlock and compelled state governments to do what they would not otherwise have done. Perhaps the prime example is term limits. In 1992, term limits passed in 14 states with an average of 66% of the vote. Similarly, Oklahoma, Arizona, Washington state and Colorado now require a vote of the people to raise taxes. From 1981 to 1990, 271 initiatives appeared on ballots across the country, and 115 (42 percent) were approved by voters.

Of course, different states have had different experiences. California has led the country in both volume and controversy. Polls indicate that Californians approve of their ballot proposition system by an eight-to-one margin. But articles written in the New Republic, Economist, California Journal and Newsweek question whether states which allow popular referenda, particularly California, may have gotten "too much of a good thing." (I've attached copies of these commentaries). After the November 1993 elections, The New York Times editorial board chastised New York voters for approving "simplistic ballot proposals masquerading as cure-alls for America's political ills."<sup>4</sup>

Across-the-board, state and local initiatives have grown in length, complexity and confusion. The number of initiatives filed has nearly doubled each decade from the 1950s to the 1990s. In 1993, the California state ballot guide mailed to voters was 48 pages; San Francisco voters received an additional 236-page guide to the 28 city propositions (weighing in at three-quarters of a pound). Public resentment appears to be mounting over the devious, deceptive and expensive media campaigns launched by initiative sponsors and opponents. If one-side of an issue gets its initiative on the ballot, the other will likely hire a petition firm to put forward its own counterinitiative on the same topic. Counter-initiatives usually have one main objective: confuse voters.

States initiatives and referenda have become a profit-making business. Rick Arnold, president of National Voter Outreach, a company that specializes in ballot access petitions, estimates that well over 60 percent of signature gathering efforts are performed by professionals (the going market rate is \$1/ signature). It's estimated to cost \$1 million to get an initiative on the ballot in California. Money and organization are particularly powerful weapons in initiative campaigns because voters, without the guide of party loyalty and often without adequate information about the issues, are more open to propaganda.

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<sup>4</sup> In New York City, voters overwhelmingly approved term limits; in New Jersey, voters gave themselves the power to recall elected officials at any time; Staten Island voters decided to secede from New York City.

### POPULAR REFERENDUMS IN EUROPEAN DEMOCRACIES

Most of our European partners have the constitutional ability to use national referenda in deciding issues of public concern, although they differ in the frequency with which they exercise that ability. Switzerland leads the Western democracies and probably the world in the extensive use of the popular referendum. Of all the national referenda held in the Western democracies since World War II, more than two-thirds were held in Switzerland. The Swiss are strong believers in the referendum and have developed a broad justification for its frequent use, averaging 169 national referenda per year.<sup>5</sup>

On a much more moderate scale, Denmark (averaging 11 national referenda/year), France (10), Ireland (8), Italy (4), and Sweden (3) all rely on the referendum in deciding issues of public concern. With only an occasional referendum, Austria, Belgium, Norway and the United Kingdom average one national referendum a year. As examples, both Sweden and Austria addressed the issue of nuclear power in referenda; Italian voters tackled the controversial issue of divorce; Spain held a referendum on its membership in NATO; Switzerland voted not to abolish its army.

The experience of Switzerland, in particular, offers some insights into the effectiveness of the referendum as a decisionmaking tool. The founders of modern Switzerland wished to overcome the inaction of the old regime and its dominance by a few ruling families. They anticipated that the voters, expressing their wishes through a national referendum, would be more open to change. The Swiss experience, in fact, has often proven that the opposite is true. More often than not, referendums have had a delaying effect. For example, the parliament was prepared to grant women the right to vote much earlier than the male electorate. Several amendments to the constitution that would have established female suffrage were defeated in referenda.

Critics of the use of referenda point to the possibility of a tyranny of the majority, which overwhelms the interests of minority groups. In Switzerland, where voters approved a constitutional amendment prohibiting the slaughter of animals according to kosher rites, the danger has been realized. But, on balance, the voters have proven themselves able to consider the interests of other groups. During the economic boom of the 1960s, foreign workers flooded Switzerland, growing to become more than 1 million of the 6 million residents. Many Swiss no longer felt at home in their own country; people began to talk of the "foreignization" of Switzerland; the economic boom ended, the economy lagged and Switzerland gave the impression of being overcrowded. An antialien movement developed, launching several constitutional initiatives that would have forced hundreds of thousands of foreigners to leave the

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<sup>5</sup> as of 1991

country almost immediately. When put to a vote of the people, the constitutional amendments did garner broad popular support, but were defeated each time. This case is usually touted as an example of how a majority of Swiss voters were willing to protect the rights of a weak minority.

Even Great Britain, with a strong history of parliamentary government, has turned to the referendum for critical decisions. Within the last generation, special referenda have been held on at least three occasions: in 1973, the residents of Northern Ireland were polled to determine whether they wished to remain part of the United Kingdom; in 1979, residents of Scotland and Wales rejected proposals for devolution of political authority; most important, in 1975, all residents of the United Kingdom voted to endorse Britain's continued membership in the European Economic Community. Although the results of these "advisory" referenda were not technically binding on Parliament, they were generally perceived as expressions of popular will that were more authoritative than normal parliamentary modes of lawmaking.

#### LEGAL LITERATURE

My cursory search uncovered little scholarly work on the issue of a national referendum; most of what I did turn up appeared in our universities' various legal journals. The most recent round of debate of the issue was provoked by Bruce Ackerman's 1991 book, We the People. Ackerman proposes to reform the Article V constitutional amendment process by adding a national referendum procedure that would increase the public's participation in constitutional decisionmaking.

In response, Philip J. Weiser, writing in the New York University Law Review, concludes that a national referendum would lack the filter necessary to prevent Americans from voting away essential protections of liberty, basic civil rights and thoughtfully entrenched institutional arrangements.<sup>6</sup> He argues that America must first prepare for direct constitutional politics through political reform and an enriched education for citizenship.

However, Clayton P. Gillette, writing in the Michigan Law Review, declares that "Participation is in the air." He addresses criticisms of public referenda which claim that plebiscitary processes are less likely than representative ones to generate decisions that reflect the public interest or social welfare. Gillette concludes that this criticism both understates the capacity of participation and overstates the capacity of legislative processes to serve the public interest.

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<sup>6</sup> New York University Law Review, Volume 68:907, October 1993

Perhaps the best discussion of the legal justifications for a national referendum were offered by Akhil Reed Amar in both the University of Chicago Law Review and the Columbia Law Review. Amar concludes, "We the People of the United States have a legal right to alter our Government - to change our Constitution - via a majoritarian and populist mechanism akin to a national referendum, even though that mechanism is not explicitly specified in Article V."<sup>7</sup> ( Incidentally, he offers as a justification for a living constitution the observation that all men *and women* are created equal).

That concludes my initial adventure in exploring the issue of a national referendum. Any point which you would like elaboration on or further exploration of, I would be happy to try to provide it.

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<sup>7</sup> Columbia Law Review, Volume 94:457, March 1994.

# BREAKING THE CONGRESSIONAL LOCKGRIP

## The Case for a National Referendum

### REPRESENTATIVE PETE HOEKSTRA

**T**here is a crisis of confidence in national government, one that threatens to permanently cripple our republican democracy.

No matter how many incumbent politicians lose to eager newcomers, the most important issues on voters' minds are either left unaddressed or unchanged. The 110 new members of the House elected in 1992 have done little to advance issues like a balanced budget amendment, term limits, or reducing the size of government. All of these issues and more find strong support in countless public opinion polls. Yet Congress refuses to reform itself.

Government paralysis carries a price tag for any electorate. Today nearly 70 percent of the American people disapprove of the way Congress is handling its job, up from only 12 percent in 1958, according to a Gallup survey. This lack of faith cannot continue. If left unchecked, declining public confidence will destroy the credibility of national institutions so much that governing sensibly—and democratically—will become nearly impossible.

Perhaps the best way to restore confidence in the political process is to rebuild the connection between national elections and national issues. We need a new constitutional device that lets voters help set the nation's agenda. I propose that through a process of indirect initiative elections, voters should be allowed to instruct Congress about government's priorities and goals.

#### NO PURE DEMOCRACY

The Constitution is a mixture of elements forming our representative democracy—a form of government in which people freely choose their decision-makers but do not make the decisions themselves. We are and should remain a republic, not a pure democracy. The Founders rightly feared the momentary passions of even the limited, property-owning, male and fairly well-educated electorate of the time. For them, democracy meant rule by the *demos*, or mob—a volatile situation to be avoided for its tendency to trample minority rights.

James Madison believed a republican form of government would "refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice

will be least likely to sacrifice it to temporary and partial considerations." In large measure, the main constitutional elements of separation of powers, federalism and bicameralism are all designed to allow time for the passions of the masses to cool, hopefully turning dangerous impulses into more reasoned effective change.

Madison is usually considered one of the more level-headed of the Founders, and his critique of direct democracy is sound and broadly admired. His optimism, however, about the "wisdom," "patriotism," and "love of justice" of elected representatives now seems naive and anachronistic.

The brakes against mob rule written by into the Constitution should not be lightly dismissed. There are, on the other hand, Constitutional elements to promote the democratic impulse. These include a wide suffrage, short election terms for House members, and the requirement that tax bills originate in the House. Constitutional amendments added since have expanded the vote, made the Senate directly elected, guaranteed participation rights to excluded groups, and preserved and promoted individual freedoms. Extra-constitutional developments, such as the rise of mass political parties, and the increasing number of offices filled by elections, have strengthened the voice of the people.

Sadly, these changes to broaden participation have not improved our government. The changes clearly have made elected officials more responsive to the immediate opinions of individual voters, yet major issues remain unresolved. Individual citizens have more opportunities to participate in political debate, but see little substance in what is being debated. Institutional developments and campaign changes have made members of Congress almost invulnerable to mass public judgment, while at the same time allowed them to manipulate the opinions of isolated constituencies and individuals.

Representatives cultivate individuals through casework, and narrow constituencies by direct mail and political action committee solicitations. The power to appease constituents on an almost individual basis allows representatives to ignore larger issues and place the blame for inaction on the institution. Today we have a far more

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PETE HOEKSTRA represents the 2nd district of Michigan.

responsive government than ever—responsive to narrow interests, that is—but its officials can more easily evade responsibility for inaction and gridlock.

### VOTERS SETTING PRIORITIES

To return to the Founders' vision for our constitutional government—to restore our democratic republic—we need a new constitutional mechanism that allows voters to help set national priorities. I have introduced three bills in the House of Representatives that provide two basic routes for indirect initiatives. Either process would let voters set issue agendas in national elections—the best way of reconnecting elections and candidates to issues. Indirect initiatives restore substantive debate on real policy while preserving key constitutional checks on mass democracy.

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One approach calls for a nationwide advisory referendum on term limits for members of the House and Senate. Voters would decide whether Congress should pass a constitutional amendment limiting service in the House and Senate. While current opinion polls suggest such a referendum would be overwhelmingly in favor of term limits, a nationwide debate and vote would clearly have more impact than a mere public opinion poll.

An advisory referendum is admittedly a "test run" for initiatives; the results would be nonbinding and Congress could choose to ignore—as it too frequently does now—the voters' choice. But the political dynamics of a national referendum, even one that is nonbinding, are such that Congress will be hard pressed to avoid issues subject to such wide public discussion.

As a further inducement to restore democracy, I have introduced other legislation that would make the indirect initiative process more powerful. One proposal is an *indirect* initiative process for legislation, and provides for the placement of citizen-sponsored initiatives on a national ballot. An initiated measure must first pass stiff petition rules for being placed on the ballot, and then, if it receives a majority vote in three-fifths the states, goes before the Congress. Congress has 15 months to enact the proposal, pass legislation with changes in it, or ignore the bill. If Congress approves the bill and the president signs it into law, the process ends. If Congress takes no action, the same initiative is placed on the next general election ballot and, if it passes, becomes law. If Congress passes a different but related bill, both versions go back to the people for a second vote. The measure that receives

the most votes becomes law. If neither receives a three-fifths vote, the initiative fails.

Another bill would provide a similar mechanism to propose constitutional amendments. A citizen-initiated constitutional amendment proposal must meet the same rigorous petition and vote requirements as the first bill. It must also, however, gain a super-majority (60 percent) of the votes in a majority of states. If it meets these hurdles, the amendment goes to the states for ratification. At that stage, the ratification procedures provided for in Article V of the Constitution take over.

### LIMITING GOVERNMENT

The national citizen initiative process, both to enact and repeal laws and to propose constitutional amendments, could be used in many ways to limit the size and scope of the federal government, including: a balanced budget, term limits, and line-item veto amendments to the Constitution; tax limitations and/or tax cuts; major campaign finance and lobbying reforms; and limitations on government takings of private property.

These National Citizens Initiative (NCI) proposals will help citizens set the agenda in Washington without changing the essential nature in which decisions are made. An advisory referendum is a modest means to induce congressional action. If such a process bears fruit, the constitutional amendments I have proposed would prove unnecessary. More likely, however, the more forceful mechanisms in the proposals are necessary to redirect Congress's attention back to the interests of the people.

While there has been little research conducted to indicate whether a national initiative process would increase voter participation, the 1992 presidential election might be instructive. The entry of Ross Perot into the process through a third-party candidacy, complete with a massive petition drive to gain access to the ballot, brought many previously uninterested participants back into the process. While voter turnout was still inexcusably low, it was up by 13 million votes over the 1988 election, and reversed the steady decline in rates of voter participation in recent years. There is evidence that when people believe their vote can make a difference, they make the effort to vote.

### LEGITIMACY UNDER ATTACK

Initiative and referendum opponents have argued strenuously against various forms of national initiatives. Although most of the attacks have been leveled against direct initiatives, not against the indirect processes I propose, these arguments deserve to be considered.

The first criticism is that direct lawmaking by the people may undermine the legitimacy of elected government by taking power away from elected representatives. But this legitimacy is already under attack from a large segment of the electorate. Moreover, indirect initiatives still involve the legislature; a legislature finally working on issues of major public concern would enhance, not harm, its legitimacy.

Furthermore, if a national initiative challenges the status quo, and the decisions made by Congress more clearly reflect the will of the American people, then the citizen initiative has accomplished a great deal. Holding



Bob Farnsworth/Manistee News-Article

**Representative Pete Hoekstra meeting with his constituents. "Today we have far more responsive government than ever—responsive to narrow interests, that is."**

the institution of the Congress (as opposed to individual members) accountable for debating issues that affect all of society, and assessing the status of national policies on a regular basis, is a healthy exercise. The initiative will enhance, not destroy, our great deliberative tradition as a nation.

Another argument against initiatives is that they encourage legislative inertia, that the legislature will wait for the public to act on controversial matters to avoid blame. Again, this avoidance is occurring now; indirect initiatives will force action but not predetermine the outcome. Opponents of initiatives argue that such lawmaking avoids the important steps of deliberation, compromise, and refinement. Not true. Any ballot measure that is hasty, too strident, oversimplified or poorly drafted can be halted and corrected by Congress, subject to the approval of voters who Congress would have had two years to convince.

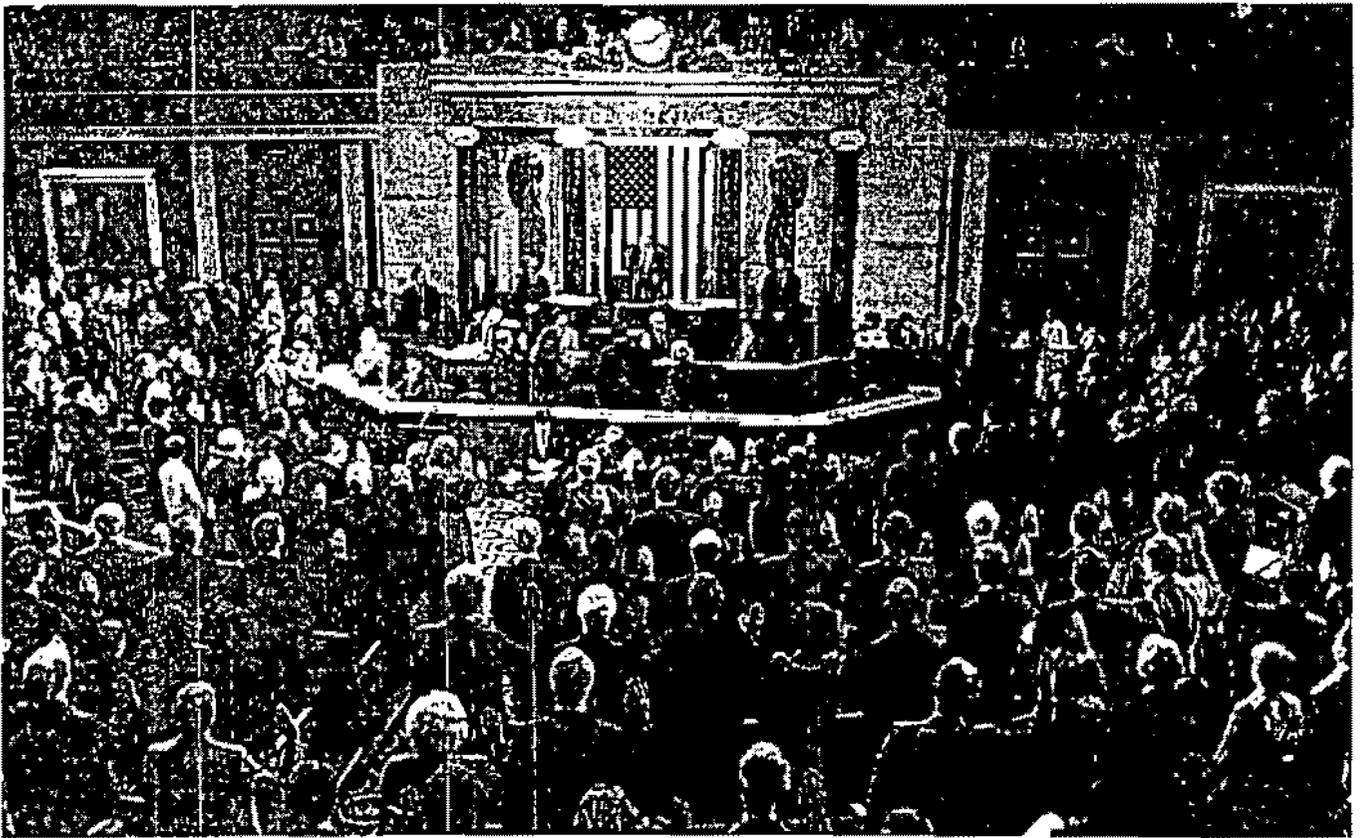
Some critics of initiatives say they are potential tools of special interest groups that cannot get their way in the regular legislative process. If there is anything true about contemporary American politics, it is that special interests routinely place items on our legislative agenda—and keep reform efforts off. Witness the difficulty of killing honey, wool and mohair, and tobacco programs, or the

failure to enact real campaign reform.

The petition requirements are large enough to ensure that special-interest or frivolous measures would rarely, if ever make it even to the initial vote. A harmful special interest will have a far more difficult time in organizing support for two nationwide votes two years apart than in obtaining closed-door favors from a few congressional leaders.

Some critics contend that a national initiative destroys federalism and its important protections for states and regions. To the extent federalism is not already destroyed by federal mandates and the shrinking power of the Tenth Amendment, the supermajority requirements and legislative review of my proposals limit the possibility of specific regions or states gaining unfair advantages in the process.

Finally, critics of the initiative process say that proponents have undue faith in the masses and lack of respect for elected elites. Admittedly, indirect initiatives display more faith in the average voters and put more power into their hands. I believe it restores an appropriate balance between the electors and the elected. It is clear to me, Madison's confidence in us notwithstanding, that our current system places too much faith in elected elites to address issues that are of broad concern.



UPI/Retna.com

The 110 new members of the House elected in 1992 have done little to advance issues like a balanced budget amendment, term limits, or reducing the size of government.

### STIMULATING THE VOTERS

Indirect initiatives preserve many of the advantages of the current system—preserving our representative form of government, protecting minorities, preventing hasty decisions, fostering compromise and conciliation. At the same time, they can stimulate the dangerously flagging public participation in civic affairs. Elections would once again be about both issues and candidates. Voters could go to the polls confident that they are sending a signal to Congress. Candidates would be more likely to take positions on ballot issues, and less able to go into office based merely on name recognition and slick campaign styles.

The underlying contemporary malaise, alienation and cynicism toward politics are all too apparent today. Unchanneled into productive expressions of citizen control, such moods could erupt in ways that would damage our constitutional principles and long-standing political traditions such as political parties.

Indirect initiatives and referenda also would provide national leadership for the legislature. Such leadership has been plainly absent from the current congressional power structure. A national initiative of either the advisory referendum type or the more powerful legislative proposals would help create a national, publicly developed agenda—one with which Congress would have to grapple within two years. Congress could actually be transformed from an assemblage of parochial agents to a body forced to debate and define the public good.

The initiative process realizes the constitutional provision for the public to "petition Congress for redress of

grievances." Special interest lobbyists defend their access to Congress on these same "petition" grounds. Sure, individuals can write, call or meet with their representatives. But the wealthy have the means to organize in a collective voice, and their "petitions" are more likely to be heard. The National Citizens Initiative gives the average voter greater clout to compete with the current powerful interests.

### ENDING BUSINESS AS USUAL

A national indirect initiative process is not a conservative or liberal issue. Experience from the states and other nations that have initiatives shows both liberal and conservative victories. Indirect initiatives are a democratic response to restoring republican principles. By linking national elections with agenda setting, they are a return to our roots, not a departure from them. National Citizen Initiatives provide two useful functions that elevate public debate and reinvigorate our traditional institutions: They separate issues from personalities, and they rebuild the bridge between the electorate and the elected representative.

As with any major reform, national indirect initiatives and referenda will disrupt comfortable relationships and break up cozy alliances. It may well mean the end of business as usual in Washington, D.C. But business as usual is not what this nation needs or what the voters want. A indirect initiative process will help restore the democratic nature of our republican institutions—before growing public frustration brings even greater alienation or a stampede to more radical measures of change. ■

growing feeling among voters that there are some problems, real problems, that have not been addressed in the past eight years," said Democratic pollster Paul Maslin, who is advising McCarthy. "If they link that with a sense that the politicians are only in it for themselves . . . you have a mood that is not going to be conducive to voting for an incumbent."

## RONALD BROWNSTEIN

Ronald Brownstein is the West Coast correspondent of the *National Journal*.

### California II.

## INITIATIVE MADNESS

### *Sacramento*

Ever since Hiram Johnson got the initiative process written into the California constitution back in 1911, this device for bypassing the legislature and submitting propositions directly to the voters has been a time bomb waiting to blow. From 1922 to 1978 there was no year in which more than ten initiatives got enough signatures to be placed on the ballot and no decade in which more than nine were actually passed. But with the passage of Proposition 13 in 1978 the late Howard Jarvis and Paul Gann, Prop. 13's backers, along with their commercial direct-mail contractors, discovered how to work the process—for signatures, for votes, and for big dollars. The result has been an eruption of initiatives that is rapidly crippling representative government.

To get a measure on the ballot in California requires valid signatures from five percent of the voters (eight percent for a constitutional amendment). Currently that's 375,000 (600,000) signatures, and thus something one would assume isn't undertaken lightly. But with commercial signature-gatherers and modern direct-mail technology, enough money will get almost anything on the ballot. (The average cost is now about \$1 million a crack.) In the decade since 1978, 17 initiatives have been passed, on every conceivable subject, including one a few years ago instructing the governor to inform the president that California supported the nuclear freeze. That's more than in the 40 previous years combined, and 12 more are to be voted on in the fall.

In all, Californians will have voted on 18 initiatives this year, plus 23 other matters—bond proposals, constitutional amendments—placed on the ballot by the legislature, for a grand total of 41 items. Those measures cover not just minor issues such as the election of county assessors but enormously complicated and important ones such as changes in California's rigid limit on state and local spending (itself the result of an initiative passed back in 1979),

about which there were two competing measures on the June ballot. To say that this causes confusion is an understatement. One initiative approved in June calls for public funding of legislative election campaigns; another prohibits it.

Other states have the initiative, but none of them has taken up the practice with such a vengeance. The likely explanation has something to do with California's huge size, the impersonality of its media politics, and the rootlessness of its voters. These California voters—especially the old—are especially susceptible to the electronic and computerized campaign technologies that have been developed in the past decade and the profits that can be made through them. Whatever the cause, there is now a whole initiative culture, with its own technology and its own institutions, gradually replacing the institutions of representative democracy.

**A**T THE CORE of that technology is the computerized direct-mail system developed in the early 1980s by commercial campaign consulting firms such as Butcher-Forde, Inc., of Newport Beach, which was often indistinguishable from Jarvis himself. BFI managed a half dozen of Jarvis's post-Proposition 13 campaigns: a campaign to reduce the state income tax by half, another to remove Chief Justice Rose Bird from office, and still others to close the loopholes, as Jarvis saw them, that were written into Prop. 13 by the liberal Bird court. Each campaign was based on mass mailings to a list, constantly updated, of more than one million faithful contributors and petition signers Jarvis had collected for his original property tax cut measures in 1978.

Jarvis and his people used those mailings to collect both signatures and money. Along the way, they learned to make each look so much like a document from an official agency that some recipients mistakenly sent Jarvis their property tax payments. "Property Tax" was printed on one mailer in large letters, "Statement Enclosed. Do Not Destroy." "Important Voter Information Enclosed, please open immediately," said another. A mailing to 800,000 people last December, nearly two years after Jarvis's death, used his name and picture and promised a "1987 Property Tax Analysis." It also asked for \$20 to help pass "the new Proposition 13."

Nobody knows who actually thought up the various post-Prop. 13 Jarvis campaigns or how much, if anything, Jarvis was paid. Many California initiative drives still gather signatures the old-fashioned way—at tables in shopping malls—but even these usually employ commercial signature-gathering firms that get 50 or 60 cents a signature. More sophisticated initiative campaigns are marketed like a commercial product, beginning with a test mailing to see if the product has appeal before rolling out a major effort. No money is ever refunded, even if the campaign is aborted. When Jarvis gave up his drive to defeat Bird early in 1986, and let others do the job, he and his contractors had collected \$1 million, nearly all of it in contributions of \$10 to \$25 apiece, but had virtually nothing left in the till. Like one of those creatures that's almost

all reproductive organs, everything raised had gone into the mailings to raise still more.

Initiatives that aren't the brainchild of the initiative industry itself tend to be the creatures of other industries, often operating more or less incognito. Four years ago an organization calling itself Californians for Better Schools ran a successful initiative campaign to establish a California lottery, one-third of whose proceeds were to go to education. All but \$59,000 of the organization's \$1.1 million budget came from one gaming industry corporation. Most of that money, in turn, went to F. C. Kimball Petition Management Inc., a firm that says it has qualified more than 50 initiatives and referenda around the country. Similarly, a few years ago the tobacco industry successfully opposed an initiative setting up smoke-free sections in public places in the guise of Californians for Common Sense.

The left has jumped on the initiative bandwagon, and developed a few new techniques of its own. One of the initiatives that passed in June required the state to issue \$776 million in bonds to acquire new land for state and local parks. The statewide Planning and Conservation League, which sponsored the initiative, asked local groups that wanted a particular park included on the list to raise money or collect signatures in proportion to the dollar value of their desired projects: 5,000 signatures or \$2,500 per million dollars of parkland in its area. Critics called this "park barrel."

Now this same parkland advocacy organization is putting \$50,000 into supporting an initiative on the November ballot that would increase the state's cigarette tax and use the money for medical services and health research. In return, five percent of the tobacco tax—about \$32 million a year—will (if it passes) be devoted to parks and wildlife.

**A**LTHOUGH HOWARD JARVIS got a flinty look from some California judges, there is nothing illegal about most of this. A lot of reforms have been proposed—prohibiting or limiting commercial signature-gatherers, requiring fuller disclosure of the real proponents or opponents of initiative campaigns, requiring legislative hearings before an initiative can go on the ballot—but none has gone very far. Californians may not be passionate about the initiative, but no one is willing to change it, especially at a time when the conventional wisdom portrays the legislature as being so ineffective.

And that makes for a vicious cycle. Because so many of the initiatives passed by California voters in the past decade in some way restrict the leeway of elected officials—most obviously by imposing tax and spending limits—it becomes harder for the legislature to act on or to evaluate competing budgetary demands in any reasonable form. The result has been an accumulating set of often expensive Rube Goldberg devices—developer fees, per-parcel taxes, utility taxes, special assessment districts—to try (with very limited success) to get around the limits. Each of those devices makes it harder for the public to determine who controls what or how the system works.

And so, in turn, the temptation to resort to the initiative and other plebiscitary devices—what someone called ballot-box budgeting—becomes all the greater. In June there were 50 tax measures on local ballots in California earmarked for specific purposes—schools, libraries, jails, cops, transportation, and so on.

There used to be a comforting theory that if enough money were spent in opposition to an initiative, even one that was popular at the outset, it could be beaten at the polls, while the reverse—carrying a weak measure with a lot of money—was believed not to be possible. But the insurance industry is expected to spend \$43 million testing that theory in November in a multi-initiative fight over auto insurance reform. That would make it the most expensive political campaign (other than the presidential) in American history. Certainly money has become as big a player in the initiative process as it ever was in the halls of the legislature in the worst robber-baron days, and maybe bigger.

Hiram Johnson and his Progressives regarded the initiative as a way of wresting control from "the interests"—specifically the Southern Pacific Railroad—and restoring it to the people. But when voters are asked to evaluate 25 or 30 separate and sometimes conflicting ballot measures, often on the basis of a 30-second television commercial, they are getting not more democracy but less.

PETER SCHRAG

Peter Schrag is editorial page editor of the *Sacramento Bee*.

The joke's on Stanford.

## CANON FODDER

**J**UST ABOUT everything, one would think, has already been said about Stanford University's impending curricular reform, which will drop some classics of Western culture from a required undergraduate course and replace them with works by "women, minorities, and persons of color." But one point has not received much attention: these changes almost certainly will not fulfill the underlying goals of the black students who initiated and led the reform movement.

I concentrate on the demands and hopes of black students, rather than "minority" students in general, because the interests of students of different minority groups are not the same, even if some of those involved in the movement were Hispanic and Asian American. The heritage of Hispanic students, for example, is both "European" and "Western," so they could have been satisfied within the traditional framework of Western classics. In fact, the full range of Hispanic and Latin American literature can be studied in any major American university.



Export earner



example, Los Angeles's unemployment fell.

#### A dissident at UCLA

The most outspoken dissenter from this rosy picture is Mr David Hensley of UCLA's Business Forecasting Project. His pessimistic argument is:

- Optimists are underestimating the effect of defence cuts, which have already cost southern California tens of thousands of jobs this year. The cuts themselves could be the catalyst for a general exodus. McDonnell Douglas and Lockheed have already transferred defence work out of the state to lower-cost locations. Optimists are also overestimating the offset provided by civilian-aircraft sales. McDonnell Douglas is not making money on civilian aircraft, even in a buoyant world market. Though defence spending accounts for only 8% of the state's economy this time, that is still substantial. Recent cuts in New York's financial services industry, 5% of that state's economy, have sent the New York city economy into a tailspin and so accelerated a downturn in the rest of the state.

- Aside from trade, there are not that many other growth opportunities left in terms of jobs. Califor-

nia may retain a substantial stake in high-tech, but computers and electronics are now capital-intensive, not labour-intensive.

- Cuts in defence spending will not send the state into recession, as they did in 1971-72. California received 19% of the Pentagon's procurement spending and 14% of its payroll in 1989. But today defence accounts for only 8% of California's gross state product, down from 14% in 1970. Job growth in other industries will more than offset declines in southern California's aerospace and electronics industries. Orders for civilian aircraft will also help to offset defence reductions. Though nearly 20,000 defence jobs were lost in 1989, for

nia may retain a substantial stake in high-tech, but computers and electronics are now capital-intensive, not labour-intensive.

- The rising costs of environmental protection could drive many businesses from the state. "The business community is scared to death of the initiatives put on the November ballot by environmentalists and the air-quality-management plan," says Mr Hensley. Moreover, net immigration is not as inevitable as most Californians assume. If air-quality regulations and a free-trade agreement drive low-wage manufacturing jobs to Mexico, many Hispanic workers could follow (or not arrive). The same is true of many skilled aerospace workers, who came to the area for jobs and do not have deep roots in southern California. The housing and construction markets are already slowing down much faster than optimists recognise.

- California is in much worse shape to weather a recession than it was in the 1970s or early 1980s, when the state had the best highway and education systems in the country. This time, its infrastructure is in poor shape.

What Mr Hensley's analysis ignores is what optimists count on most: the "animal spirits" of an economy with so many aspiring newcomers. These are difficult to quantify, but they definitely exist. People come to the state to make good. Their appetite for taking risks is enormous. Many people have two or three careers in their working life. Entrepreneurs start not one business, but two, three or four. Such vitality could help the economy clear some of Mr Hensley's worst hurdles.

But even the optimistic Mr Levy agrees with Mr Hensley's last point: California's lack of investment in infrastructure and education. "You cannot run an economy or a society successfully where 20-25% of the people are at risk of dropping out," he says.

As services grow faster than manufacturing, the state's jobs are becoming three-tiered. Between low-wage manufacturing jobs and high-wage professional and managerial jobs lies what is rapidly becoming the biggest segment: medium-wage white-collar service jobs in shops and offices. Mr Levy fears a crippling shortage of people literate and skilled enough to fill these posts. "Ultimately California's prosperity depends most of all on the competitiveness of its labour force," he warns.

## Read the small print

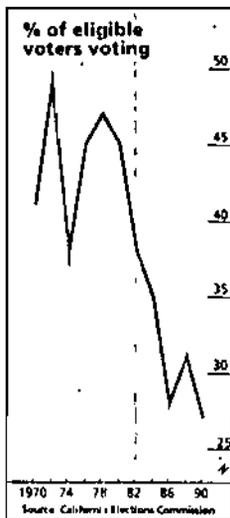
### Direct democracy isn't working

THE most important politicians in California in the past two decades have not been Governors Ronald Reagan, Jerry Brown or George Deukmejian. That accolade belongs to the late Howard Jarvis and Mr Paul Gann, gadflies who sponsored two ballot initiatives which transformed the financing of California's state and local government. Credited with launching a nationwide tax revolt which helped Ronald Reagan win the 1980 presidential election, their initiatives had an even more profound effect on California.

Passed in 1978, Jarvis's proposition 13 changed the formula for assessing property taxes, slashing the income of local governments and so shifting

much of the burden for schools, road building and other services to the state. The passage in 1980 of the Gann initiative, proposition 4, restrained state spending by pegging it to population growth and inflation, thus mandating that the size of state spending would decline as a proportion of an expanding economy. Both measures enjoyed wide support, especially from white, middle-class homeowners aggrieved by soaring property-tax bills caused by the breakneck growth in house prices.

Whether most voters understood the true implications of either initiative is doubtful. A one-off tax cut may have made sense in 1980. But it was a mistake to set permanent limits on government tax-



ing and spending just as California embarked on a decade of rapid change. The spending limits also tied the hands of legislators in Sacramento. Once voters felt the thrill of deciding the state's tax policy in a direct vote, it took a brave, or foolhardy, legislator to propose a tax increase for anything. And the enthusiasm unleashed by Messrs Jarvis and Gann for passing laws by referendum removed, in effect, most big political issues from the legislative agenda.

Voter initiatives were introduced in 1911 by a reformist governor, Hiram Johnson, to break the stranglehold of the Southern Pacific Railroad on a supine legislature. With enough signatures, anyone can place on the ballot either a statute or an amendment to the state constitution. Some 22 other states have similar provisions, but few make it as easy to get an initiative on the ballot or as difficult to amend a measure passed by direct vote. And nowhere else have initiatives become so popular.

Such direct votes are still considered the best way to circumvent a legislature dominated by special interests. But a plethora of initiatives in the 1980s have themselves emasculated the legislature, reserving many taxes for specific uses. A budget battle this summer between Mr Deukmejian, the fiscally conservative Republican governor, and the Democrat-controlled assembly, set new standards of political acrimony, primarily because less than 20% of the \$55 billion state budget was actually subject to change by either side. A rational allocation of resources became almost impossible.

If that is the way voters want it, so what? Why quarrel with direct democracy? But the initiative process itself is no longer representative, if it ever was. Over the past decade initiative campaigns have attracted tens of millions of dollars and all the paraphernalia of candidates' races, becoming a far more powerful vehicle for special interests than corrupt legislators ever were. Even when passed, many of the more contentious initiatives are challenged by armies of high-priced lawyers and end up in the state Supreme Court, which is often stuck with the thankless task of rewriting badly drafted, detailed laws already passed by the voters. "Almost every one of the initiatives on the ballot in November will be the subject of litigation," predicts Mr Eugene Lee, a professor of political science at the University

of California's Berkeley campus. "At a time when the ultimate in statecraft is required to achieve even a minimum of co-ordinated public policies, the initiative offers the politics of simplification."

The voters themselves are no longer representative of the population as a whole. Initiatives are now passed, and most politicians elected, with the support of less than one in five of the eligible voters. And of those that do vote, according to Mr Mervin Field, California's leading pollster, four out of five are white, a third are over 60 and 40% have incomes of \$40,000 or more.

#### A mountain of bumph for every voter

Even this select band rarely makes an informed choice. How could it? Before every election, registered voters are posted a pamphlet containing texts of all initiatives, a brief analysis by state officials of its effect, together with arguments by advocates and opponents. Admirable. But it would take a paragon to get through the resulting morass of reading matter. The pamphlet for the November 1988 ballot, with 28 measures before the voters, was 159 pages long, most of it in eye-straining small print. The pamphlet for last June's primary ballot was 110 pages long, followed a few weeks later by a 14-page supplement. Small wonder that most people never plough through such bumph.

Instead, the few people who do try to make up their minds about an initiative usually rely on a crescendo of "vote no" and "vote yes" 30-second TV and radio ads just before the election. Huge amounts of money are spent on such media campaigns, an estimated \$130m in 1988. More will be spent this year. Condensing complex legislation into a couple of sound bites has produced political ads so grossly misleading that the *Los Angeles Times* now runs a regular column reviewing their claims. This periodic media barrage often has little effect anyway. According to a poll conducted just before last June's vote, nearly half of registered voters had not even heard of the main ballot measures. Only 10% had looked at the ballot pamphlet.

Perhaps the most startling recent example is the passage in June of proposition 111, supported by nearly all of the state's politicians. Most of those who bothered to vote thought they were supporting a 9-cent increase in petrol taxes to pay for new highways, the focus of the public campaign, and they were. But proposition 111 itself barely mentioned petrol taxes. Most of it was devoted to rewriting the Gann spending limits to allow faster rises in state spending. Proposition 111 also virtually rescinded an initiative passed in 1988 directing that revenues beyond the Gann limit be spent on education. It was all there in the pamphlet, but hardly any voters read the actual text.

Because initiatives can pass with so little informed consent, they attract special interests like bees to honey. Property developers and railway companies helped to write detailed investment schemes into two mass-transit initiatives passed in June. Once made law, the initiatives cannot be altered by the legislature. Scores of political consultants now make their living plotting campaigns and cobbling together coalitions of those with something to gain. Some 35 different firms thrive by just gathering the signatures to put a proposal on the



My God, someone's voting

ballot. The going rate: \$1 per signature collected.

Even while privately deriding the initiative process as damaging to representative democracy, the state's politicians enthusiastically use it to achieve their own ends. Mr John Van de Kamp, the state's attorney general, had hoped to further his gubernatorial campaign by sponsoring initiatives on crime, the environment, and government ethics. He got them on the ballot, but lost the Democratic primary to Ms Feinstein. A co-sponsor of the environmental initiative, a complex measure awarded the reassuring nickname of Big Green (see box below), is an assemblyman, Mr Tom Hayden. The estranged husband of Ms Jane Fonda and a former radical of the 1960s, Mr Hayden apparently hopes to become the state's first directly elected environmental advocate if Big Green, which would create the post, passes. Even Mr Deukmejian, the lame-duck governor, is sponsoring an initiative on November's ballot.

The powers-that-be do not always get their way with initiatives. In 1988 Californians were offered five different initiatives on car insurance, three sponsored by the insurance industry, one by lawyers, the industry's traditional foes, and one, proposition 103, by consumer advocates. Insurance rates are a hot issue. Premiums can cost a young, single male in southern California as much as \$5,000 annually for the doubtful pleasure of driving a car.

Lawyers and insurance companies spent more than \$70m battling for their measures, which were chiefly aimed at taking the bread out of each other's mouths. Consumer advocates pushing a 20% cut in insurance premiums spent nothing, relying instead on the support of Mr Ralph Nader, a nationally famous consumer activist. The voters apparently be-

lieved Mr Nader. Proposition 103 was the only initiative to pass. Ever since then, it has been tied up in the Supreme Court by the insurance companies, who claim that they are entitled to a fair return and that a 20% cut would bankrupt most of them or force them to leave the state. Proposition 103 did turn the insurance commissioner into an elected post, and consumer advocates hope that will produce fairer regulation of the insurance industry. But any cut in insurance premiums, which is what voters wanted most, is now unlikely.

Undaunted, Mr Bill Zimmerman, a political consultant and one of proposition 103's original backers, is preparing an initiative for the 1992 ballot that would institute a state-owned car-insurance scheme if rates are not reduced.

"The initiative process is flawed," he admits. "But it's better than the legislature, which would never have taken any action on insurance rates. At least initiatives allow people to challenge the status quo."

Yes, but that is what elections are supposed to do. The biggest winners from initiatives in recent years have been admen and lawyers, not voters. Is this any way to run a state?



Do I have your support?



## The name game

**A**ll the strengths and weaknesses of initiatives are combined in Big Green, a sweeping environmental measure which goes to Californian voters in November. If Big Green passes, say environmentalists, it will tackle urgent issues blocked for years by industrial and farming interests in Sacramento. Big Green is a mish-mash, reply critics, a few good ideas mixed in with a collection of drastic measures that will mean disaster for the state's farming and cost consumers billions in higher prices and increased taxes.

Among other things, Big Green would phase out by 1996 all agricultural chemicals known to cause cancer or genetic illness; cut carbon-dioxide emissions 20% below 1988 levels by 2000, and 40% below by 2010; levy a 25 cent-a-barrel tax on oil passing through the state to create a \$500m oil-spill fund; require that developers plant a tree for every 500 square feet of new building projects; ban oil and gas leases along state-controlled portions of the Californian coast; establish a \$300m fund to

protect redwood trees; and create the elected post of environmental advocate.

Business opponents claim that Big Green amounts to massive overkill in a state that already boasts some of the strictest environmental controls in the country. They predict that the initiative would cost \$3 billion to implement and would cut state and local tax revenues by \$8 billion-12 billion. Food bills 30% higher, a 20% rise in electricity rates and a 60-cent increase in petrol prices would also result, they say.

"Bunk," reply Big Green's supporters. Farmers would discover that most of the banned pesticides are not really necessary and they would have plenty of time to find safer alternatives. The costs of other measures are unclear, they admit, but not nearly as high as opponents charge. The truth is that no one knows how much Big Green would cost.

Convinced that they cannot defeat Big Green, the California Farm Federation and the food industry have put their own initiative on the ballot and given it the playful title of Californians

for Responsible Food Laws (acronym: CAREFUL). Environmentalists call it "Big Brown". The farmers' measure would tighten the monitoring of pesticides and increase spending on research into alternatives, but not ban existing pesticides (Californian farmers consume nearly a third of America's pesticides). Under Californian law, if two conflicting initiatives pass, the one with more votes takes precedence. CAREFUL explicitly states that Big Green's pesticide provisions would be rescinded if CAREFUL gets more votes.

The same tactic has been adopted by the timber industry, whose initiative, perhaps inevitably, is called "Big Stump" by environmentalists. In fact, there are five different environmental initiatives on the ballot, all of which sound eminently green. "The important thing will be to make sure people know which initiative is supported by the real environmental groups," says Ms Lucy Blake, executive director of the League of Conservation Voters, a political-action committee that helped draft Big Green. In other words, don't worry too much about the details; just trust us.

# Initiatives: too much of a good thing?

By Charles Price and Robert Waste

**T**he old bromide about the weather — "Everybody talks about it, but nobody can do anything about it" — has also been true of California's initiative process. For years, critics of this direct-democracy technique have complained about the problems and abuses inherent in the process. But thus far, efforts to substantially reform the initiative have failed.

Politicians have usually been wary of proposing major changes because the initiative has always been popular with the public. As a result, initiative procedures today are approximately the same as in 1911 when the process was first adopted, even though the state's population-growth now mandates the collection of hundreds of thousands of signatures (5 percent of the vote cast for governor in the most recent election for statute initiatives; 8 percent for constitutional amendments) before a measure can qualify for the ballot.

Despite the hurdle, the initiative process is more popular than ever. Modern campaign methods, including computerized mailing of petitions and paid circulators, have encouraged those who can raise the necessary \$1 million or so to bypass the Legislature and go directly to the public.

However, there are indications that the public, deluged by ballot measures in the past few years and faced with an increasingly complex array of issues to discern, now may be willing to accept some changes in the initiative procedure. Some legislators have quickly stepped in and are proposing major alterations in the state's process of direct democracy.

The initiative was promoted by reformist Progressives early this century as a last resort technique for the public, if the Legislature were corrupt or controlled by special interests or party bosses, voters using the initiative process could adopt laws and constitutional amendments without the Legislature or governor. During the early decades of this century the initiative was employed frequently. But by the 1940s, during World War II and in the years immediately afterwards, initiative activity declined sharply. However, in the 1970s-80s and in 1990, there has been a tremendous resurgence of initiative activity.

The number of initiatives filed has nearly doubled each decade from the 1950s to the 1990s. More initiatives have been filed in a single year, 1990, than in entire decades from the 1910s through the 1960s. Intriguingly, while only about one-third of initiatives were approved by voters up to 1979, in the 1980s nearly one-half were approved.

There are a number of reasons for this surge in initiative activity, including the development of a professional petition industry — petition companies, initiative attorneys

and campaign consultants whose livelihood depends on a continual fresh flow of initiatives; a public angered by legislative inaction and political scandals; the success of some efforts, such as property tax-slashing Proposition 13, the growth of single-issue politics; increasing use of counter-initiatives (groups threatened by an initiative place an alternative initiative on the ballot); and a growing trend towards elected officials authoring initiatives as part of their campaign strategy in running for statewide office.

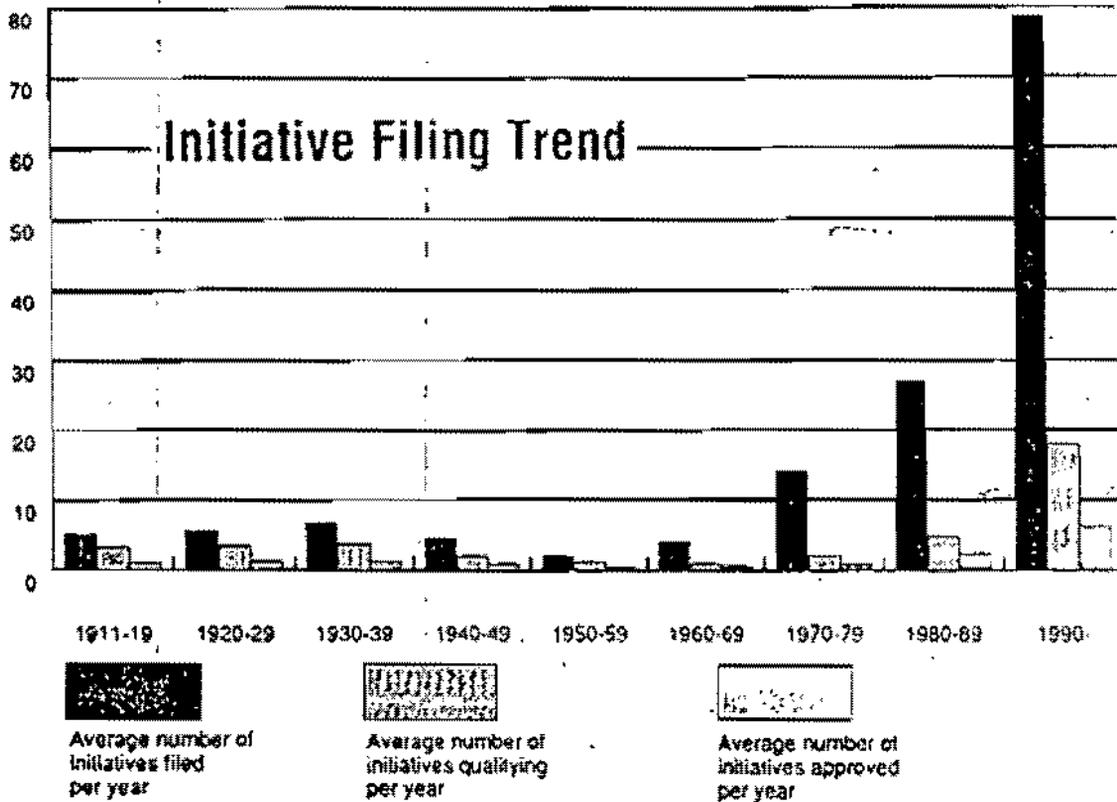
When only a few initiatives qualified for each ballot, the process was grudgingly accepted by state officeholders. However, adoption by voters of the Political Reform Act (Proposition 9, 1974), the Gann state spending limitation initiative (Proposition 4, 1979) and, perhaps most important, the term-limit initiative (Proposition 140, 1990) which may cut legislative careers to a maximum of six or eight years, angered a great many public officials. Through the mid-1980s, however, polls showed the public overwhelmingly supported the initiative process. Mervin Field reported in 1979 that 83 percent of the California public thought the initiative was a "good thing," while only 5 percent thought it was a "bad thing." The public seemed to agree with the theme of the "Yes on Proposition 13" campaign — the initiative was a good way to "teach the politicians a lesson." Therefore, attempts by various, mainly Democratic California legislators to reform the initiative (usually proposals to make it harder to qualify initiatives — e.g., raising the filing fee or requiring that petitions be signed in a certain number of counties) were regularly defeated. In addition, in *Meyer v. Grant* (1988), a federal court ruled that states could not prohibit paid signature soliciting — a favorite target of initiative critics.

However, the convergence of a number of factors indicates that for the first time this century the time may be ripe for significant initiative reform. Why is this so?

• First, clearly, the public was very unhappy with the number of voting decisions facing them in the 1988 and 1990 elections, caused mostly by the number of initiatives on those ballots. An all-time record number of initiatives, 18, qualified in 1988; two years later, this figure was equaled when another 18 initiatives appeared on the primary and general election ballots. However, ballot length was not simply a result of too many initiatives. As Bill Arno of American Petition Consultants noted, "Actually, there were more legislatively referred measures than initiatives on the 1990 ballot, and if the Legislature had been doing its job there wouldn't have been so many initiatives."

• Second, the public was upset with the length, complexity and confusing nature of many of the 1988-90 initiatives. The 1990 Ballot "Pamphlet" and supplement came to 221 pages of complicated legal argument. In this vein, pollster Mervin Field reports that public support for the initia-

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lative process has declined 16 percent since 1979. Currently, "only" 66 percent of Californians view the initiative as a "good thing."

• Third, initiatives have not been faring well in the courts lately, and this adds to public frustration over the process. Thus, just a few weeks prior to the November 1990 general election, Propositions 73 and 68 — two campaign-finance initiatives approved by voters in June 1988 — were declared unconstitutional. In addition, Proposition 103 — the auto-insurance rate-reduction initiative from November 1988 — has been so enmeshed in legal challenge that public hopes for quick insurance-rate reductions went unrealized. However, two years after the adoption of Proposition 103, State Farm Mutual in December 1990 under a plan approved by the Department of Insurance will substantially lower its rates for "good" drivers. The courts even stepped in and voided Proposition 105, an omnibus "consumer protection" measure that required disclosure of everything from insurance policies to household toxics on the previously uninvoked restriction in the state constitution requiring initiatives to deal only with a "single subject."

• Fourth, there is growing public resentment over the devious, deceptive and expensive media campaigns by initiative sponsors and opponents. In addition, the new trend evidenced in 1988 and 1990 revolves around electoral competition between environmental or political reform groups and their corporate opponents. If the former gets its initiative on the ballot, the latter will hire a petition firm to put forward its own counter-initiative on the same topic. There were four sets of counter-initiatives on the November 1990 ballot, while in the November 1988 election, five separate initiatives focused on auto insurance. Counter-initiatives have one main objective: confuse voters. As Kelly Kimball of Kimball Petition Management stated, "I'm disgusted with groups that put measures on the ballot to confuse and deceive voters, and who prefer that their counter-measures don't pass. Enough's enough."

• Fifth, many officeholders were bitter that a majority of the electorate would support the term-limits initiative, which not only cut short legislative careers but imposed a nearly 40 percent reduction in the Legislature's own budget, causing widespread layoffs among legislative staff and did away with legislators' retirement benefits.

• Sixth, there was a massive "no" vote registered against most of the initiatives (10 of 13) and most of the other propositions and bond measures on the 1990 general-election ballot. As Democratic Senator Milton Marks of San Francisco noted, "The outcome of the November [1990] election was a clear indictment of the initiative process."

• Seventh, many of the major players in the state's initiative industry — for example, Ted Costa, executive director of the Paul Gann People's Advocate, and petition circulators Kelly Kimball and Bill Arno — now believe the process needs to be reformed.

• Eighth, rejection by voters of Proposition 137 (November 1990), an initiative designed to make it more difficult to reform the initiative process (it would have required a majority vote of the public before any change could be made in the initiative process) and recent Mervin Field polls indicate growing public support for initiative reform. Joel Fox, executive director of the Howard Jarvis Taxpayers Association, said, "The public's rejection of Proposition 137 caught me by complete surprise."

Thus, there is at least some support among officeholders from both parties and the public that special interests have tended to monopolize and control the initiative process and that reforms are needed. What is not clear is the shape reforms should take. Should reform aim at discouraging use of the initiative, as some legislators want? Or, should reform aim at restoring the process to the people? And, as both Kelly Kimball and Bill Arno noted, if the Legislature adopts measures to make it more difficult to qualify initiatives, this will benefit their petition-for-hire companies because they will be the only ones around who have the ex-

peruse to collect the hundreds of thousands of signatures needed.

Among the various reforms being proposed by elected officials, Senate Republican leader Ken Maddy of Fresno has proposed a constitutional amendment to more clearly express the single-subject initiative requirement — "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."

Should Maddy's bill pass, initiative provisions would have to be reasonably germane and interdependent with other provisions of the measure. Of course, what is "reasonably germane" is subjective and subject to court interpretation. Ironically, the Maddy bill passed the Senate but failed in the Assembly last year when it was *joined* to a proposal to move the presidential primary ahead.

**O**pponents of "Big Green" (Proposition 128, November 1990) argued that it failed to meet the single-subject requirement, but since it was not approved the question is moot. Proposition 105, the court-voided consumer-information initiative approved by voters in November 1988, had five separate sub-categories — toxic substances, fraudulent health insurance, nursing homes, initiative campaign funds and stock-selling corporations conducting business in South Africa. Although the court acted in this case, it historically has been loathe to do so. The last time the court struck down an initiative for violation of this principle was 1948. Unquestionably, lengthy propositions with many subsections complicate decision making for voters but agreeing on what is "reasonably germane" is not easy.

Among other legislators who favor reform of the initiative, Assembly Speaker Willie Brown of San Francisco favors having initiatives voted upon only during general elections, not during primaries, because of the poor turnout in these June contests. (Of course, the percentage voting in the general election these days is not very high either). If this were implemented, it would mean the general-election ballot would be substantially longer and might further voter frustration.

Senate President pro Tempore David Roberti has suggested that initiative petitions should have to obtain signatures in a certain number of counties. Democratic Senator Gary Hart of Santa Barbara is contemplating legislation to prohibit bond issue initiatives. Independent Senator Quentin Kopp unsuccessfully authored a bill in the last legislative session aimed at discouraging initiative proponents from building support for their measures by offering groups who joined the coalition funding from the measure for their pet projects. Of course, log-rolling is a long-time practice in the Legislature. Proponents raise money for their initiatives, then pay themselves substantial consulting fees from the campaign treasury. Marks stated, "We need to somehow take away the profit involved with initiatives."

Republican Assemblyman Stan Statham is the author of AB 3148 which was signed into law by former Governor George Deukmejian. This law requires a notice that the petition may be circulated by either a volunteer or by a paid signature gatherer, and the public has the right to inquire as to the circulator's status.

Statham noted that, "Not a soul at the Capitol doesn't know that the initiative process is warped and out of control." Democratic Assemblywoman Jackie Speler of South San Francisco proposed in a bill last session that the Secretary of State do a legal analysis of a proposed initiative to ensure the proposal was in proper legal form. At present, initiative proponents can seek aid from the Legislative Counsel in drafting their proposals. But, according to Ted

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Mar. 21	<b>Committee Procedure and Protocol</b>	Sacramento
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#### April

Apr. 12	<b>Budget Issues Update</b>	Sacramento
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Apr. 19	<b>Bill Tracking and Analysis</b>	Sacramento
Apr. 26	<b>Legislative Process, Bill Tracking and Analysis</b>	Los Angeles

For SCHEDULE INFORMATION or to be placed on our mailing list, please contact **ROD TUTTLE** at 916/444-2840.

Costa, when he asked the Counsel's office for help in drafting an initiative, he was told that because of the passage of Proposition 13 and state spending limits, the counsel's office did not have sufficient staff to help him. Not surprisingly, initiative advocates worry that if the secretary of state's office or attorney general's office did a precirculation legal review of the initiative it could be partisanly-inspired because these are elected partisan officeholders.

UC Berkeley Professor Eugene Lee argues that "consideration be given to a minimum threshold in turnout, say, 50 percent of registered voters, as a condition of passage to ensure the 'people's voice' is heard." However, initiative advocates might well ask, why should this only affect initiatives? Shouldn't candidates be under the same proviso? And, since turnout in primaries is usually below 50 percent of those registered, how would we nominate our candidates? Lee also proposes that the Legislature and governor be allowed to amend and repeal statutory initiatives after a specified time and that the constitutional amendment initiative signature threshold percentage be raised from 8 percent to 10 percent.

Yet, while the time may be ripe for reform, there may be good reason to proceed slowly. There are always unanticipated consequences of any reform. In one sense, the abuse of the initiative process in 1990 was dealt with by the voters. They massively voted "no" — not a bad strategy considering all of the confusing proposals on that ballot. And, because they voted down so many measures, won't those who buy their way onto the ballot be less enthused about trying this tactic in 1992? Also, the election of Governor Pete Wilson may encourage environmentalists to pursue the legislative path once again. As Gerry Meral, execu-

tive director of the Planning and Conservation League, said, "The PCL had to go the initiative route because of Governor Deukmejian's obstinance. We may not have to do this with Wilson."

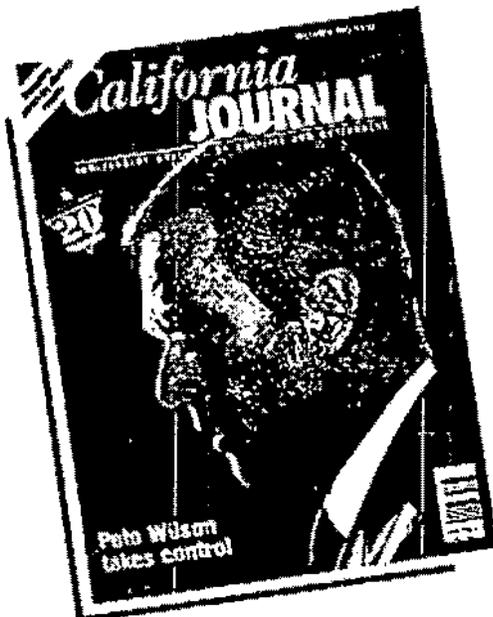
It should be emphasized: An overwhelming majority of the public (66 percent according to Field) still supports the initiative. Efforts to discourage initiative use according to Ted Costa might lead to a coalescence of interest groups ranging from Tom Hayden's Campaign California, Harvey Rosenfield's Voter Revolt, Ralph Nader's Public Interest Research Group, environmental groups such as the Planning and Conservation League and Sierra Club on the left of the political spectrum to Ted Costa's People's Advocate, Richard Gann, Ralph Morrell, and Joet Fox of the Howard Jarvis Taxpayers Association on the right. These disparate groups might be willing to pull together to thwart legislative attempts to discourage initiative use.

Finally, are initiatives the central problem facing California government? Democratic Assemblyman Ted Lempert of San Mateo, a member of the Assembly Elections and Reapportionment Committee, doesn't think so. "Initiatives are usually a yes or no on a basic idea. That's good and has its place but the Legislature is where the real work is done. That's where we have the hearings and make detailed policy. That's the level at which we have to get the people interested again. That's the real reform of all of this."

And echoing these sentiments, Martin Smith, political editor of *The Sacramento Bee* observes, "The problem is not so much initiative procedure as an underlying problem of government not working. Maybe something can be done at the margins with initiatives but the real disease is government that doesn't work and hasn't worked in at least 16 years of not very dynamic leadership." ■

Advertisement

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Spurred by growing public concern, in 1985 the California Supreme Court ruled that an environmental-impact report would be required of all large commercial projects. Proposition 65, passed in 1986, focused on the alarming pollution of the state's drinking water. The measure forbade companies from discharging chemicals that were proven carcinogens into possible drinking water; it also made provisions for citizens to bring suit against polluters. Concerned about pollution in the Santa Monica Bay, a grass-roots organization called Heal the Bay sued the City of Los Angeles and the EPA in the late '70s, forcing the city to install secondary treatment of its sewage. And last spring the South Coast Air Quality Management District approved the most ambitious plan yet to clean up the air in southern California.

Taking action gave the Pappos some compensation for their hardship: they and 529 other families reached a settlement with Fairchild and other companies. But it may be too little too late: Brian has had four open-heart operations and had a pacemaker installed. The case hasn't decreased the area's desirability. Housing prices near San Jose are among the highest in the nation—\$235,000 is the median price of a home.

MICHAEL A. LERNER



JAMES D. WILSON—NEWSWEEK

s toll: *The Pappo family near the Los Pascos plant*

## The Tough Life

Average number of earthquakes in California: 10,000 in southern California, of which 63 are over 5.0 on the Richter scale.  
 Suicides on the Golden Gate Bridge since 1937: 1,372.  
 Percentage of Californians insured with individual health insurance: 51%.  
 Average speed on the Los Angeles freeway in 1987: 19 mph. Projected speed in 2010: 19 mph.  
 Skin cancer rate in 1985: there were 10,000 deaths in California due to melanoma and other skin cancers, a 40% increase since 1970.  
 Number of days in southern California when the air is unhealthy to breathe: 222 days per year due to one or more pollutants; 176 days per year due to ozone levels alone.

## Is This Any Way to Run a State?

**A**mong the reforms promoted by turn-of-the-century progressive Gov. Hiram Johnson was the initiative process. It was envisioned as a way to give the little guy the last word over partisan and sometimes corrupt lawmakers. But after 78 years, there are signs that Johnson may have created a monster. Guns and gays, coastlines and cigarettes, toxics and taxes of every imaginable type—all have been among the 212 issues directly voted on by Californians. Is this really the way Johnson wanted to run a government?

Probably not. Today initiatives completely dominate the state's political life. They affect voter turnout, set the tone of campaign debate, even influence the outcome of local and statewide elections. They have also become big business: professional signature gatherers now blanket neighborhoods with petitions to qualify measures for the ballot, and Washington-based political consultants are moving in to get a piece of the action. "What the initiative is doing is exactly what people wanted it to do—to step in when government couldn't or wouldn't do the popular will," says Larry Berg, director of the University of Southern California's Institute of Politics and Government. But its rampant use, he adds, "symbolizes the near and total breakdown of government in California."

Government by initiative has spawned a new kind of political activist. Leading the way in the late 1970s were Howard Jarvis and Paul Gann, curmudgeonly gadflies who tapped into voters' righteous an-

ger over skyrocketing property taxes. The rest, of course, is history: their Proposition 13 won overwhelmingly, igniting an antitax revolution that caught fire across the nation. "California's leading politicians over the last decade haven't been a governor or a speaker of the state Assembly. They've been Jarvis and Gann," says Lewis H. Butler, president of California Tomorrow.

With Jarvis now dead and Gann ailing from AIDS, two successors have emerged. Bill Zimmerman's roots go back to '60s antiwar politics; Harvey Rosenfield is a longtime Ralph Nader consumer-rights activist. They created an organization called Voter Revolt that last year played to outrage over high insurance rates. Their initiative, Proposition 103, prevailed despite being outspent

32 to 1. Now they hope to build something more lasting: a movement dedicated to using the initiative process to advance a new consumerist political agenda.

As its next target, Voter Revolt wants to modify Proposition 13—an issue regarded as sacrosanct by the once burned California Legislature. But Zimmerman is betting that voters are finally ready to tinker with their own creation, which has restricted funding for everything from libraries to highways. Voter Revolt's proposed solution: taxing big-business property at a higher rate than small businesses and homeowners. "A lot of us came to California motivated by the desire for something better," says Zimmerman, a native Chicagoan. "Twelve years after Prop 13, California is no longer that place. It's not even as good a place as some of the places we left."

Win or lose, Zimmerman reasons that it's the exercise that counts. "It plays into that whole California dream that you can do anything here," he says, "even write your own laws."

MICHAEL REESE

## Looking Ahead to the 'Fourth Wave'

**R**ich, green and vast, California's Central Valley is in the process of change. For most of the state's history, the region has been one of the world's most productive agricultural areas. But now the valley also is fast becoming a manufacturing and high-tech center with strategic links to the Pacific Rim. Though it's still a place of tree-lined streets, Bible-belt beliefs and old-fashioned county fairs, experts pre-

103D CONGRESS  
2D SESSION

# H. R. 3835

To establish a national advisory referendum on limiting the terms of Members of Congress at the general election of 1994.

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1994

Mr. HOERSTRA (for himself, Mrs. FOWLER, Ms. SHEPHERD, Mr. FINGERHUT, and Mr. TORKILDSEN) introduced the following bill; which was referred to the Committee on House Administration.

## A BILL

To establish a national advisory referendum on limiting the terms of Members of Congress at the general election of 1994.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "National Voter Oppor-  
5 tunity To Inform Congress Effectively (V.O.I.C.E.) on  
6 Term Limits Act of 1994".

### 7 SEC. 2. FINDINGS AND PURPOSES.

8 (a) FINDINGS.—The Congress finds that—

1 (1) the right of citizens of the United States to  
2 vote is a fundamental right;

3 (2) the right of citizens of the United States to  
4 have an effective voice in the decisionmaking pro-  
5 cesses of the Congress is grounded in the right to pe-  
6 tition and is a fundamental part of American democ-  
7 racy, and Congress should provide an opportunity  
8 for citizens to express their views on important pub-  
9 lic issues;

10 (3) there is an increasing public sentiment and  
11 demand for limiting the terms of Members of Con-  
12 gress; and

13 (4) voters in 15 States have already voted and  
14 approved State laws to limit the terms of their con-  
15 gressional delegations, and voters in other States  
16 have expressed their interest in having the oppor-  
17 tunity to also vote on term limits for Members of  
18 Congress.

19 (b) PURPOSES.—The purposes of this Act are—

20 (1) to give the citizens of every State the oppor-  
21 tunity to have a voice on whether or not the terms  
22 of Members of Congress should be limited; and

23 (2) to conduct a national nonbinding referen-  
24 dum on term limits at the 1994 general election,  
25 thereby having an opportunity to study the feasibil-

1 ity of conducting national nonbinding referenda on  
2 other important issues in the future.

3 **SEC. 3. DEFINITIONS.**

4 As used in this Act—

5 (1) the term “nonbinding referendum” means  
6 the placing on the general election ballot in every  
7 congressional district and delegate or resident com-  
8 missioner district in 1994 the advisory question de-  
9 fined below, the results of which shall be properly  
10 tabulated and certified as described herein, but  
11 which results shall not be legally binding on any per-  
12 son or institution,

13 (2) the term “advisory question” means the  
14 National Advisory Referendum on Term Limits, the  
15 language of which is contained in section 4(b) of this  
16 Act;

17 (3) the term “general election” means the elec-  
18 tion at which Federal officers are elected in 1994;

19 (4) the term “Federal office” means Members  
20 of the United States House of Representatives and  
21 Senators, Delegates to the United States Congress,  
22 and Resident Commissioners of the territories of the  
23 United States; and

24 (5) the term “State election agency” means the  
25 official agency of each State and territory charged

1 with the legal responsibility for conducting general  
2 elections within that jurisdiction.

3 **SEC. 4. PROCEDURES FOR NATIONAL VOTER OPPORTUNITY**  
4 **TO INFORM CONGRESS EFFECTIVELY ON**  
5 **TERM LIMITS NONBINDING REFERENDUM.**

6 (a) **IN GENERAL.**—This Act shall have the effect of  
7 placing on the 1994 general election ballot in every con-  
8 gressional district, and delegate and/or resident commis-  
9 sioner district, in the United States, the District of Colum-  
10 bia and the territories of the United States, the advisory  
11 question concerning term limits for Members of Congress.

12 (b) **ADVISORY QUESTION; BALLOT TITLE AND LAN-**  
13 **GUAGE.**—Not later than August 1, 1994, the Clerk of the  
14 United States House of Representatives and the Secretary  
15 of the United States Senate shall jointly certify to the ap-  
16 propriate State election agencies for inclusion on the 1994  
17 general election ballot in each congressional district, the  
18 following ballot title and question:

“NATIONAL ADVISORY REFERENDUM ON TERM LIMITS

“Should Congress approve a constitutional amend-  
ment to limit the number of terms that a Member of the  
United States House of Representatives and United  
State Senator can serve in office?

“Yes

No”.

19 (c) **PREPARATION OF BALLOTS.**—

1 (1) PROCEDURES.—The procedures for printing  
2 and preparation of the ballots containing the advi-  
3 sory question shall be the same as provided in each  
4 State and territory for conducting the elections of  
5 the Members of the United States House of Rep-  
6 resentatives and Senators, and Delegates or Resi-  
7 dent Commissioners.

8 (2) ADVISORY QUESTION.—In each congres-  
9 sional and delegate district, every general election  
10 ballot shall include the advisory question contained  
11 in subsection (b). Should there be no general elec-  
12 tion scheduled to be held in any particular congres-  
13 sional or delegate district, a ballot shall nonetheless  
14 be prepared for the voters of said district to be able  
15 to participate in the nonbinding referendum in the  
16 same manner as all other districts where a general  
17 election is being held. The costs of printing, dissemi-  
18 nating and tabulating the ballots with the advisory  
19 question for those congressional or delegate districts  
20 where a general election would not otherwise be held  
21 in November 1994, shall be reimbursed by the  
22 United States upon submission by the State election  
23 agency of the actual costs of conducting the  
24 nonbinding referendum in those districts. All reim-  
25 bursements to State election agencies for the costs

1 of conducting the nonbinding referendum in congres-  
2 sional districts which would not otherwise be con-  
3 ducting a Federal election in November 1994, shall  
4 be made from the franking accounts of the Con-  
5 gress, with equal amounts drawn from the franking  
6 accounts of the House of Representatives and the  
7 Senate to reimburse the States for such expenses.  
8 The Clerk of the United States House of Represent-  
9 atives and the Secretary of the United States Senate  
10 shall be responsible for ensuring the proper applica-  
11 tion for and reimbursement of said expenses.

12 (d) TABULATION AND CERTIFICATION OF VOTING  
13 RESULTS.—The State election agencies shall tabulate the  
14 results of the voting on the advisory question in the same  
15 manner as is customary for tabulating the results of elec-  
16 tions of the Members of the United States House of Rep-  
17 resentatives and Senators. Said results shall be officially  
18 certified pursuant to the customary laws and procedures  
19 of each jurisdiction.

20 (e) TRANSMISSION OF CERTIFIED RESULTS TO THE  
21 CONGRESS, ALL MEMBERS, AND COMMITTEES ON THE  
22 JUDICIARY.—The official, certified election results of each  
23 jurisdiction's nonbinding referendum on the advisory ques-  
24 tion shall be certified by the State election agency to the  
25 Clerk of the United States House of Representatives and

1 the Secretary of the United States Senate in the same  
2 manner and at the same time of the certification of elec-  
3 tion of Members of the House of Representatives and Sen-  
4 ate at the 1994 general election, said results to be certified  
5 by county, congressional district and statewide totals. The  
6 Clerk and the Secretary shall be responsible for transmit-  
7 ting to each Member of the respective House of Congress  
8 the results of the nonbinding referendum from all jurisdic-  
9 tions. The results shall also be taken under advisement  
10 by the respective Committee on the Judiciary of the House  
11 of Representatives and Senate, with recommendations for  
12 response reported back to the full House and Senate with-  
13 in 6 months of the general election.

14 (f) COMMENTS REGARDING PROCEDURES FOR FU-  
15 TURE NONBINDING REFERENDA.—Within 90 days of the  
16 date of the general election, the State election agencies  
17 shall forward to the Clerk of the United States House of  
18 Representatives and the Secretary of the United States  
19 Senate their comments or suggestions regarding changes  
20 or improvements in procedures for conducting national  
21 nonbinding referenda in future general elections. All such  
22 comments shall be referred to the respective committees  
23 on the Judiciary of the House of Representatives and Sen-  
24 ate.

1. SEC. 5. EFFECTIVE DATE.

- 2. This Act shall become effective immediately upon
- 3. passage.

o

103D CONGRESS  
1ST SESSION

# H. J. RES. 180

Proposing an amendment to the Constitution of the United States to give citizens of the United States the right to enact and repeal laws by voting on legislation in a national election.

## IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 1993

Mr. HOEKSTRA (for himself and Mr. HUTCHINSON), introduced the following joint resolution; which was referred to the Committee on the Judiciary

## JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to give citizens of the United States the right to enact and repeal laws by voting on legislation in a national election.

- 1 *Resolved by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled*
- 3 *(two-thirds of each House concurring therein), That the fol-*
- 4 *lowing article is proposed as an amendment to the Con-*
- 5 *stitution of the United States, which shall be valid to all*
- 6 *intents and purposes as part of the Constitution when*

1 ratified by the legislatures of three-fourths of the several  
2 States:

3 "ARTICLE —

4 "SECTION 1. The people shall have the right to enact  
5 any law which the Congress has authority to pass, and  
6 to repeal any provision of law passed by Congress which  
7 has become law, except that the people shall not have the  
8 right to declare war, grant letters of marque and reprisal,  
9 make rules concerning captures on land and water, or call  
10 forth the militia.

11 "SECTION 2. A petition proposing the enactment of  
12 a law, or the repeal of a provision of law, shall be submit-  
13 ted to an officer of the Government of the United States  
14 whom the Congress shall designate by law. Each petition  
15 shall contain the text of the proposed law, or, in the case  
16 of a proposed repeal of a provision of law, the text of the  
17 provision of law that shall cease to be effective if repealed  
18 under this article. Each petition shall be signed by at least  
19 3 percent of the whole number of people, in each of at  
20 least 10 States, who voted in the most recent election for  
21 President, or for electors for President, occurring before  
22 the date on which the petition is submitted to the officer  
23 designated by Congress, and the total number of signa-  
24 tures on such petition shall be at least 3 percent of the  
25 whole number of people, from all of the several States,

1 who voted in such election. All such signatures shall be  
2 collected within the 18-month period ending on the date  
3 the petition is submitted to the officer designated by the  
4 Congress.

5 "Within 90 days after a petition is submitted to the  
6 officer designated by the Congress, such officer shall de-  
7 termine the validity of the signatures contained in the pe-  
8 tition. If the petition contains the required number of valid  
9 signatures, the officer shall certify the petition and shall  
10 direct the chief executive officer in each State to place a  
11 copy of the proposed law, or provision of law proposed to  
12 be repealed, contained in the petition on the ballot in the  
13 first election (other than an election to fill a vacancy) for  
14 Members of the House of Representatives which is held  
15 at least 120 days after such certification. The Congress  
16 shall by law establish procedures for the preparation and  
17 submission of any such petition and for the validation of  
18 signatures on such petition.

19 "SECTION 3. If a law or repeal proposed under this  
20 article receives a majority of the votes cast in three-fifths  
21 of the several States, the proposed law or repeal shall be  
22 introduced to the Congress by the Speaker of the House  
23 of Representatives and the President pro tempore of the  
24 Senate on the first day of the first session of Congress  
25 following the vote.

1 "If Congress does not enact the proposed law or re-  
 2 peal, without amendment, before the end of one year and  
 3 90 days after the first day of the first session of Congress  
 4 following the vote, the officer to whom the petition was  
 5 submitted shall direct the chief executive officer in each  
 6 State again to place a copy of the proposed law, or provi-  
 7 sion of law proposed to be repealed, contained in the peti-  
 8 tion, together with any amended version approved by Con-  
 9 gress, on the ballot in the first election (other than an  
 10 election to fill a vacancy) for Members of the House of  
 11 Representatives which is held at least 120 days after such  
 12 direction.

13 "If a law or repeal again placed on the ballot pursu-  
 14 ant to this article receives a majority of the votes cast  
 15 in three-fifths of the several States, the proposed law or  
 16 repeal shall be enacted and take effect according to its  
 17 terms.

18 "No law, or repeal of a provision of law, which is en-  
 19 acted under this article shall be subject to approval of the  
 20 President.

21 "The Congress may not, during the 2-year period be-  
 22 ginning on the date on which a law enacted by the people  
 23 under this article takes effect, or the date on which a law  
 24 repealed by the people under this article ceases to be effec-  
 25 tive, repeal or amend a law so enacted, or reenact any

1 part of a law so repealed, except by an affirmative vote  
2 of two-thirds of the Members of each House of Congress.

3 "SECTION 4. The people in each State voting under  
4 this article shall have the qualification requisite for elec-  
5 tors of the most numerous branch of the State legislature.  
6 The Congress shall by law prescribe the manner in which  
7 the results of the voting conducted under this article shall  
8 be ascertained and declared.

○

103D CONGRESS  
1ST SESSION

# H. J. RES. 181

Proposing an amendment to the Constitution of the United States to give citizens of the United States the right to propose amendments to the constitution by an initiative process.

## IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 1993

Mr. HOEKSTRA (for himself and Mr. HUTCHINSON) introduced the following joint resolution; which was referred to the Committee on the Judiciary

## JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to give citizens of the United States the right to propose amendments to the constitution by an initiative process.

1. *Resolved by the Senate and House of Representatives*
2. *of the United States of America in Congress assembled,*
3. *(two-thirds of each House concurring therein), That the fol-*
4. *lowing article is proposed as an amendment to the Con-*
5. *stitution of the United States, which shall be valid to all*
6. *intents and purposes as part of the Constitution when*

1 ratified by the legislatures of three-fourths of the several  
2 States:

3 "ARTICLE —

4 "SECTION 1. The people shall have the right to pro-  
5 pose amendments to the Constitution through the initia-  
6 tive process provided in this article.

7 "SECTION 2. A petition proposing an amendment to  
8 the constitution shall be submitted to an officer of the  
9 Government of the United States whom the Congress shall  
10 designate by law. Each petition shall contain the text of  
11 the proposed amendment. Each petition shall be signed  
12 by at least 3 percent of the whole number of people, in  
13 each of at least 10 States, who voted in the most recent  
14 election for President, or for electors for President, occur-  
15 ring before the date on which the petition is submitted  
16 to the officer designated by Congress, and the total num-  
17 ber of signatures on such petition shall be at least 3 per-  
18 cent of the whole number of people, from all of the several

19 States, who voted in such election. All such signatures  
20 shall be collected within the 18-month period ending on  
21 the date the petition is submitted to the officer designated  
22 by the Congress.

23 "Within 90 days after a petition is submitted to the  
24 officer designated by the Congress, such officer shall de-  
25 termine the validity of the signatures contained in the pe-

1 tition. If the petition contains the required number of valid  
2 signatures, the officer shall certify the petition and shall  
3 direct the chief executive officer in each State to place a  
4 copy of the proposed amendment contained in the petition  
5 on the ballot in the first election (other than an election  
6 to fill a vacancy) for Members of the House of Representa-  
7 tives which is held at least 120 days after such certifi-  
8 cation. The Congress shall by law establish procedures for  
9 the preparation and submission of any such petition and  
10 for the validation of signatures on such petition.

11 "SECTION 3. If the amendment proposed under this  
12 article receives a majority of the votes cast in three-fifths  
13 of the several States, the amendment shall be deemed pro-  
14 posed to the States for ratification under article V of this  
15 Constitution. Congress shall provide by law which of the  
16 eligible modes of ratification shall be used.

17 "SECTION 4. The people in each State voting under  
18 this article shall have the qualification requisite for elec-  
19 tors of the most numerous branch of the State legislature.  
20 The Congress shall by law prescribe the manner in which  
21 the results of the voting conducted under this article shall  
22 be ascertained and declared.

○