



LEAGUE OF WOMEN VOTERS® OF CALIFORNIA

Statement on Initiative Reform to the Senate and Assembly Select Committees on Improving State Government

Presented by Janis R. Hirohama, President
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The League of Women Voters of California appreciates this opportunity to discuss some of the strengths and weaknesses of California's current initiative process and to make suggestions on how to strengthen and improve it. This discussion is especially relevant now, when deep public dissatisfaction with state government is increasingly finding an outlet in calls for reform, and specific reform proposals are now being advocated—some of them, inevitably, using the initiative process.

We know that Californians strongly support having the initiative power and value their ability to exercise direct democracy. A majority think that decisions made through the initiative process are probably better than those made by the legislature and governor. At the same time, the data also show that voters think there is room for improvement. They believe the initiative process is out of control, that many ballot measures are complicated and confusing, and that too much money is being spent on initiative campaigns. Recent polling indicates that voters would consider supporting some changes to the initiative process, such as requiring initiative sponsors to identify funding sources when submitting initiatives that call for additional spending.

Over the years, the League of Women Voters has participated in the initiative process from several perspectives. First, our members have studied the initiative process in order to adopt positions which serve as the basis for our taking action. Second, based on our initiative positions, the League has advocated on specific legislation and ballot measures that relate to the initiative process. Third, in our voter education work, we provide the public with information about initiatives. Finally, we have used the process ourselves, as an active participant in a number of initiative campaigns on issues including campaign finance reform and redistricting reform.

Strengths and Weaknesses of the Current Process

The greatest strength of the initiative process is that it gives voters the ability to take policymaking into their own hands, particularly when they feel that the legislature and the governor have failed to act on an issue. It serves as an important safety valve that allows the people to find solutions to problems when they feel government has been unresponsive. Initiatives can be a vehicle for populist, status quo-challenging reforms such as redistricting reform or term limits that may have little chance of making it through the legislative process.

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However, we have seen the initiative process stray from its roots as a Progressive Era reform intended to check the influence of special interests and instead become a process dominated by them. The cost of qualifying and campaigning for initiatives has amplified the importance and influence of money in the process and has put true grassroots-based efforts at a disadvantage. It was once possible for citizens to qualify initiatives for the ballot by volunteer efforts; it has now become essentially impossible to qualify them without paid signature gatherers. It can cost \$1 to 3 million to get enough signatures to qualify a measure for the ballot. Successful campaigns to pass or defeat initiatives now cost on the order of \$7 to \$10 million or more.

In the eyes of many, misuse of the initiative process has created roadblocks to effective governance, with the effect being most pronounced in the area of budget and finance. The trend toward measures that have limited the ability of state and local government to raise revenues, coupled with other measures that require specific spending, has a serious impact on the legislature's ability to set priorities and deal with crisis situations. Some measures mandate appropriations, while others provide new taxes, usually from sources that affect the fewest voters. Often, little or no thought is given to how measures will fit in with existing programs, whether the designated funding is sustainable, or whether it is consistent with overall tax policy.

It can be extraordinarily difficult to make changes after an initiative passes, even when the passage of time has made flaws and unintended consequences obvious. Groups that have gone to the trouble of organizing and funding initiatives also usually include language to limit the possibility of amending the initiative by requiring a supermajority vote for any legislative amendment, and this generally means that unintended consequences cannot be dealt with short of going back to a future ballot.

After adoption by the voters, initiatives are often subjected to expensive and time-consuming challenges in the courts. While some of those legal challenges are obvious efforts by the measures' opponents to delay or defeat implementation, others are on solid ground in challenging poorly drafted initiatives that violate the law. As a result, a significant number of constitutional and statutory initiatives approved by the voters have been struck down, in whole or in part, by the courts.

Improving the Initiative Process

League members throughout the state studied the initiative process in 1983-84 and again in 1997-99 and arrived at various positions concerning the initiative. Over the years, we have advocated for a number of measures to make the initiative process a better tool for public policy.

Indirect Initiative. We support retention of the direct initiative, but we would also like to see the indirect initiative adopted as an option.

Initiatives are often long and complex and may be poorly drafted. Even if errors are found, initiative proponents cannot correct them once circulation for signatures has begun. The direct initiative process lacks the benefits of the legislative process, which include public hearings and review by many different parties and the ability to make improvements as a proposal moves through the legislature.

The indirect initiative process would provide that a proposed initiative, usually after at least some signature gathering has taken place, be introduced in the legislature. It would then go through the regular legislative process, where it would be subject to review, analysis, and debate and could be amended to correct drafting and other errors before being voted on by both houses. If the legislature passes it in a form acceptable to the proponents, no further action would be necessary. If the measure fails to pass the legislature, or the proponents decide to reject the legislature's version, the proponents can then place their measure on the ballot.

The indirect initiative incorporates citizen-initiated measures into the legislative process of review and revision, improves public scrutiny and awareness of the proposals, encourages compromise, requires the legislature to be responsive, and gives proponents control by offering them the option to put their measures on the ballot if they have been rejected by the legislature or enacted in a form they disagree with.

The League of Women Voters sponsored proposals to amend the state Constitution to adopt an indirect initiative process in four legislative sessions in the late 1980s and early 1990s. More recently, in 2006 we supported ACA 18 (Nation). There are two indirect initiative bills in the legislature now, SCA 16 (DeSaulnier) and ACA 13 (Hernandez), and we expect to be looking at those indirect initiative proposals with an eye toward possible support.

Drafting and Review. The League has supported measures that would improve the quality of drafting and review for initiatives and thereby forestall the expense and frustration of legal challenges and invalidation by the courts. One reform we have long supported is precirculation review of initiatives. For instance, for several legislative sessions we sponsored bills like AB 1331 (Speier) of 1991, which would have required that initiative petitions be submitted to a legal review panel for non-binding review and comment on potential legal problems, conformity to procedural and substantive law, and clarity of language before being circulated for signature. This bill was ultimately vetoed by the governor. More recently, in 1998 we supported SB 1449 (Thompson), which would have provided for nonbinding precirculation review by the Legislative Counsel.

Over the years we have also supported measures that would tighten the definition of a single subject by requiring that each part of an initiative be germane to other parts and that all provisions must be functionally related or interdependent, such as SCA 15 (Murray) in 1999.

Other Process Reforms. We have supported other proposed reforms to the initiative process that are consistent with our positions. For example, this year we supported AB 436 (Saldaña)—ultimately vetoed—which would have increased the initiative filing fee to better reflect the administrative costs of title and summary preparation and discouraged the practice of proponents submitting multiple versions of a single initiative in order to poll test the different versions. We see other areas for potential reform, such as requiring that voting on initiatives take place only at primary and general elections and not at special elections. We could also support a requirement that initiatives dealing with timely subjects should include a sunset clause. This would help alleviate the clutter in the state codes, and could be particularly useful for measures dealing with taxes, credits and exemptions.

More Information for Voters. The League of Women Voters, of course, plays an active role in educating the voters about the initiatives that appear on the ballot. We post detailed information about ballot measures on our SmartVoter.org website. Our Easy Voter Guide Project provides

clear, simple information about ballot measures in printed and online form to audiences that include literacy program participants, English learners, students, and other underserved populations. Our members conduct presentations on the pros and cons of ballot measures in communities across the state. In our role of educating voters about elections and ballot measures, the League has a frontline view of the difficulty that the public has in understanding initiatives and voting in an informed manner. That confusion has a number of causes, including the large number of initiatives, the use of complicated and confusing ballot language, and the existence of competing measures.

“Voter fatigue” is a real phenomenon. The public finds the sheer number of ballot measures hard to deal with. With sometimes as many as 10 or more initiatives appearing on a single ballot, plus other measures added by the legislature, voters are hard-pressed to understand the provisions and the implications of those measures and to cast informed votes. Complicated and confusing language in initiatives can confound voters, sometimes to such an extent that they don’t know what a “yes” or “no” vote on a particular measure means. Adding to their confusion are the instances of conflicting or competing measures on the same subject, such as the five insurance initiatives in 1988, competing campaign finance schemes in 1988 and 1996, and two prescription drug discount programs in 2005.

We believe more and better information for voters is essential. Some positive steps have been taken. We are pleased at the significant improvements over the years in the Secretary of State’s official voter information guide, a vital source of information for voters. However, providing clear, adequate, and accurate information and improving the quality and reach of that information is an ongoing task for those of us who are engaged in voter education efforts. Improvements that might be considered include continued improvements in the official voter information guide, such as listing of initiative proponents and opponents; posting of more information online in user-friendly formats, including videos and podcasts; free air time for radio and television information about initiatives; and requiring televised or online debates between supporters and opponents.

The Influence of Money. The League is aware of the powerful role that campaign money plays in determining which initiative measures get on the ballot in the first place, and which propositions ultimately succeed or fail at the polls. The League would support realistic limits on contributions to initiative campaigns and on expenditures made by the proponents and opponents. Although court rulings prohibit such limits at the current time, we think a reexamination of the underlying assumptions about money in politics would be beneficial.

Surveys show that voters strongly support more and better public disclosure of the funding sources behind initiative signature gathering and campaigns. The League pushed for the online filing of campaign disclosure reports and believe that it plays an important role in making the influence of money in initiative campaigns more evident to voters. We believe that the voters would be well-served if the reports posted on the Secretary of State’s Web site could be made even more user-friendly.

Voters are often confused by campaign advertising funded by independent expenditures. We are supporting AB 7 (Krekorian) and AB 1322 (Huffman), which would improve the amount and quality of information disclosed to the voters about the sources of funding for independent expenditure ads.

In conclusion, we know that Californians treasure the right to direct democracy, and rightly so. The initiative process provides an important alternative to the legislative process and serves as a valuable tool for voters to make their voices heard. But the current process needs improvement.

The League of Women Voters of California will continue to weigh in on the policy matters highlighted today to the extent our positions allow us to do so. In addition, local Leagues of Women Voters around the state are educating their communities about the issues and the opportunities presented by initiative reform and are anxious to increase their efforts. As an organization dedicated to encouraging informed and active participation in government, we are determined to continue working to help all Californians be aware of and involved in improving our government, including the initiative system.