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# BALLOT BALLET:

## The Metroscape's Delicate Dance with Direct Democracy

by David Santen

Referred to as the “fourth branch” of the Oregon political system, the ballot initiative process has defined Oregon politics as much if not more than any of the traditional legislative, executive, and judicial branches of government. After a century on the books, it continues to grow in stature and presence, evidenced from the increased bulk of both the Voters' Pamphlet and the Oregon Constitution itself. It tackles the entire spectrum of issues, affecting residents of Clackamas, Columbia, Multnomah, Washington, and Yamhill Counties, and often spilling over into Clark County, Washington, and beyond. Land use and property rights, structure of the tax base, and how local schools are funded, legislative accountability, are all issues that resonate throughout the six-county metroscape (including Clark County), which in turn serves as a fairly accurate microcosm for the ballot initiative process, and how Oregon sees it today.

The first amendment to Oregon's Constitution allowed for the referral of statutes to the Legislature and direct amendment to the Constitution by a vote of the people. This became known throughout the country as the “Oregon System,” a result of an unprecedented era of progressivism in the United States. The ballot initiative process was hammered out by William U'Ren, a blacksmith and lawyer strongly influenced by James W. Sullivan's book on direct legislation through the initiative and referendum process. With help from conspiring interests and a confluence of political battles, U'Ren managed to earn the initiative and referendum amendment approval by the 1899 and 1901 Legislative sessions (amendments to the Constitution at that time required the approval of two sessions before being submitted to a general vote), and the amendment passed in the general election of 1902 by a margin of 62,054 to 5,668. This was the high-water-mark of a long and colorful career in politics by U'Ren; a brass marker in front of the Clackamas

County Courthouse in Oregon City bears his portrait.

The early years saw Oregon law changing at the behest of the newfound tool of direct democracy that the initiative and referendum process provided. Oregon was one of only two states to legalize women's suffrage through the initiative process. Prohibition was approved at a state level by initiative, and several failed measures attempted to alter county line boundaries. Indeed, in the 1910s, Oregon utilized the initiative process to pass measures 82 times. In contrast, no subsequent decade saw that number grow above 30 until the 1980s (32) and 1990s (56). The 2000 election contained 18 that qualified (of those 18, five passed, and two are currently being challenged in court). In short, none of the 24 states that employ the initiative and referendum process have done so more often than Oregon.

The revival of the initiative process in the 1980s, and the escalation of its use through the 1990s, hinges on several factors: growing discontent among voters with a perceived lack of response by elected officials to the necessary issues, the relative ease with which initiatives can be qualified in Oregon, the reaffirmation of the legality of using paid signature gatherers by the U.S. Supreme Court, and the passage of several groundbreaking measures that systematically altered the political landscape of Oregon and in turn inspired a wider array of groups to take their battles to the ballot box.

The ability of initiative and referendum to inspire significant political change appeals to groups that have long been frustrated by the legislative process characterized by its deliberative nature. The “tax revolt” that swept the nation in the early 1990s manifested itself in Oregon and Washington via measures that altered the tax structure for the state. Measure 5 capped property taxes in Oregon and reallocated school funding duties to the state, absolving locals of direct responsibility for



William S. U'Ren, father of the initiative process in Oregon.  
OrHi #49958

paying for schools, human resource activities, and so forth. Washington voters in turn lashed out at the relatively high vehicle registration fees that were based on vehicle value with Proposition-695, which not only supplanted the sliding-scale motor vehicle tax with a \$30 flat-tax, but also stipulated that future tax or fee hikes receive voter approval prior to implementation.

Major issues that the ballot initiative process has tackled in the past decade or so include tax limits, term limits, property rights and compensation for lost value (Measure 7, which requires that landowners be compensated fairly for the lost value of property negatively impacted by government regulation), mandatory prison sentences for certain offenses, vote-by-mail, physician-assisted suicide, and many others. While some of these accurately reflect voter discontent (taxes, for example) from within the metroscape, others reflect deep-pocketed support from national interests. The argument around these issues debates the wisdom of forcing voters, the legislature, and the courts to address topics that may, prior to appearing on the ballot, have been of relatively low importance to the majority of citizens.

Rob Drake, mayor of Beaverton, does not necessarily consider that to be a positive:

*The ballot initiative process has brought forth some issues that were very one-issue oriented, that created a lot of tension and friction, and in some cases could radically change what people could or couldn't do in their lives. Take Ballot Measure 9, Lon Mabon's anti-gay initiative, the whole basis of which was a very negative, hateful thing that brought a lot of embarrassment to the state of Oregon nationally and wasted a lot of money. Wouldn't it have been nice to have put all the money – both 'for' or 'against' money – for something like that into affordable housing, or feeding people, or fixing children's teeth?*

The popularity of the initiative process in Oregon, however, has always included its ability to address almost any topic imaginable simply because any person or group may file an initiative with the Secretary of State in order to begin the process. No legal review is required (although it is encouraged). The Attorney General develops a title no longer than 15 words. At that time, any registered voter can comment on the title. Challenges to the title are referred to the Supreme Court. After the title is finalized, the Secretary of State provides a cursory review for issues that would be unconstitutional (such as violating the single-topic rule). Circulators may then begin the signature collection process: 66,786 for statutes and 89,048 for constitutional amendment initiatives. All signatures must be collected four months prior the election, at which point the state Elections Division begins verifying signatures by means of random sampling. The signature-gathering process generally costs in the range of \$65,000 to \$400,000. Once approved, the campaigning begins, an expense that can run anywhere from almost nothing to several million dollars; *The Oregonian* found that the average cost, in constant dollars, of campaigning for an initiative rose from \$862,433 in the 1970s to \$1,704,482 in the 1990s.

The ability for sponsoring groups to gather signatures through the assistance of paid petitioners was confirmed, following the



Photographs by Arianne Sperry

# Initiative Timeline

**1** Chief petitioners (up to three) may file proposed measures at any time, along with 25 valid signatures, with the Secretary of State's office, and must declare whether signature gatherers will be paid.

**2** Secretary of State distributes text of measure the first day-of-business after receiving the petition to designated persons (including the Legislature and media) who may comment on whether the measure complies with the "one subject" requirement. The measure is also sent to the Attorney General for a title.

**3** Attorney General has five business days to prepare a draft ballot title, which includes a caption no longer than 15 words, two 25-word statements explaining the results of both a "yes" and "no" vote, and an initiative summary no longer than 125 words that is then returned to the Elections Division.

**4** Secretary of State/Elections Division issues public notice of draft ballot title. The public has 10 business days to file written comments.

**5** Any comments received are sent to the Attorney General, who has 10 business days (five if no comments filed) to certify the original ballot title or issue a revised draft.

**6** Secretary of State distributes certified title to the Chief Petitioners and to the persons who commented on either the one-subject requirement or the ballot title.

1988 U.S. Supreme Court's opinion that banning payment was an infringement upon the First Amendment. Since then, the rise in petitions being circulated by volunteer-only groups has remained static, while paid circulators, at times earning \$2-3 per signature, have become a near necessity. To some, this is the biggest flaw with the current system – and the one that they have the slimmest opportunity to correct. Though paying for signatures was legal in Oregon until the 1930s, and has been again since 1988, many suggest that it somehow violates the direct-democracy spirit, forcing the process into the arms of big money.

**B**ut while the petitioner proliferation has continued, the locations in which they can solicit signatures have not. Long a fixture at Fred Meyers and other high pedestrian-traffic areas, petitioners found themselves on the losing end of an Oregon court decision that upheld the rights of property owners to restrict petitioner access. Leaving that to the discretion of many businesses allowed owners and site managers to at last remove an element long seen as an annoyance to customers. In the 2002 election cycle, expect to see petitioners haunting college campuses, libraries, sidewalks and other public locations, explains Patty Wentz, of the Voter Education Project, which maintains a hotline for people to call when they see a petitioner circulating ballots. A Project representative will then go down to the location, position themselves several feet away from the petitioner, and hand out promotional literature on the Project and how people can make themselves more aware of what they are signing.

Reading before signing, and taking the time to fill out a complete name rather than just scrawling a signature, slows the signature-gathering process down and cuts down on the potential for fraud, according to Wentz. "Right now the law says that you only have to sign it. So a mercenary who is carrying 11 petitions wants you to sign really fast so he can get on to

the next person. He may be rushing you or have conned you – we have seen a lot of that this season – and it makes it a lot easier to forge your signature." Wentz says that paid circulators, or "mercenaries," rarely know or care much beyond what the ballot-sponsoring organization has told them to say about each initiative. This year is the first year that the Voter Education Project has managed to have petitioners arrested during a campaign for fraud. Previously, policing for potential fraud took place after the signatures were gathered, by which time the perpetrator had long-since disappeared.

"You can't qualify an initiative using volunteers anymore," says Wentz. "It has just become a business for people, a vendetta for people. That is not populism. That is just cynical. It is just terrible."

The numbers seem to bear out the argument of not being able to qualify initiatives for the ballot in Oregon without paid circulators. From 1998 to 2000, paid circulators qualified 69 out of the 165 total (42%). Unpaid signature gatherers circulated 90 initiatives, and qualified only 11 (12%). In 2000, 18 initiatives qualified for the ballot. Unpaid circulators placed only two measures on the ballot.

**W**hile some argue that the process of gathering signatures is a true gauge of sufficient interest and support in an issue, regardless of whether the person holding the clipboard is paid or not, to place it on the ballot, others question the logic. Dan Cook, editor of the *Business Journal* in Portland, puts it bluntly: "You get hit up for so many things just walking down the street, that you are glad when all they want is a signature."

The mechanics of how the signatures make the ballot is a major issue to many public officials, but that pales in comparison to interest in what happens once the initiative makes the ballot. While supporters see the initiative process as a way of either forcing the Legislature to refer long-ignored issues (taxes are the classic

Anyone dissatisfied with the certified title, and who files written comments on the draft, has 10 business days to file a petition of review with the Oregon Supreme Court.

The Court reviews the petition to ensure that it meets statutory requirements. It then either sends a version with or without changes to the Elections Division, or sends it back to the Attorney General for modification – who will then have five business days to change and return the title to the Supreme Court.

Parties have five business days to respond to the modified title with another petition of review, which then sends that title back to the Supreme Court for another statutory review (see #8). Repeat as necessary.

After the ballot title receives final approval, Chief Petitioners prepare petition's cover and signature sheets for review and approval by the Elections Division. The signature-gathering process may then begin.

issue) to the voters, or to simply amend the Constitution, detractors point to the key facet of the legislative process as the major fault of the initiative process: the lack of deliberation, and the subsequent polarization of the issues.

Cook sees the Legislature as taking a free pass at the expense of the ballot initiative process. "I've seen the way the ballot initiative process works in different cities, and invariably it makes the Legislature weaker and weaker and they love it because then they don't have to do anything. It lets them pass on all the tough issues, it ties up resources, and funnels money into an attorney's pocketbooks."

Portland attorney Eric Winters believes that the initiative process is the only way that "hot potato" issues, such as death with dignity, can be debated in an open forum. "Can anyone contend that death with dignity, medical marijuana, or any substantive tax reform could emerge from the Legislature? Those sorts of ideas are killed in committee," he writes.

Clackamas County Commissioner Michael Jordan dismisses arguments that issues garner true debate by virtue of appearing on the ballot. "The fundamental flaw with the ballot initiative process is it gets you in a position where public policy lurches every two years from one extreme to another, rather than being a deliberative, compromise, 'get to common ground'-kind of discussion."

"The deliberative discussion that you get in an election campaign really just sets up the next question. It doesn't impact the question on the ballot, because you can't change that. You just get to vote 'yes' or 'no,'" says Jordan. He doesn't see the Legislature helping the issue either. "It seems our Legislature is no longer ready to make decisions on issues - they're only ready to put decisions on the ballot, which I think enhances folks' perception that they are a body driven by this initiative and referendum process," says Jordan.

Etan Seltzer, director of the Institute for Portland Metropolitan Studies at Portland State (and *Metroscape* publisher), agrees with Jordan that the ballot initiative process is reductive and polarizing. "These circulators show up on your doorstep, and ask you if you would like to sign a petition for 'better government'? Well, who wouldn't be for 'better government'? What is the opposite there? There is this notion that in having initiatives you can boil any question down to the simple 'yes' or 'no, black-or-white choice. That by having it on the ballot automatically creates the forum for debate. Nothing that complicated can be so simple. There is no dialogue, no debate, no compromise. To have the ballot initiative process represented as this 'essential form of democracy' is a lie."

Jordan points out that the policy questions addressed by many of the initiatives are much more complicated than they appear. "I have hardly seen any issue in my experience that I didn't find to be significantly more complicated once I got into it. And that doesn't mean people shouldn't have the right to vote on them, but they are complicated questions, and I don't know that there is a simple one out there that doesn't have ramifications that aren't anticipated."

This sentiment rankles ballot initiative activists, who charge that elected officials, planners, and others regularly dismiss the will of the people as being uneducated and incapable of accurately and adequately making responsible decisions. Bill Sizemore heads up Oregon Taxpayers United, a group that filed more than a quarter of all proposed initiatives in the 2000 election cycle, qualifying six for the ballot. In interviews, Sizemore again and again makes the claim that the initiative and referendum process should be left alone, and that any flaws in it are replicated by the legislative process. "What is this magical transformation that makes voters too stupid to make decisions for ourselves, but suddenly capable

19  
County Elections officials must deliver an abstract of results to the Secretary of State's office by November 25 (20 days following the General Election).

18  
**November 5, 2002: Election Day**

17  
The Elections Division certifies all ballot measures and assigns each a number, based on the order in which they were submitted for signature verification, by September 5 (61 days prior to the General Election).

16  
Persons may submit arguments for and against to be printed in the Voters' Pamphlet, for \$500 per argument (325 words/ 30 square inches), or with 1,000 verified signatures from Oregon voters. These may be filed after the measure is certified to the ballot but no later than August 27, 2002 (70 days before General Election).

15  
Along with an explanatory statement, each measure requires a direct-dollar statement of its financial impact. This "impact statement" is crafted by the Secretary of State and must be completed by July 29. A comment period lasts until August 2, and a final impact statement must be issued by August 7.

14  
Secretary of State holds public hearing for objections or suggestions regarding statement (by August 2, 2002, 95 days prior to General Election), which are registered and returned to the explanatory committee. A final, revised explanatory statement is due August 7 (90 days prior to the General Election).

11  
Petitioners must collect a set number of signatures to qualify measures for the ballot. Constitutional amendments require 8% of the votes cast in the previous gubernatorial election (89,048); statutory initiatives require 6% (66,786). All signature sheets are due July 5, 2002.

12  
Secretary of State's office selects a random sampling of signatures and sends these to local county elections officers, who then validate those signatures. Verification process must be completed 30 days following the July 5 deadline (August 4, 2002). Petition may not be ruled invalid unless it fails two separate sampling processes.

13  
A committee of proponents and opponents is appointed by July 17 (111 days prior to the General Election) to draft a 500-word explanatory statement. Statement must be filed by July 29 (99 days before the General Election).

of making wise decisions when it comes to electing politicians to govern us?" he asks.

**K**evin Mannix, a candidate for Oregon governor and author of several initiatives, echoes this sentiment. In an April 2002 gubernatorial debate, Mannix lashed out at fellow candidate Ted Kulongowski's proposal to eliminate the amendment from the initiative process, saying that he was "sick and tired of the intellectual elites who always think they know better than the people," and that the initiative process was one that has worked well for Oregon for 100 years.

The Oregon Supreme Court decided that the "wise" decisions would be more readily available if the ballot measures themselves were clearer. Citing a law on the books since the early 1900s, the court ruled in 1998 that measures amending more than one part, unless closely related, of the Constitution were unconstitutional. That ruling led to the dismissal and resubmittal of several amendments, and to court victories for some measure opponents

*What is this magical transformation that makes voters too stupid to make decisions for ourselves, but suddenly capable of making wise decisions when it comes to electing politicians to govern us?*

– Bill Sizemore

based on technicalities. It also further illustrated the growing entanglement that the courts and the ballot initiative process, particularly the constitutional amendments, endure.

"Courts would seem, at first blush, to be natural enemies of the initiative process. After all, the initiative process is the most direct expression of the people's preferences, whereas the judiciary is the political institution most insulated from those popular preferences. Yet the irony . . . is that expansion of the initiative process . . . has made the political system more reliant on the judicial branch," writes Richard Ellis, professor of politics at Willamette University, in his book *Democratic Delusions: The Initiative Process in America* (University Press of Kansas, 2002).

The regularity with which ballot-related cases appear on the Oregon Supreme Court docket has indeed proven to be a windfall for those of the legal persuasion. For the court system, it has become a burden proportionate to the rise in ballot measures. Challenges to ballot titles accounted for 35 of the Court's cases – over a third – in 2000. The Court has struggled to sidestep the workload without impacting the democratic process. Proposals to increase the number of signatures needed to begin the initiative process (currently only 25), or to use a

three-judge panel rather than the whole court, have yet to come into play.

Issues of how the branches of government mingle with the ballot initiative process, however, are largely left to the political scientists until enflamed by actual measures that exacerbate the sticking points in that relationship. Criticism, and increased usage, of the ballot initiative system truly began in earnest with the passage of Measure 5, the 1990 constitutional amendment that, passed by a vote of 52%, places a limit on the property taxes that were used to fund schools and government. This effectively limited the ability of local districts to raise additional monies for these services, instead placing the issue in the hands of state lawmakers and voters. The voters responded with further tax-limiting measures, such as Measure 47 (1996).

The current state of local school districts is reflected by this reallocation of funding sources. The Portland Public Schools District recently announced that it would further shorten its school year, making it the shortest in the nation. As the

state budget confronted a deficit of over \$800 million, it did so with the schools as the primary recipient (approximately 57% of state income tax goes to funding schools; overall, schools account for over 40% of the budget). With a disproportionate emphasis on the state income tax for revenue (the Tax Foundation, a national research and policy group, puts Oregon's income tax rate at the second-highest in the nation), the budget may be more vulnerable to a shifting economy. That places the onus of new funding sources on the legislature in Salem, which is well aware, in the words of Mike Burton, executive officer of Metro, that "there is never a good time to talk about taxes." In his final State of the Region address in April 2002, he charged lawmakers to meet the funding challenge. "The time to talk about taxes is when it's needed."

**A**nti-tax advocates argue that school funding is considerably higher now than it was pre-Measure 5, and that the money has instead gone to teachers salaries and retirement packages even as Portland closes buildings, lays off teachers, and increases class sizes. Others argue the issue that perhaps schools have strayed too far from the core competencies, running programs for which there was no funding. The issue, they emphasize, is

government's refusal to cut spending money it does not have.

The truth of the situation with Portland schools perhaps is less important than the perception of the situation with public schools. The annual pleas for money, threatened layoffs and cut-backs, editorials (*The Oregonian* recently asked readers to contribute letters discussing how public schools have changed in the past five years: selected responses were titled, "Old books and vanishing classes," "No more school nurse or librarian," "Lack of maintenance endangers," and "Caring teachers the only constant") and administrative turnover, have created a perception, true or false, that schools in the Portland-area are getting worse. Studies show Portland students fleeing to private and out-of-district schools.

Ginger Metcalf, executive director of Identity Clark County, a private, non-profit corporation that focuses on community and economic development in southwest Washington, sees the impact of Oregon's Measures 5 and 47 across the Columbia River and describes it in one word: "devastating."

"When Oregon passed Measures 5 and 47 – I'm trying to put this delicately – the quality of the schools declined on the Portland side. Property taxes were still too high, in the minds of property owners, and many of them elected to move to Clark County for the education in the Evergreen district (and to a lesser extent, the Vancouver school district). This sorely hurt our schools. The lower property taxes and the better education was for us a 'double whammy', because those people refuse to vote for anything that increases the tax funding for that improved education."

Eastern Clark County has struggled to supply the number of jobs that go with the growing number of new houses and residents. Metcalf points to the fact that for every dollar that a resident pays in property tax, he takes back \$1.12-1.24 in services. In contrast, for every dollar that industry pays in property tax, it takes back \$0.41 in services. In short, "the residential tax base doesn't pay the bills – the industrial tax base does." Most of these new residents continue to work in Oregon, says Metcalf, which means that disposable income stays in Oregon as well, causing Clark County to lose potential sales tax revenue from retail sales.

Washington's ballot initiative process differs in the relative ease with which issues can qualify for the ballot, although the issues that qualify address many of the same issues as those faced in Oregon, such as transportation funding. Washington's I-695 drastically limited funding for roads and transit. While some funding for transportation projects has been successful at the local level (such as in

Washington County), putting services to a vote, through bonds or levies, has proven risky for local governments. Funding for a north-south light-rail line has been denied more than once on both sides of the Columbia River, and Vancouver voters recently voted down funding for emergency medical services (EMS). Ginger Metcalf sees it as "voting with your pocket book rather than your head."

"They voted down an EMS issue! Services across the board are being curtailed or cut. If we don't pay for it, who will? We are the public," entones Metcalf.

This reduction of services is often an intended by-product of measures that are passed, stemming from a desire to bring government spending in line with available resources. Steve Buckstein of the Cascade Policy Institute, a conservative think-tank in Portland, points to a report stating that Oregon state and local governments spend nearly 20% more than comparable states, including 14% more on education, 30% more on health care, 13% more on welfare and 19% more on police. The only major category in which Oregon lagged other states was in highway spending (3% below average). "Government should be as small as possible, not as large as it can get away with," Buckstein writes. "Taxing more to keep spending at high levels is irresponsible."

**T**hough tax-related issues have long-dominated the political landscape of the 1990s, issues surrounding land use, property owners rights, and "ballot box planning" have crept to the forefront, thanks in part to the passage and subsequent court hold-up of Measure 7 (approved in November of 2000), as well as increased debate on the future expansion of the Urban Growth Boundary, maintained by the regional Metro government.

Measure 7 was introduced by supporters as a way to protect the rights of property owners by agreeing to compensate them for loss of property value due to an action taken by government. Charges of unconstitutionality for being in violation of the single-issue law have left it in limbo until a court decision is rendered. Meanwhile, its supporters and detractors have moved ahead to the 2002 ballot, which is now ground zero for dozens of proposed "Sons of 7" initiatives designed to strengthen or destroy Measure 7's proposals.

Polls conducted by the Public Policy Institute of California showed that 63% of California voters indicated that growth related decisions should be made by local voters via voting on local initiatives. Only 35% preferred the option of local elected officials making decisions after going through a

process of planning reviews and public hearings. Oregon seems to have caught up with the trend of ballot-box planning. “The tendency seems to shift toward citizens believing that they are just as qualified to make these decisions as anyone else; furthermore, there is an increased belief that ‘My interests can’t be better protected than by anyone but me,’” says Ethan Seltzer, IMS Director. He cautions that this trend is a dangerous one. “If you like Measure 5, and how we got there, then you will love ballot-box planning.”

A report by the City Club of Portland, released in April 2002 and entitled “Measure 7 and Compensation for the Impacts of Government Regulation,” agreed with its premise that there

*If you like Measure 5, and how we got there,  
then you will love ballot-box planning.*

*– Ethan Seltzer*

were property owners who had suffered financial hardships worthy of compensation. Measure 7, however, was “not the proper vehicle for remedying hardships.” Instead, the report outlines guiding principles that could be used as a way of determining where property owners’ rights end and the government begins, and from there establishing a system of compensation. The annual estimated cost of claims from Measure 7 varies wildly, from the Oregonians in Action estimate of \$150 million to the \$5.4 billion cited in the financial impact statement listed in the Voters’ Pamphlet.

The effect, which in a sense, is a logical progression from increased voter control of property taxes, has been to center public policy on the role of government in planning issues, particularly, whether the public is willing to allow government to continue to administer land-use issues. The rise in local cities such as Canby putting annexation issues to a vote, the heated debate between planners and non-planners in the recent campaign to lead Metro has repositioned planning as the next frontier of political discussion, placing it on parallel with tax issues for many.

Measure 7 is a good example of constitutional amendments that will require money, but leave identifying actual funding sources (and what will be cut in order to free up funds) to Salem. An *Oregonian* commentary piece written in 1998 by Steven Koblik, president of Reed College, lamented the fact that the either/or context that ballot measures are placed in force voters to vote whether or not they want libraries, or schools, or police officers. The discussion of where the money comes

from rarely happens, and since voters have made it clear to Salem that tax hikes are unacceptable, this funding must appear from reallocated revenues or economic growth. The piece warned of a crisis when the then-booming economy eventually cooled, as K-12 class sizes grew and arts and culture programs were cut.

While many would like to see changes made to the ballot initiative process, those changes are subject to intense debate, and highly unlikely. Recent attempts in 1996 and 2000 by the Legislature to increase the number of signatures required to qualify constitutional amendments to the ballot were soundly rejected – this in spite of a 1995 poll conducted by the City Club of Portland that indicated a general discontent among voters about how the process operates. Other suggestions have ranged from a preliminary judicial review of ballots to check for issues that might prove to be unconstitutional, to requiring all initiatives to have a legislative sponsor, to limiting constitutional amendments to fundamental issues related only to how government operates and the rights of people while leaving less fundamental issues to the statutes. The issue of paying for ballot signatures is fairly unpopular among critics of the system, but legal in the eyes of the U.S. Supreme Court and thus not on the table for discussion.

The strongest advocates of the system vigorously reject any restrictions on the process. However, the increased presence of the judiciary and its ability to determine whether issues addressed by one initiative are too broad to pass the single-issue rule have tempered enthusiasm for the direct amendment. As a result, many proposals are forced down the path of statutes, which are then referred to the public by the Legislature. Richard Ellis points to that trend as a positive. Legislators generally are unlikely to tamper extensively with measures that they disapprove of – simply because of the unpleasant prospect of voter backlash. He sees the statutory process as ideal in that it forces issues to undergo the same kind of political trial-by-fire process and deliberation as laws, produced by the Legislature, go through.

As the costs of qualifying measures combine with the ever-rising numbers of initiatives to be translated from position statements listed in the Voters’ Pamphlet, and as sources of alternative revenue continue to evaporate, the climate for changing the ballot initiative process, via the process itself, may become more hospitable. In the meantime, the lawyers are winners. The judges are busy. And the people? They can count on a continued wealth of bedside reading during the election season. ■