City Club of Portland Report: The Initiative and Referendum in Oregon

City Club of Portland (Portland, Or.)
The City Club Membership will vote on this report on Friday, February 16, 1996. Until the membership vote, the City Club of Portland does not have an official position on the recommendations included with this report. The outcome of this vote will be reported in the City Club Bulletin dated March 1, 1996: (Vol. 77; No. 36)
EXECUTIVE SUMMARY

The initiative is an important and valuable part of the Oregon legislative process and should be retained. It provides Oregonians a way to propose and vote on constitutional amendments and statutes, including those the Legislative Assembly has been unable or unwilling to refer or enact. It allows Oregonians to assert direct control over public policy while leaving the primary lawmaking role to the Legislative Assembly.

Oregon’s initiative process, however, has been the subject of growing public concern arising from the increasing number of measures on the ballot and from the content and impact of many measures, especially upon the Legislative Assembly's budget-making responsibility. The number of measures qualifying for the ballot will almost certainly continue to rise at least in the near term: over 75 preliminary petitions for 1996 general election measures have been filed at the time of this report.

The committee believes that judgments about the need for and form of change in the Oregon initiative should rest on how, not how often, the initiative is being used. In that regard, the committee’s study has identified at least three critical trends in the initiative’s use that the committee believes are taking the initiative outside its intended and proper role in the lawmaking of a “republican” — that is, representative — form of government. The United States Constitution, Article IV, section 4, requires Congress to guarantee each state a republican form of government.

First, the initiative is being used to place ordinary statutory matter—most importantly, matter unrelated to the structure, organization and powers of government, and the rights of the people with respect to their government—into the Oregon Constitution to prevent legislative change and to preclude judicial review for consistency with the Oregon Constitution.

Second, the initiative is being used to propose—isolated from total competing demands on state resources—specific government policies or programs with enormous state general fund cost and without any financing mechanism as part of the proposal.

Third, the initiative is being used to propose—again isolated from total competing demands on state resources—reservation or commitment
of part of the general fund for a specific program or policy, thereby also inviting competitive proposals in self defense.

The importance of these initiative trends is sharpened by the growing, and constitutionally protected, use of signature gatherers paid by the signature, a system that assures almost any measure backed by enough money will reach the ballot. The importance of these trends is also sharpened by certain crucial differences between lawmaking by initiative and by the Legislative Assembly:

• The initiative process, after filing of a preliminary petition for a proposed measure, has no mechanism for correcting drafting errors, clearing up ambiguous language or addressing unintended effects noted after the petition’s filing.

• The initiative process has no organized and systematic procedure like legislative committee hearings by which cost-benefit and other issues about a measure can be raised, different views heard, and possible changes considered. When used to advance measures with a large general fund impact, the initiative bypasses the discipline of the process by which the Legislative Assembly must weigh and resolve competing spending proposals as a whole to produce a biennial budget that does not exceed projected revenue.

• The initiative process does not subject those who employ it to any kind of political or electoral accountability for the effects of its use.

• The initiative process involves campaigns for and against proposed measures that must substitute simplified slogans and appeals broadcast by media for debate among legislators representing, and accountable to, constituents with different interests.

Opinion surveys confirm that many Oregonians are troubled by the described trends in the initiative’s use and are open to principled reform efforts. Some concerned citizens view reducing the number of measures qualifying for the ballot as the reform goal, and propose reaching that goal by increasing the number of signatures required or by requiring a geographical distribution of signatures. The committee believes this approach does not address the issues raised by the forms of the initiative’s use. It will instead place an increased premium on having large financial or organizational resources with which to obtain signatures and further reduce access to the initiative by citizens or organizations without such resources. The committee recommends leaving current signature requirements unchanged.

To address the problems in the manner of the initiative’s use without further reducing access to the initiative by groups with limited resources, the committee recommends two categories of constitutional amendment.

As a first priority the committee recommends that:

• Initiated amendments to the Oregon Constitution should relate only to the structure, organization and powers of government, and the
rights of the people with respect to their government; and should not be used to dedicate revenue or to make or repeal appropriations, or to require state expenditures above a limited amount.

• Initiated amendments to the Oregon Constitution qualifying for the ballot should first be referred to the Legislative Assembly for deliberative consideration and then submitted to the people at the next general election.

• Amendments to the Oregon Constitution, whether initiated by the people or referred by the Legislative Assembly, should require a three-fifths majority for approval.

The committee believes that amending the initiative process in these three ways will limit constitutional amendments to fundamental changes related to government, insure deliberative review of such amendments before submission to the people, and require a solid majority to approve changes in Oregon's fundamental law.

As a second priority the committee recommends:

• The initiative power to enact statutes should not be used to dedicate revenue, make or repeal appropriations, or require state expenditures above a limited amount unless the proposed measure itself provides any additional revenue required by its approval.

• Initiated statutes qualifying for the ballot should first be referred to the Legislative Assembly for deliberative consideration and then submitted to the people at the next general election unless enacted by the Legislative Assembly itself and approved by the Governor.

The committee believes that amending the initiative process as to statutes in these two ways will insure deliberative review of proposed statutes before submission to the people and will insure that proposed measures that require general fund expenditures do not impair the budgeting process or remove support from other government functions considered in the proposed measure.

Finally, the committee also makes several recommendations to the Legislative Assembly for statutory changes relating to ballot titles, financial impact statements, and the voters' pamphlet to improve the initiative process. The committee also recommends that the Legislative Assembly reactivate a constitutional revision commission.

The committee believes these changes will preserve the basic advantages of the initiative process while assuring the appropriate distinction between initiated constitutional amendments and initiated statutes and maintaining the integrity of Oregon's biennial budget making process.
# Table of Contents

I. INTRODUCTION .................................................................................................................. 1

II. BACKGROUND .................................................................................................................... 3
   A. The historical background of lawmaking ................................................................. 3
      1. The evolution of representative assemblies as law makers ................................. 3
      2. The design of the United States Constitution .................................................... 3
      3. The origins of “direct democracy” ...................................................................... 4
      4. Town meetings and referenda ............................................................................ 5
      5. The modern initiative by petition ...................................................................... 6
   B. Evolution of the initiative and referendum in Oregon ............................................ 7
      1. Legislative implementation ............................................................................... 7
      2. Initial legal challenges: the guarantee of a republican form of government .... 8
   C. Employment of the initiative in Oregon and comparison with selected states ........... 11
      1. Affirmation and criticism .................................................................................. 11
      2. Principal arguments in favor of the initiative ....................................................... 11
      3. Principal criticisms of the initiative .................................................................. 11
      4. Frequency of use ............................................................................................. 12
      5. Subject matter of Oregon ballot measures ....................................................... 14
      6. Getting on the ballot ....................................................................................... 15
      7. Deciding what measures go on the ballot ............................................................ 17
      8. Constitutionality of ballot measures .................................................................. 18
      9. Expenditure on ballot measure campaigns .......................................................... 19

III. DISCUSSION ...................................................................................................................... 21
   A. The initiative as part of the legislative process ...................................................... 21
      1. Lawmaking: specialization and professionalism .................................................. 21
      2. Lawmaking: checks and balances ...................................................................... 21
      3. Lawmaking: legislatures must do most of it ....................................................... 22
      4. Breaking political log jams and unintended consequences ................................ 22
      5. Drafting and unintended consequences .............................................................. 23
      6. Information: ballot measures and the media ....................................................... 23
      7. Information: the Voters’ Pamphlet .................................................................... 25
      8. The use of paid signature gatherers .................................................................... 26
      9. The importance of money in ballot measure campaigns ..................................... 27
     10. Use of the initiative to avoid legislative process ................................................. 27
     11. Trust and distrust of government and lawmakers ............................................... 28
   B. Constitutional amendments, statutes and the budgeting process ............................ 29
      1. Comparative difficulty in amending constitutions .............................................. 29
      2. Use of the initiative power to mandate revenues and expenditures, and the requirement of a balanced budget ................................. 31
I. INTRODUCTION

This study of the Oregon initiative and referendum was commissioned by the City Club of Portland because of increasing concern with the initiative process and its effect upon state and local government, a concern shared by citizens statewide as reflected in a recent poll. See Appendix C. The importance of the study was highlighted at the outset by 1994 general election ballot measures which, if enacted, would have threatened the financial stability of state government and its capacity to perform its responsibilities. As of this writing 76 preliminary petitions have been filed with the secretary of state for initiative measures for the 1996 general election.

The purpose of this study was to review Oregon’s initiative and referendum, identify strengths and weaknesses of the system, and make recommendations for its improvement. The study was carried out by a committee of volunteer Club members appointed by the Club’s Research Board. The committee began its work in November 1994. All committee members were screened to ensure that no member had a financial conflict of interest in the outcome of the study or was committed to a specific position with respect to the initiative and referendum process in Oregon.

The committee based its recommendations on information gathered from interviews with over 30 witnesses involved in all aspects of the initiative process. See Appendix A for a full list of witnesses. The committee also reviewed a wide variety of published materials that presented information and perspectives on the general concept of representative and direct democracy, Oregon’s initiative system, and the initiative systems in other states. See Appendix B for a full bibliography of materials used by the committee.

The principal focus of this study is Article IV, section 1, of the Oregon Constitution. This provision as implemented by statute enables a registered voter to place a proposed constitutional amendment or statute upon the ballot by filing with the secretary of state a petition signed by twenty-five registered voters, obtaining a ballot title, and securing valid petitioner signatures of registered voters equal to 8 percent of the votes cast for governor at the preceding general election in the case of a proposed constitutional amendment and 6 percent in the case of a proposed statute.

The same section also provides that a referendum petition filed with valid signatures equal to 4 percent of the same vote base will suspend the effect of any statute enacted by the legislature without an emergency clause, and requires that the secretary of state place the proposed statute on the ballot. Referendum by petition must be distinguished from the different constitutional provisions that authorize the legislature to refer laws,1 constitutional amendments,2 and constitutional revisions3 to the people for approval or rejection.
The committee examined the state’s ninety-year experience with the initiative and the referendum as a part of our constitutional and legislative process to see whether any constitutional or statutory changes are desirable in the light of that experience. Early in the study it became apparent that evaluation of the initiative process requires analysis of the nature of representative government, and the various and often conflicting philosophies of the relationship between political leaders and citizens. These philosophies are central to the workings of government, and every citizen has a stake in how public policy is made or ought to be made in the legislative process.

The committee begins its analysis with a review of the history of lawmaking because an understanding of this background will help the reader understand the conflicting views of the initiative and the rhetorical hyperbole with which these views are sometimes expressed in public as well as in scholarly discussion of the initiative. The study then reviews the constitutional and statutory evolution of the initiative and referendum in Oregon. This discussion is legal and may be heavy going for some readers, but the fact is that constitutional and statutory provisions are “legal” and must be understood and treated as such, as those who have undertaken an initiative or referendum campaign discover—sometimes to their cost. This review sets the stage for consideration of the arguments supporting and criticizing various aspects of the initiative as it has been employed in Oregon and three other western states. The study then proceeds to consider the initiative as a part of the legislative process, the unique problems of initiated constitutional amendments and, finally, the committee’s proposals for change.
II. BACKGROUND

A. The historical background of lawmaking

Before examining the pros and cons of the initiative, and considering the conceptual battle between advocates of representative government and advocates of direct democracy, a brief look at the historical development of lawmaking is in order. It is useful for that discussion to think of law in two categories. The fundamental law of a state or nation which provides the structure of government, defines its powers, and sets forth the rights of its citizens with respect to government, we call constitutional law, and the written or unwritten statement of that law a constitution. The law enacted by a lawmaking body of government we call statutory law or statutes.

1. The evolution of representative assemblies as law makers

   Organized governments in the ancient and medieval world were largely monarchical in form. Their fundamental law was largely unwritten and was grounded in custom and tradition. Such statutory law as existed was decreed or pronounced by a hereditary king generally assisted by a council of nobles, tribal leaders or heads of clans. Lawmaking by representative assemblies is a relatively modern concept originating in the Middle Ages. The English Parliament in the thirteenth century was composed of knights and burgesses called by the king to meet with his appointed council primarily to raise money for the crown. Over the centuries Parliament evolved into an elected representative body, although the electorate in Great Britain was an extremely limited body of property owners even at the time of the American Revolution. One of the major grievances of the American colonists was their lack of representation in Parliament which enacted laws for them and imposed taxes and trade regulations on them.

2. The design of the United States Constitution

   The constitution of the United States is the oldest written document establishing the structure, powers and limitations of a federal republic. When the delegates to the Constitutional Convention of 1787 hammered out the structure and powers of the proposed national government to replace the Articles of Confederation, they had the benefit of 180 years of experience with the various structures of colonial government under proprietors and royal charters, together with their experience with the several Continental Congresses and Congress under the Articles of Confederation. The delegates thoroughly explored the various theories of government at that time. They intended to guard against any revival of monarchical government against which they had just successfully revolted, and at the same time guard against “tyranny of the majority” in a government based upon a popular electorate. The United States Constitution is studded with checks, balances, powers and limitations which reflect this clear intention.
The meaning of representation was thoroughly debated by the convention. Adams and Madison argued that elected representatives should be chosen for their ability and concern for the nation's broad interests instead of the local interests of their constituents. They should be free to vote as their judgment indicated. Other delegates argued a mandate concept: that representatives should vote as their constituents directed. The views of Madison and Adams carried the day, but the mandate concept has echoed throughout our history because the prospect of electoral victory and the possibility of electoral defeat tend to remind incumbent representatives and challengers that their constituents ultimately decide who shall represent them.

The United States Constitution, and the Oregon Constitution when the state was admitted into the Union in 1859, established governments with three branches: legislative, executive and judicial. The lawmaking branch of the United States consisted of the Congress; that of Oregon consisted of the Legislative Assembly or Legislature. In both governments the legislative or lawmaking branch consisted of two chambers: a house of representatives and a senate. The house of representatives in both cases was elected by popular vote. The federal senate was elected by the state legislatures until 1913 when the 17th Amendment was adopted providing for popular election of senators. Governments with elected representative lawmaking arrangements were and are known as representative democracies and that form of government as "republican," the form Congress is mandated to guarantee to each state by Article IV, section 4, of the United States Constitution.

3. The origins of "direct democracy"

"Direct democracy" as distinguished from "representative democracy" is lawmaking directly by the enfranchised people rather than by representatives elected by the people. In all probability, many tribes of preliterate hunter-gatherers evolved ways of decision making by agreement of the adult males. Early German society was described by the Roman historian Tacitus as organized and governed by tribal assemblies of freemen. Modern adherents of direct democracy like to trace its origins back to ancient Greece where from 506 BC for several hundred years the free citizens of the city-state of Athens, meeting in a body called the Ekklesia, could make law as well as banish politicians considered a danger to the state.

Documented in far more detail are the roles played by assemblies in the late Roman Republic, 367 BC-29 BC. There were three popular assemblies: the Comitia Centuriata, the Comitia Populi and the Comitia Plebis Tributa, two of which had the power to enact law. The Comitia Centuriata, consisting of the whole people voting in their centuries (voting divisions of that body), had the right to enact law when called together for that purpose by a consul or praetor. From 287 BC the Comitia Plebis Tributa (also called the Concilium Plebis), composed of
enfranchised commoners voting by tribes, but excluding patricians, had the right, when convoked by a tribune of the plebs, to enact law which bound the whole people. Neither Legislative Assembly could initiate law on its own account. In both the voting was by group, by century in the Comitia Centuriata, by tribe in the Comitia Plebis Tributa. A majority of the participating groups, not a majority of the individual votes, determined the decision of the two assemblies.

The Roman Senate, a highly influential but nominally advisory body composed of wealthy patricians and landowners, was chosen for life by the censors. The latter, senior senators, were elected by the Comitia Centuriata. The Senate issued advisory opinions or decrees which normally did not have the force of law until enacted by one of the assemblies. Executive functions in the Republic were performed by two consuls elected annually by the Comitia Centuriata. The Senate had the power to conduct foreign policy and additional power to issue decrees overriding the assemblies in an emergency. The Senate also could appoint a dictator with both lawmaking and executive authority for limited periods, again to deal with emergencies. Thus the authority of the Roman people to legislate in their two assemblies was circumscribed procedurally and did not permit them to initiate specific legislation unless they were called into session by a magistrate entitled to do so for that purpose, and the exercise of that legislative authority was also subject to veto by any one of the ten tribunes of the plebs.

4. Town meetings and referenda

The New England colonies before the Revolution developed town meetings in which the adult males met to elect town officials and to enact local laws. However, the town meeting format for the passing of laws, while workable at the village level, did not extend beyond New England and was not a practical way to govern populations spread over a large geographic area or local populations larger than villages. Large assemblies were cumbersome, and ordinary citizens had neither the time nor the expertise for direct government.

The United States Constitution was drafted by delegates elected by state legislatures and was ratified by state conventions composed of delegates elected by the people. In Massachusetts and New Hampshire proposed state constitutions were submitted to assemblies of citizens for approval. By the middle of the nineteenth century, it became common state practice to submit proposed constitutions and constitutional amendments drafted by conventions to the people for approval. This was the procedure followed in Oregon in 1857 when Oregonians voted to join the Union.

Referenda also were employed in several European nations in the 19th century. Napoleon III, the elected president of the Second French Republic, converted the republic into an empire and himself into an emperor by means of a referendum. Adolph Hitler was elected
chancellor of Germany by a majority of the Reichstag and thereafter used a referendum to abolish the Weimar Republic and establish himself as dictator of the Third Reich.\textsuperscript{15}

The practice of asking citizens to vote on the adoption and amendment of fundamental law was thus recognized in several nations and followed in the adoption of state constitutions in the United States. The legislative referendum is a process by which the legislature puts a question to a vote of the people. This process was employed at the outset of Oregon’s history as a state when the legislature submitted questions about slavery and free blacks to Oregon voters.\textsuperscript{16}

5. The modern initiative by petition

The initiative as a device to place constitutional questions before voters appeared first in the Swiss Constitution of 1874. Legislation could also be referred to the voters by petition, but there was no provision for initiating ordinary law by petition. The early Swiss experience with direct government was picked up by the American Populist movement in the last two decades of the nineteenth century. Farmers in Oregon, like those in many parts of the country, became increasingly dissatisfied with the state legislature’s inability or unwillingness to respond to demands for reform. They perceived both the legislature and the political parties as corrupt and boss-ridden, unwilling to pass laws regulating corporations. A badly depressed economy sharpened the demand for change. Farmers joined other dissident groups in political association. They saw direct legislation as the only way to redress the evils in the established political system.\textsuperscript{17}

Two men, Seth Lewelling and William U’Ren, led the Oregon movement to place the initiative and referendum in the Oregon Constitution. They made political alliances, developed grass roots organizations, and by astute maneuvering led the 1899 legislature to approve an amendment creating the initiative and referendum. The amendment procedure at that time required passage by two successive legislatures and then approval by a majority of voters who voted in the next election. Accordingly the amendment was resubmitted to the 1901 legislature which again adopted it. The amendment was then referred to the people who approved it in 1902 by a 78 percent majority.

Oregon is frequently credited with being the first state to adopt the initiative and referendum, and the two procedures (with the recall) were known for many years as “The Oregon Plan”; however, South Dakota was in fact first, adopting these devices in 1898. Utah came second in 1900 and Oregon third in 1902. Twenty-four states now have the initiative in some form. Six (Alaska, Idaho, Maine, Utah, Washington and Wyoming) have statutory initiatives only. Florida has constitutional initiatives only. A majority of states have no initiative (see Figure 1, next page).

6

THE INITIATIVE AND REFERENDUM IN OREGON
FIGURE 1
Map of States with the Initiative (shaded)


B. Evolution of the initiative and referendum in Oregon

1. Legislative implementation

After adoption of the initiative and referendum constitutional amendment in 1902, the Oregon Legislature passed implementing statutes that established the process by which citizens could file and circulate petitions and a procedure for verifying petition signatures. In 1906 a further constitutional amendment eliminated the second referral vote by the legislature, and the constitution could henceforth be amended either by referral by a single legislature and approval by the people or by initiative petition and approval by the people without action by the legislature. This remains so today. The initiative was extended to all municipal and district legislation by constitutional amendment in 1906 and to county legislation in 1909.

Over the years the legislature has made many changes in the statutes implementing the initiative and referendum which need not be reviewed in their entirety. See Appendix D. Some changes, however, continue to be important. A 1903 act provided that the secretary of state should decide in the first instance whether a petition satisfied the initiative constitutional provisions. A 1907 act repealed the 1903 act but provided
that if the secretary of state refused to accept and file a petition the courts should decide whether the petition was legally sufficient.\textsuperscript{22}

In 1935 the legislature prohibited paying for gathering signatures on petitions,\textsuperscript{23} but the prohibition was repealed in 1983.\textsuperscript{24} The 1983 act required a measure’s chief petitioners to declare whether anyone would be paid for gathering signatures. In 1992 the legislature also required that if signature gatherers were being paid each signature page must also carry a notice to that effect.

Financial impact statements by an impartial committee were first compelled by the 1951 legislature for any initiative or referendum measure which would require general fund expenditures exceeding $50,000.\textsuperscript{25} An impartial explanation of ballot measures prepared by a committee of three was also required. These committees consisted of one supporter and one opponent who were to select a neutral third person. The 1957 Legislature shifted responsibility for the financial impact statement to the secretary of state.\textsuperscript{26}

2. Initial legal challenges: the guarantee of a republican form of government

The United States Constitution by its Guaranty Clause (Article IV, section 4) requires that Congress guarantee every state “a Republican Form of Government.” All the thirteen original states generally replicated the broad outlines of the federal constitution with three branches or departments of government including an elected legislative body. All states later admitted to the Union also followed this pattern with the sole exception of Nebraska which adopted a unicameral legislature.

Following adoption of Oregon’s initiative and referendum in 1902 the new constitutional provision for initiating a statute was challenged in \textit{Kadderly v. City of Portland}, 44 Or 118 (1903), as violating the guarantee of a republican form of government. The plaintiff in the case contended that a republican form of government meant a government in which laws are exclusively made by elected representatives and not directly by vote of the people. The Oregon Supreme Court held that the power to initiate statutes independently of the legislature did not violate Article IV, section 4. The United States Supreme Court subsequently held in \textit{Pacific States Telephone and Telegraph Co. v. Oregon}, 223 US 118 (1912), that whether a state statute adopted by the initiative violated Article IV, section 4 was a political question to be determined by Congress, not an issue to be decided by the federal courts. The court did not set aside the Oregon judgment that had sustained the tax imposed on the telephone company by the initiative. In \textit{Kiernan v. Portland}, 57 Or 454 (1910), the Oregon Supreme Court said it was “inconceivable” that a state “loses caste as a republic” because it allows citizens by popular petition and plebiscite to act as a branch of its legislative department.
Forty-four years later, then Representative David Baum challenged the initiated reapportionment constitutional amendment approved by the people in 1952. Baum v. Newbry, 200 Or 576 (1954). Baum contended, among other grounds for attack, that the amendment violated the guarantee of a republican form of government by delegating to the secretary of state the contingent duty to reapportion the Legislative Assembly if the legislature failed to do so. The Oregon Supreme Court, citing Pacific States Telephone and Telegraph Co. v. Oregon and other cases, held that assurance of a republican form of government was a political matter and not one for judicial inquiry.

"We are bound by the interpretation placed on the Federal Constitution by the Supreme Court of the United States. This, therefore, being a political matter and not one for judicial inquiry, we are powerless to determine whether or not the constitutional amendment before us violates Article IV, section 4, of the Federal Constitution."

The most recent legal challenge to the initiative is the case of Atiyeh, et al. v. State of Oregon and Keisling, Lane County Circuit Court case no. 16-95-00123 (1994). Plaintiffs attacked the validity of Ballot Measure 8, 1994 general election (public employee pensions) on several grounds, including alleged violation of the republican form of government guarantee. The circuit court, without issuing a detailed opinion, held the measure invalid under the Guaranty Clause. That decision is on appeal to the Oregon Supreme Court at the time of this report.

The intellectual underpinning of the revived Article IV, section 4 challenge in Oregon has been formulated by retired Oregon Supreme Court Justice Hans Linde in a series of elegantly reasoned speeches and law review articles. Judge Linde's argument, briefly put, is as follows: Republican government, as the term was used by the drafters of the federal constitution, meant government by elected representatives. Direct democracy is antithetical to representative democracy and destructive of it, and the drafters of the constitution knew this to be the case. The initiative is anti-republican at least to the extent it is employed to adopt statutory matters as constitutional amendments, thereby placing those matters beyond amendment by the legislature and review by Oregon's courts for compliance with the Oregon Constitution; or to the extent it is employed to attack citizens as individuals and arouse "passion" which the drafters of the federal constitution intended the legislative process to filter and moderate.

Judge Linde further contends that although the United States Supreme Court has declined jurisdiction under Article IV, section 4 and left federal enforcement of the Guaranty Clause to Congress, state courts have a duty to assert jurisdiction independently of the federal courts because of the Supremacy Clause of the Federal Constitution. That clause, the second paragraph of Article VI, provides:
"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The Oregon Supreme Court in *Baum v. Newbry* held itself bound to accept the United States Supreme Court's interpretation of the Guaranty Clause because of the Supremacy Clause, which according to Judge Linde's argument, instead obligates the Oregon Supreme Court to interpret and enforce the Guaranty Clause independently of the United States Supreme Court.

If Judge Linde's interpretation is accepted, and the Oregon Supreme Court finds that it can interpret and enforce the Guaranty Clause independently of the United States Supreme Court, Judge Linde argues that the Oregon Supreme Court should hold that the guarantee of "republican form of government" at a minimum restricts the types of measures that can be proposed by initiative as constitutional amendments, and some kinds of measures in any form.

The contrary position, briefly stated, is that the United States Supreme Court has held that whether the republican form of government clause has been violated is a matter for Congress and not the courts to decide. Even assuming that the Oregon Supreme Court has jurisdiction to interpret that clause independently of the United States Supreme Court, the language of Madison in Federalist No. 43 suggests that the meaning of the republican form of government was not so strictly limited.

"The authority extends no further than to a guarantee of a republican form of government which presumes a preexisting government of the form which is to be guaranteed. Whenever the states may choose to substitute other republican forms, they have the right to do so, and to claim the federal guarantee for the latter. The only restriction imposed on them is that they shall not exchange republican for anti-republican constitutions."

The question, of course, is whether the initiative itself is "anti-republican."

These are interesting legal and constitutional questions. The *Atiyeh* case may still be in the courts months after this report has gone to press. Whatever the outcome and whether or not one agrees with Judge Linde's legal analysis, the committee has paid careful attention to the emphasis he and other witnesses have placed on the importance of the deliberative process in lawmaking, and on the logic and desirability of reserving constitutions for setting forth only the structure and functions of government and the rights of citizens with respect to their government.
C. Employment of the initiative in Oregon and comparison with selected states

1. Affirmation and criticism

Some witnesses vigorously defended the initiative process and opposed any change in it. Others vigorously attacked it. Most witnesses expressed support with criticism and offered a variety of suggestions for modification and improvement. See Appendix A for a list of witnesses. It is probably fair to say that many witnesses and certainly members of this committee were not fully aware of the complexity of the issues involved prior to undertaking this study.

2. Principal arguments in favor of the initiative

The principal supportive statements heard from the witnesses or reviewed in the literature are the following:

a. The initiative is an integral part of our legislative process, should be maintained and politically cannot be abolished.

b. The modern electorate is as capable of understanding initiative measures and acting upon them as are the members of the state legislature in dealing with proposals before them.

c. The initiative and referendum are essential to controlling the legislature which is subject to influence by campaign contributions and lobbyists for special interests.

d. The initiative is the only way the people can adopt constitutional amendments and statutory measures which the people favor and the legislature refuses to refer or enact.

e. Direct democracy, as exemplified in the initiative and referendum, is democratic government in its purest and highest form, and is superior to representative government.

3. Principal criticisms of the initiative

The principal criticisms heard from the witnesses or reviewed in the literature were the following:

a. The use of paid signature gatherers and radio and television advertising have made it possible for single interest groups to buy their way onto the ballot and overwhelm their opposition by the expenditure of money. Circulation of initiative and referendum petitions has become commercialized as a business rather than a grass roots expression of public political concern or widely held views about a public issue.

b. The initiative is being used to embed statutory measures in the constitution to prevent amendment by the legislature.

c. Some proposed initiative measures eliminate substantial revenues or require substantial expenditures from the state general fund without
providing a revenue source to finance those expenditures and without regard to the effect on other state general fund programs.

d. Constitutional amendments are proposed by the initiative which would impair the rights of some Oregon citizens, violate the United States Constitution and cause unnecessary divisiveness among the electorate.

e. The initiative process lacks deliberation and the opportunity to amend a measure to avoid consequences not anticipated by a petition's sponsors.

f. The people do not receive enough information about the financial impact of initiated measures and their effect on other governmental functions and responsibilities.

g. The number of ballot measures and the money and media attention focused on them drain away interest in and support for individual races for the legislature and thus weaken the legislature.

h. Legislators and other elected officials employ the initiative to promote constitutional amendments and statutes without going through the give and take of the legislative process, thus sapping the vitality of representative government and weakening political leadership.

In reviewing the initiative, and particularly its recent employment, the committee will address these supportive and critical points.

In addition to the testimony of a widely varied group of witnesses, the committee had before it a poll by Market Decisions Corporation of Portland taken February 8, 1995. The poll was commissioned by a group of businesses, unions and civic organizations and was offered in evidence in the course of a Senate Judiciary Committee hearing during the 1995 regular session of the legislature. See Appendix C for survey questions and results.

4. Frequency of use

Between 1902 and 1994, Oregon petitioners have employed the initiative 277 times and the referendum by petition 51 times on statewide measures. Of the initiatives 108 were constitutional amendments with 34 approved and 74 rejected; and 169 were statutes of which 65 were approved and 104 rejected. Of the 51 referenda, 20 were approved and 31 rejected. Surprisingly, legislative referrals to the people accounted for a greater number of ballot measures than the initiative. The legislature has referred 273 constitutional amendments and 69 statutes to the people, a total of 342 ballot measures. Of the 273 proposed constitutional amendments 161 were approved and 112 were rejected; and of the 69 proposed statutes 32 were approved and 37 rejected. The greatest number of measures on the ballot was 36 in 1912: 8 initiated constitutional amendments, 19 initiated laws, 3 referenda ordered by petition and 6 constitutional amendments referred by the legislature.29
The committee compared data on the use of the initiative from Washington, Oregon, Colorado and California. All but Washington allow both constitutional amendments and statutes to be initiated. Washington allows statutes only. In Oregon, the initiative was heavily employed during the first three decades after its adoption, but its use subsided during the forties, fifties and sixties. Since the early 1980s the initiative has been again employed extensively. (Table I, below). This pattern in use of the initiative is replicated in California (Table II, page 14), but not in Washington (Table III, page 15). Colorado adopted the initiative in 1912 but data are available only from 1970 (Table IV, page 15).

TABLE I
Oregon Ballot Measures by Initiative Petition, 1904-94

<table>
<thead>
<tr>
<th>Decade</th>
<th>Total</th>
<th>Constitutional Amendments</th>
<th>Statutes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1904-09*</td>
<td>23</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>1910-19</td>
<td>82</td>
<td>26</td>
<td>56</td>
</tr>
<tr>
<td>1920-29</td>
<td>29</td>
<td>10</td>
<td>19</td>
</tr>
<tr>
<td>1930-39</td>
<td>28</td>
<td>13</td>
<td>15</td>
</tr>
<tr>
<td>1940-49</td>
<td>13</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>1950-59</td>
<td>14</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>1960-69</td>
<td>7</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>1970-79</td>
<td>18</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>1980-89</td>
<td>32</td>
<td>10</td>
<td>22</td>
</tr>
<tr>
<td>1990-94*</td>
<td>31</td>
<td>16</td>
<td>15</td>
</tr>
</tbody>
</table>

*Fewer than 10 years.

In the Oregon general election of 1994 there were 18 measures on the ballot, 16 initiatives and 2 legislative referenda. One of the criticisms frequently heard was that voters could not handle this many measures intelligently. The historical record shows that Oregon voters worked their way through double that number in 1912. The evidence suggests that many voters spend a good deal of effort in advance of an election obtaining information on ballot measures and probably are at least as well informed about them as they are about the many individual candidates on the ballot. Oregon traditionally has a very long ballot compared with other states. It may well be desirable to have fewer measures on the ballot at any one election, but there is no practical way to limit initiative petitions or legislative referenda to a specific maximum except by adopting an arbitrary maximum number for a given election or by making it significantly more difficult to initiate or refer measures. Other more politically acceptable changes, desirable in their own right, may have the incidental effect of reducing the total number of measures.
TABLE II
Approval and Rejection of California Ballot Initiative Measures, 1912-92

<table>
<thead>
<tr>
<th>Decade</th>
<th>Qualified for Ballot</th>
<th>Approved by Voters</th>
<th>Rejected by Voters</th>
</tr>
</thead>
<tbody>
<tr>
<td>1912-19†</td>
<td>31</td>
<td>8</td>
<td>23</td>
</tr>
<tr>
<td>1920-29</td>
<td>34</td>
<td>10</td>
<td>24</td>
</tr>
<tr>
<td>1930-39*</td>
<td>38</td>
<td>10</td>
<td>27</td>
</tr>
<tr>
<td>1940-49</td>
<td>20</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>1950-59</td>
<td>11</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>1960-69</td>
<td>9</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>1970-79</td>
<td>25</td>
<td>8</td>
<td>17</td>
</tr>
<tr>
<td>1980-89**</td>
<td>54</td>
<td>24</td>
<td>27</td>
</tr>
<tr>
<td>1990-92***</td>
<td>14</td>
<td>3</td>
<td>8</td>
</tr>
</tbody>
</table>

Total 236 74 155

† Fewer than 10 years.
* One indirect initiative was adopted by the California Legislature in 1936, and is not tallied in either the “Approved” or “Rejected” tallies.
** Data list three more initiatives qualified for ballot than were reported voted on (one in 1980; two in 1983); no clear explanation for this difference was given in report.
*** Data list three initiatives qualified for ballot in 1991; none appear to have been voted on.

5. Subject matter of Oregon ballot measures

The subject matter of measures proposed by initiative over the past ninety years varies widely: from women’s suffrage (1906, 1908, 1910, 1912) to authorizing the state printer’s compensation to be regulated by law (1906); from a single tax amendment to giving cities power to regulate pool rooms (1908); from a constitutional eight hour day to a $1500 tax exemption (1914); from creating a lieutenant governor (1912, 1914) to limiting Rogue River fishing (1930). There were many proposals to carve new counties out of existing counties, innumerable proposals to change tax laws, a proposal to give mayors control over street speaking, proposals to change election laws, to authorize bonds, to prohibit various kinds of fishing in particular rivers, and a measure opposing vaccination.

In 1922 the people approved the Compulsory Education Initiative, a constitutional amendment which required all children to be educated in public schools. The amendment was subsequently held by the United States Supreme Court to violate of the United States Constitution in the landmark case of Pierce v. Society of Sisters, 268 US 510 (1925).
Table III
Ballot Measures in Washington State, 1914-94

<table>
<thead>
<tr>
<th>Decade</th>
<th>Total</th>
<th>Initiatives to the People</th>
<th>Initiatives to the Legislature</th>
</tr>
</thead>
<tbody>
<tr>
<td>1914-19*</td>
<td>9</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>1920-29</td>
<td>6</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>1930-39</td>
<td>15</td>
<td>15</td>
<td>0</td>
</tr>
<tr>
<td>1940-49</td>
<td>10</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>1950-59</td>
<td>14</td>
<td>12</td>
<td>2</td>
</tr>
<tr>
<td>1960-69</td>
<td>12</td>
<td>11</td>
<td>1</td>
</tr>
<tr>
<td>1970-79</td>
<td>20</td>
<td>14</td>
<td>6</td>
</tr>
<tr>
<td>1980-89</td>
<td>14</td>
<td>10</td>
<td>4</td>
</tr>
<tr>
<td>1990-94*</td>
<td>11</td>
<td>8</td>
<td>3</td>
</tr>
</tbody>
</table>

*Fewer than 10 years.

Table IV
Ballot Measures in Colorado, 1970-94

<table>
<thead>
<tr>
<th>Decade</th>
<th>Total</th>
<th>Initiatives to the People</th>
<th>Initiatives to the Legislature</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970-79</td>
<td>39</td>
<td>18</td>
<td>21</td>
</tr>
<tr>
<td>1980-89</td>
<td>30</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>1990-94*</td>
<td>30</td>
<td>22</td>
<td>8</td>
</tr>
</tbody>
</table>

*Fewer than 10 years.

The captions of all ballot measures since 1902 are listed in each edition of the Oregon Blue Book published biennially by the Oregon secretary of state.


The procedure for getting on the ballot in Oregon is detailed precisely in the Initiative and Referendum Manual published by the secretary of state. Not more than three chief petitioners who are Oregon registered voters must file the proposed measure with the secretary of state. The secretary of state distributes the text to designated persons calling for comment on whether the measure complies with the “one subject” requirement (discussed in the next section of this report), and sends the petition to the attorney general to prepare a ballot title.
The attorney general sends the draft ballot title back to the secretary of state, who publishes notice and solicits comment in writing within ten days. Comments received are sent back to the attorney general who then certifies either his original draft or a revised draft to the secretary of state. The latter then distributes the certified title to the chief petitioners and to persons who commented on either the one-subject requirement or the ballot title.

Any person who filed written comments on the draft ballot title and who is dissatisfied with the certified title may file a petition for review with the Supreme Court naming the attorney general as respondent. The court must review the petition expeditiously and then certify a ballot title, with or without change, to the secretary of state. Only at this point can petitioners begin to circulate their petition and gather signatures.

This sounds like straightforward business. The difficulty is that the ballot title can have a significant, if difficult to measure, effect on the success or failure of a measure if it qualifies for the ballot. Both proponents and opponents want language favoring their position. Moreover, opponents may initiate judicial review simply to delay the petitioners from circulating their petition.

In 1994 there were 14 ballot title decisions by the Supreme Court. The mean time from filing the petition for review to argument was 20 days. The time from argument to date of decision was an additional 30 days, for a total of 50 days. The staff attorney to the Supreme Court testified that this is about as rapidly as the court can handle ballot title challenges.

Under the present statute the Supreme Court reviews ballot titles before measures qualify for the ballot. Consequently, the court goes through the process for many measures that do not thereafter qualify. Amending the statute to provide for gathering signatures on petitions under a petition title prepared by the attorney general and deferring judicial review until after qualification would relieve the court of unnecessary work. This would mean that, in some instances, there could be a change from the petition title to the ballot title which could be objectionable to the petitioner. Alternatively, the attorney general’s title could be made non-reviewable, or reviewable only by the secretary of state and not the judiciary.

The simplest solution, some contend, would be to make the attorney general’s certified ballot title reviewable only by the secretary of state. The attorney general and the secretary of state are the elected and politically accountable chief legal and elections officers of the state and the people should be able to rely on them to provide fair and accurate ballot titles. The secretary of state already has the responsibility for filing a financial impact statement, and a single public hearing before him or her on the adequacy of both ballot title and impact statement should provide an adequate and efficient check on fairness. This procedure
would have the advantage of getting the Supreme Court out of the time consuming business of reviewing and rewriting ballot titles which some contend one secretary of state can probably do just as well or better than seven judges. Nonetheless, other witnesses pointed out that a ballot title’s wording can determine the success or failure of a ballot measure, and this, they believe, justifies the time expended by the Supreme Court on ballot title challenges.

The question of ballot titles is further complicated by the recent practice of the same chief petitioners of filing multiple proposed initiative petitions with minor differences in phraseology. The purpose is to shop for the most favorable ballot title. Until recently current law has been interpreted to require the attorney general to provide a different ballot title for each proposed initiative. That is a daunting task, and one that could be eliminated by directing the attorney general to use the same ballot title in all instances in which measures are essentially the same.

The committee notes that the Oregon Supreme Court has recently held that, depending on the measures, the attorney general has discretion to certify identical, similar or different ballot titles for materially identical proposed measures. Rooney v. Kulogoski, 322 Or 15, 23 (1995). It is not clear whether the same result would be reached under new legislation adopted by the 1995 legislature revising the requirements of ORS 250.035(6) for ballot titles. In the Rooney case and other recent decisions a minority of the Supreme Court dissented on the ground that the statute requiring the court to review and modify a ballot title is an unconstitutional violation of the principle of separation of powers embodied in Article III, section 1 of the Oregon Constitution.

Despite (or perhaps because of) this multi-layered review process, clarity of ballot titles has sometimes been a problem. With the passage of the 1995 legislation, ballot titles will now be required to state specifically the effect of a yes or no vote.

7. Deciding what measures go on the ballot

The initiative section of the Oregon Constitution places only one express restriction on the kind of measure which can be placed on the ballot: the law or amendment “shall embrace one subject only and matters properly connected therewith.” Article IV, section 1 (2)(d). The 1903 statute implementing the initiative amendment provided that the secretary of state should determine whether a petition legally entitled the petitioner to have the proposed petition referred to the people as complying with the conditions of the constitutional amendment. As noted earlier, the 1907 legislature repealed the 1903 statute, rewrote the procedures and did not include this provision. However, the 1907 act provided that if the secretary of state refused to accept and file a petition the courts should decide whether the petition was legally sufficient.

This provision appears to assume the secretary of state will make that
initial decision. Since that time the secretary of state has decided whether a petition satisfies the single subject provision, *Oregon Education Assoc., et al. v. Roberts*, 301 Or 228 (1986), and *Oregon Education Assoc., et al. v. Roberts*, 302 Or 87 (1986); and whether the subject matter of an initiative is appropriate for legislation, *Foster, et al. v. Clark*, 309 Or 464 (1990).

Some witnesses testified that initiative petitions to amend the Bill of Rights of the Oregon Constitution should be prohibited as contrary to the principle that protection of individual rights should not be subject to majority vote. The Oregon Chapter of the American Civil Liberties Union (ACLU) is currently sponsoring such a constitutional amendment. Other witnesses testified that initiated amendments to the Oregon Constitution that threaten individual rights should not be precluded, pointing to the United States Constitution as a safety net which will protect the state from any such state constitutional amendments adopted by the initiative.

The witnesses most concerned with proposed amendments which might affect the Oregon Bill of Rights cite recent Oregon Citizens' Alliance measures targeting homosexuals directly or indirectly. These witnesses point out the emotional nature of such amendments and the divisiveness created among the people by campaigns in support of and opposed to such amendments. These concerns are real and understandable, but the issue is broader. Initiative proposals frequently involve divisive issues. The resort to the initiative often occurs just because such issues cannot easily be resolved through the normal legislative process. "Ideological" issues which raise or have at one time raised intense feeling in the electorate, such as crime, prohibition, gambling, abortion, voting rights for women, and capital punishment, have marked use of the initiative over the years. As far as the Oregon Constitution is concerned there are other ways to deal with such concerns on a broader basis.

8. Constitutionality of ballot measures

Opponents of a proposed ballot measure frequently contend that the measure is unconstitutional and, indeed, some measures patently violate the state or federal constitutions. The secretary of state in Oregon cannot reject a petition on the ground that it is unconstitutional, *State ex rel Carson v. Kozer*, 126 Or 641 (1928). As mentioned above, the secretary of state may determine whether the petition violates the constitutional single subject requirement, and whether the subject is properly legislative instead of administrative, and may reject a measure for those reasons. Some witnesses urged that judicial review of measures for constitutionality should occur before election on the ground that voters should not be asked to vote on an unconstitutional measure. Courts in several states are authorized to render advisory opinions on constitutionality of ballot measures. Oregon courts are not so authorized, and that is the basis upon which the Oregon Supreme Court has held that
decision of constitutional issues not involving an actual dispute between adverse parties is outside the judicial power in Oregon. Most legal scholars and judges agree that constitutional issues are generally best decided in concrete cases instead of in the abstract. Some measures may be invalid on their face; others may be invalid only as construed and applied in particular circumstances after the measure is approved and carried into effect. To require the Supreme Court to issue general advisory opinions on constitutionality in the interval between qualification for the ballot and the printing of the ballot would violate this principle and impose a significant additional burden upon the court.

It can be argued that if the secretary of state believes a proposed initiative petition is unconstitutional on its face and has an opinion to that effect from the attorney general, the secretary ought to be able to refuse to accept the measure as in the case of a violation of the single subject requirement or the case of a measure not legislative in nature. The secretary of state's action then would be subject to judicial review under existing law. However, the Supreme Court's construction of the initiative provisions of the constitution in the Kozer case precludes that procedure in the absence of further constitutional amendment or a decision by the Supreme Court itself overruling its decision in Kozer.

9. Expenditure on ballot measure campaigns

The cost of ballot measures has risen greatly over the past two decades in Oregon, Washington, California and Colorado. Total expenditures for the average Oregon ballot measure increased from less than $50,000 per measure in 1970 to more than $900,000 per measure in 1990 (in 1988 constant dollars). In the same period, the average per voter expenditure for ballot measures increased much more sharply in Oregon than in California (Table V).

<table>
<thead>
<tr>
<th></th>
<th>1970</th>
<th>1990</th>
<th>Percentage Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oregon</td>
<td>$0.02</td>
<td>$0.42</td>
<td>2000%</td>
</tr>
<tr>
<td>California*</td>
<td>0.05</td>
<td>0.18</td>
<td>260%</td>
</tr>
</tbody>
</table>

* Base Year: 1976.
Note: California, which has approximately ten times the population of Oregon, has lower per voter campaign costs because of economies of scale.
In 1988 and 1990 more money was spent on initiative measures in California than on lobbying the legislature on all bills introduced in those sessions.\textsuperscript{32} One result of the increasingly expensive California initiative campaigns has been the role of large contributors. In 1990 one individual contributed over $1,000,000 to qualify an initiative measure. In 1990 more than two-thirds of all initiative campaign contributions were given by 141 donors who contributed $100,000 or more. Donors of less than $1,000 contributed 6 percent of all dollar contributions.\textsuperscript{33}

In Oregon one legislative candidate, Dr. Gordon A. Miller, sponsored Ballot Measure 6 for the 1994 general election proposing certain campaign contribution limitations and penalties. Dr. Miller contributed $192,400 (97 percent) of the total $198,719 contributed to the Measure 6 campaign.\textsuperscript{34} The measure was approved but subsequently challenged and held unconstitutional. \textit{Vanetta v. Keisling}, United States District Court for the District of Oregon, Case No. 94-1541 JO, July 13, 1995. The case is presently on appeal.
III. DISCUSSION

A. The initiative as part of the legislative process

1. Lawmaking: specialization and professionalism

Congress, parliaments, legislatures and city councils have evolved at different levels of government because there is an undeniable need for an efficient and generally accepted source of lawmaking. Modern technological societies require a good deal of lawmaking to adjust, control and facilitate the activity and enterprise of their citizens. The source may range from a dictator to appointed officials to elected representatives of the population, but a source there must be. A democratic society elects representatives to make law because it has been generally recognized from the beginning of the republic that a population larger than a village cannot effectively meet and deliberate on the many often intricate questions that come before a city, county, state or nation. It has also been recognized that expertise is desirable in law makers—some ability, education and training that gives them a head start in dealing with complex questions of governance—as well as the kind of interest that makes them willing to devote substantial time to public activity.

Devoting time to public activity is in a real sense specialization. This was so in 1787 and it is far more true today when our society increasingly requires specialization in every field. This specialization in lawmaking applies to making both constitutions and statutory law. Constitutions in the United States have generally been prepared by conventions of elected representatives, or by commissions authorized by legislative bodies, but for more than a century it has been the practice to refer new state constitutions, amendments and revision of constitutions to the people for their approval. This procedure is consistent with the principle that political power ultimately derives from the people but it also assures that the work of preparing a document intended to be balanced and coordinated is done by persons with some recognized skills to do so. This, as we have seen, was the manner in which the Oregon Constitution came into being.

2. Lawmaking: checks and balances

Lawmaking by the legislature is subject to checks and balances designed to insure deliberation and discourage unwise laws. A bill must first be approved by a majority of both houses and is then subject to veto by the governor who is responsible for the administration of the law and the operation of the state government. The legislature, in turn, may override the governor's veto by a two-thirds vote of both houses. A further check is provided by the independently elected judiciary which determines whether a law is valid under the state and federal constitutions. Lawmaking was not designed to be easy. The initiative, as we have seen, was considered at the outset as both a check and a balance with respect to the legislature. It is worth noticing, however, that the only
present check on a procedurally correct initiated constitutional amendment is a subsequent judicial determination that it violates a federal constitutional provision.

3. Lawmaking: legislatures must do most of it

Witnesses generally agreed that the legislature must exist to handle the vast bulk of lawmaking required at the state level. Each Oregon legislature considers more than a thousand bills in its regular session and enacts hundreds into law. No witness before the committee proposed abolition of the legislature and substitution of the initiative as the sole source of lawmaking. One witness, however, proposed that state legislators be selected by lot from the general public. Moreover, the legislature provides a mechanism that allows competing views about specific measures and competing claims on the state's budget to be considered by men and women committed to spending full time on these questions for six to eight months every two years as well as substantial time on such matters between sessions. When a major policy change is proposed through the legislative process its consequences are explored through committee hearings. Proponents and opponents have the opportunity to testify, and often point out gaps, flaws, or unintended consequences not considered by the initial drafters. The bill may then be amended to deal with these issues.

Experts on the initiative emphasize that the legislative process is not perfect, a conclusion with which most observers agree. Beneficial legislation may be blocked by political maneuvering. Bad measures may be enacted over resolute opposition, or slipped through in the closing days of a session, or attached to major legislation. But the legislative machinery does provide for deliberation and public hearing of competing viewpoints by those who enact the laws, and it also provides personal accountability to the electorate, a factor wholly absent in direct legislation.

4. Breaking political log jams and unintended consequences

The initiative clearly enables voters to put on the ballot measures which the legislature has been unable or unwilling to enact. It can effectively break legislative log jams. In the case of legislative reapportionment, for example, the Oregon legislature was required by the state constitution to reapportion itself following each decennial census. The legislature failed to do so in 1921, 1931, 1941 and 1951. In 1952 the voters did so by the initiative. Repeated legislative failure to enact property tax relief was settled by an initiative petition in 1990. It is well to remember, however, that breaking up a log jam may also involve unintended consequences as the turbulent waters carry the debris downstream. As several witnesses observed, a good many proposed laws should never be enacted. The initiative does not provide for a deliberative approach to legislation. There is no formal hearing process, no assembly of witnesses to point out the consequences of the measure, no balancing of needs with other governmental responsibilities.
5. Drafting and unintended consequences

Finally, there is no mandatory screening mechanism to ensure that an initiative is adequately drafted. The legislative counsel will provide drafting advice to petitioners if requested, but there is no requirement that petitioners seek that advice. A proposed measure may have consequences wholly unintended by its sponsors because of incompetent or careless drafting. A filed initiative petition cannot be amended at any later time to deal with newly discovered errors or omissions. Some persons argue that it is a mistake to provide drafting assistance for measures which ought not to be enacted. The contrary argument is that in the long run good drafting is good public policy. Well drafted measures can be debated on their substantive merits, and the confusion, unintended consequences and legal expense of construing and applying poorly drafted measures can be minimized for everyone concerned. One suggested solution to this problem would be to require petitioners to consult with legislative counsel before filing their petitions. Accepting the advice of legislative counsel need not be mandatory, but in most cases would probably be welcome and would certainly avoid later trouble.

6. Information: ballot measures and the media

There is exchange of ideas in the course of a ballot measure campaign, but it bears little resemblance to legislative consideration of a bill. Proponents and opponents of a ballot measure can circulate printed material. Occasionally debate will occur on a measure when organizations such as this club, chambers of commerce or the League of Women Voters consider the measure of sufficient interest to sponsor or arrange debates. But face-to-face debate and confrontation is otherwise infrequent. Both sides attempt to raise money and spend it on television and radio spots. Few persons would contend that a ten second spot, such as “Beware of Tricks in Measure Six,” can incorporate an intelligent analysis of a complex issue.

Two important questions are: where do voters get their information and what is the influence of money? Voters’ primary source of information about ballot measures, aside from the Voters’ Pamphlet which is considered below, is the news media. News reports and editorials are the most trusted sources in the media, according to media witnesses. However, the recent rise in spending on initiative campaigns has reversed the historic relationship between media coverage and media advertising. It is now common for voters to be exposed to more paid media advertising than news and editorial commentary. The amount of media coverage varies widely. Controversial measures like the Oregon Citizens’ Alliance’s anti-gay rights measures attract extensive coverage. Measures with heavy paid media budgets tend to attract free media coverage. The result is that the amount of media coverage is influenced more by the money spent on it and the intensity of public interest than by the underlying significance of the measure.
A new and growing possible source of information is direct mail targeted at computer generated lists of voters. Direct mail has also been employed in California to dramatically expand signature collection. Petitions which provide for a relatively small number of signatures are sent to a selected list of registered voters with a request that the addressee circulate the petition among his family and immediate neighbors. The mailing includes promotional material and requests a contribution when the addressee returns the petition. This procedure can generate both signatures and funds for a ballot measure campaign.

About 70 percent of the typical initiative campaign budget is spent on advertising, and the amount of advertising can dwarf any non-paid coverage. Paid advertising enables the advertiser to frame the issue for voters, and the non-paid media coverage tends to respond to and report on that framing. One observer pointed out that a report which responds to a misleading advertisement will normally be aired only once, while the ad continues to be aired over and over. Another observer pointed out that most voters decide their position on ballot measures during the last two weeks before the election, and this is the time period with the highest concentration of paid advertising.

As the number of ballot measures increases, the media make choices about which ones to cover in depth. Media witnesses say coverage is limited in part because they perceive that there are limits to voter appetite for more information. Moreover, since the Federal Communications Commission abolished the “Fairness Doctrine” in 1987, broadcasters are not required to guarantee equal time on or access to airwaves. Media representatives, in response to reformers who want to give voters more information about ballot measures, doubt that voters themselves want more information. Voters, they say, feel saturated with what they have. Voters would probably agree that what they need is more reliable information, although they would have some difficulty agreeing on what those sources might be.

Public discussion of ballot measures in general and initiatives in particular is increasingly dominated by radio talk shows and television advertising. Radio talk shows provide entertainment and a market place for disinformation as well as information. Dialogue that entertains or stirs passions draws an audience. Sponsors of television and radio advertising have no obligation to present both sides of an issue and they do not. There appears to be no easy counterweight to this trend. Efforts by newspapers and by community organizations such as the League of Women Voters to provide information designed to be fairly descriptive of ballot measures are helpful, but attempts to draw significant crowds to public meetings for discussion of issues have minuscule results compared to the impact of media broadcasting through automobile radios and home television sets.
7. Information: the Voters’ Pamphlet

The Voters’ Pamphlet in Oregon provides the most widely circulated coverage of statewide ballot measures because it goes to every household with a registered voter. In the case of initiative petitions the pamphlet contains a five-hundred-word explanatory statement prepared by a committee composed of two persons appointed by the chief petitioners, two opponents appointed by the secretary of state, and a fifth person appointed by the first four committee members. If the explanatory committee fails to perform, a statement prepared by the legislative counsel is substituted. After the explanatory statement is prepared the secretary of state holds a hearing to listen to objections and suggestions. These are sent back to the explanatory committee which then files its final statement. Any dissatisfied person who presented objections to the secretary of state may petition the Supreme Court for changes.

In addition to the explanatory statement the secretary of state is required to make a dollar estimate of the financial impact of the measure. The impact statement is valuable but limited solely to an estimate of the direct dollar impact. The statement does not point out the effect of a measure upon the functioning of government operations, nor does it state the dollar amount of the impact as a proportion of the total estimated general fund, information essential to understanding the significance of the impact. Moreover, the failure to file a fiscal impact statement for the Voters’ Pamphlet or the ballot does not prevent the measure from going on the ballot, Bassien v. Buchanan, 310 Or 412 (1992), and the amount of an estimate is not subject to judicial review, Marbet v. Keisling, 314 Or 223 (1992).

In 1990 Ballot Measure 5, a proposal to limit property taxes, affected hundreds of thousands of home owners, created a new demand upon state revenue of more than a billion dollars annually by 1995-1996, and substantially affected the funding of local government and public schools. It went on the ballot lacking a fiscal impact statement. Whether one favored or opposed the measure, the failure to provide a financial impact statement for a measure of this consequence was lamentable.36

Ballot Measure 11 in 1994 contained a series of mandatory sentences to prison for certain offenses, exceeding sentencing guidelines approved by the 1989 and 1991 legislatures. The measure had the effect of doubling the number of prison beds required by 2001, with an estimated fiscal impact of $461,800,000 for construction and annual increased operating costs of $101,000,000 by 2001, and an estimated requirement of an additional 3000 beds between 2001 and 2005, for which no further cost estimate was provided.

Ballot Measure 10 in 1994 was a constitutional amendment which requires a vote of two thirds of each house of the legislature to enact a bill which reduces any criminal sentence established by an initiative statute. Ballot Measure 11 committed the state to long range prison construction.
and operation expenditures which Ballot Measure 10 effectively embedded into the constitution in the absence of a two-thirds legislative vote of both houses to modify. Expanding the scope of the financial impact statement would have presented a more accurate picture of the impact of each measure, and of the two combined, should both be approved by the people as they were.

Any person may file arguments to be printed in the Voters' Pamphlet upon payment of $500 per page or submission of a petition signed by 2500 registered voters eligible to vote on the measure. There are no procedures for screening purchased arguments for accuracy. A totally false statement of fact in an argument concerning a ballot measure can be published with no opportunity for rebuttal in the pages of the pamphlet.

Most witnesses considered the Voters' Pamphlet to be valuable. Media representatives say most voters begin looking through the pamphlet in the closing days before the election. They pointed out, however, that the number of pages of arguments purchased has grown to such an extent that the pamphlet has become bulky and its usefulness impaired. Several media representatives pointed out that the pamphlet can be converted into an advertising vehicle by purchase of multiple pages. There is no other way one can place a written page in the home of every one of the 1,832,774 registered voters in the state (1994) for the sum of $500 per page.

By contrast, in Washington the speaker of the house, the president of the senate and the secretary of state select the persons to write supporting, opposing and rebuttal statement on each measure, and that is all that appears in the Washington Voters' Pamphlet. Secretary of State Ralph Munro told the committee that Washington's process is generally accepted by the people presumably because they have found the three officials to be fair in their appointment of representatives to write the arguments. The Washington Voters' Pamphlet arrangement is obviously workable; however, to introduce it at this time in Oregon would probably arouse intense opposition of the initiative industry and the interests that sustain it, and of those citizens who view open access to the Voters' Pamphlet as one of its most important features.

8. The use of paid signature gatherers

A number of witnesses vigorously attributed most of the problems they find with the initiative to the use of paid signature gatherers. All but two of the 16 initiative measures on the 1994 Oregon ballot used paid signature gatherers. Several witnesses, including Secretary of State Keisling, suggested that signature gatherers be paid salaries or hourly wages instead of according to signatures obtained. William S. U'Ren used paid gatherers for his many initiatives. Their use was not made illegal until 1935. The prohibition was repealed in 1983, and a requirement was added that the chief petitioner state whether paid gatherers would or had been used. The 1992 special session added a requirement that if the person obtaining signatures is to be paid, a statement to that effect must
be placed on each signature page. In *Meyer v. Grant*, 486 US 414 (1988), the United States Supreme Court in a unanimous opinion invalidated a Colorado statute prohibiting paid circulators of an initiative petition as an infringement of core political speech.

Washington sought to sustain its statute outlawing paid signature gathering on the basis of a legislative finding (unsupported by evidence) that the prohibition was necessary to prevent fraud. In *Limit and Bockwinkle v. Maleng*, No. C94-0162, the United States District Court for the Western District of Washington, citing *Meyer* and other cases, held the Washington statute invalid. Despite the expressed concern over the use of paid signature gatherers, there appears to be no evidence in Oregon that there have been more invalid signatures using paid gatherers than unpaid ones. Part of the objection to paid gatherers may rest on the belief that the initiative was intended to allow expression of widely held grass roots views instead of the views of individuals and narrow self-starting interest groups with enough money to finance the signature gathering process.

Historically, money has been collected and spent in political campaigns in a variety of ways to obtain public support. Possibly one can distinguish signature gatherers who are paid per signature from paid campaign workers, or from many other forms of spending designed to further communication of one's views about an issue to the public, in the sense that signature gatherers are more immediately paid for results and are possibly more subject to temptation to misrepresent the petition. However, the United States Constitution as interpreted in federal court decisions noted above, and very possibly the free expression provisions of the Oregon Constitution, make it unlikely that any significant restrictions can constitutionally be placed on paid signature gathering apart from requirements to disclose the source and amounts of funding for a proposed measure. There is even some question whether such disclosure can be required. See *Riley v. Native Federation of the Blind*, 487 U.S. 781 (1988).

9. The importance of money in ballot measure campaigns

The current dissatisfaction with paid signature gatherers may also be attributable to an accurate appreciation that money has become increasingly important in determining whether initiative petitions or initiated referenda get on the ballot, and in making the difference between victory and defeat at the polls. Paid gatherers make it possible for a single individual or interest without a mass base of support to get almost any plausible measure on the ballot. Some witnesses told the committee that $100,000 to $150,000 would be sufficient. One individual spent in excess of this sum to put Ballot Measure 6 on the ballot in 1994.

10. Use of the initiative to avoid legislative process

The electorate is made up of many interest groups. Some represent broad categories such as labor, industry, farmers, women.
Some represent narrow categories such as denturists, physicians, lawyers, cattle ranchers. Several witnesses pointed out that for many years interest groups concerned with legislation which affected them concentrated on electing favorable legislators and lobbying at legislative sessions. Recently many interest groups have shifted their efforts to ballot measures as a more productive way of advancing or protecting their legislative concerns. Similarly legislators have discovered that the initiative can provide an end run around the legislature. In California more than half of the 1990 ballot measures were sponsored by state and local officeholders. Nearly all those measures had been defeated in the legislature the previous year. In 1988 U.S. Representative Denny Smith sponsored an initiative statute mandating certain criminal sentences despite the work of the Oregon Criminal Justice Council which was developing sentencing guidelines pursuant to a 1987 legislative mandate. One legislator who has sponsored several recent initiatives commented that “the initiative enables you to get through the crap of the legislative system.”

11. Trust and distrust of government and lawmakers

Witness after witness referred to the current distrust of government as a factor now driving increased use of the initiative. This is not surprising considering the emphasis the media have placed on the phenomenon. Polling in the national press makes clear that a large segment of the people has lost confidence in federal and state legislators and legislative processes. Legislators are seen as subject to control by special interests, concerned primarily about reelection, unresponsive to the people and undeserving of thanks for their public service. Several witnesses before this committee spoke disparagingly of “elites” and the “government class” in which they appeared to cast all persons involved in public life. One witness described the legislature as representing the “governing class.”

Witnesses with academic backgrounds pointed out that the current disenchantment with government, like that which led to populist political uprisings at the turn of the century, coincides with wrenching social change and economic dislocation. One witness described the last two decades as a transition from an industrial to a knowledge-based economy. The perception that many voters have about government may arise more from a sense that life is less certain and less secure than it once was, or seemed to be. Government, the protector against hostile forces, becomes government the hostile force. Such voters scorn politicians as a class instead of seeing them as political leaders.

This negative public mood about government has been a major factor in the term limit movements in Oregon and throughout the United States despite the increasing need for specialization in lawmaking. Commentators have noted that voters who can remove every elected official at the end of his or her term—or, in some states like Oregon, recall them—have by imposing term limits insured that their elected
representatives cannot serve long enough to become experts in that role. Inexperienced legislators increasingly rely on staff, agency bureaucracy, or professional lobbyists. Able and experienced legislators such as the late Senator Donald Husband of Eugene, or the late Representative Stafford Hansell of Hermiston, who were reelected many times by their constituents, will no longer be around to serve as seasoned leaders and provide strong institutional memory for their colleagues.

In this climate of political distrust the availability of a direct method to "get through the crap of the legislative process" tempts a variety of individuals (including legislators) and interest groups to use the initiative instead of working through the legislature. At the same time, as the Market Decisions poll illustrates, the electorate itself, historically jealous of its right to the initiative, sees its interests threatened by use of this blunt instrument and has become concerned with the process.

B. Constitutional amendments, statutes and the budgeting process

A state constitution, as noted earlier, should provide the basic structure of state government, distribute power among its branches and prescribe the basic rights of citizens against government. The process of constitutional amendment by the initiative deserves particular attention because of the growing trend toward proposing statutory matters as constitutional amendments. In the 1994 election ten of the sixteen initiated measures were constitutional amendments. Seven of those ten deal with statutory matters. To qualify a proposed statute for the ballot requires 6 percent of the previous vote for governor and to qualify a proposed constitutional amendment requires 8 percent. This small difference is an incentive to draft a statute in the form of a constitutional amendment because a constitutional amendment resolves any conflict with an existing Oregon constitutional provision and insulates the measure from amendment or repeal by the state legislature.

This rationale was acknowledged by the state legislator who told the committee that he had initiated the statute providing mandatory prison sentences for certain offenses (Ballot Measure 11, 1994 general election), and capped it with a constitutional amendment (Ballot Measure 10, 1994 general election) requiring a two-thirds legislative vote to change a mandated sentence approved by the people, to prevent a "narrow majority" from changing such sentences. As pointed out before, this effectively vested a one-third minority of one house of the Oregon Legislature with a veto power over reduction of a commitment requiring the expenditure of hundreds of millions of dollars far into the future.

1. Comparative difficulty in amending constitutions

The United States Constitution was intentionally made difficult to amend. Congress, by a vote of two thirds of both houses, may propose amendments for approval by state legislatures or state conventions, and a proposed amendment must be ratified by three fourths of the state
legislatures or conventions. Alternatively, Congress, upon application of
the legislatures of two thirds of the states, is required to call a convention
for the purpose of proposing amendments which take effect upon
ratification by the legislatures or conventions of three fourths of the
states. As a result the United States Constitution has been amended only
twenty-seven times in more than two hundred years. The Oregon
Constitution, by contrast, has been amended 195 times since 1902,
161 times by legislative referendum and 34 times by initiative petition.

Many witnesses testified that amendment of the Oregon Constitution
by the initiative or legislative referendum should be a more deliberative
and difficult process than enacting a statute. Others testified that
proposed amendments as distinguished from proposed statutes should
be limited in subject matter to the constitution’s major functions.
Few students of government would contend that a constitution should
or could contain even a small portion of the body of law essential to the
operation of government and the functioning of society.

The ease of amendment fosters proposed amendments going far
beyond a constitution’s major functions, and has facilitated use of the
amendment process to place statutory matters beyond amendment or
repeal by the legislature. The Oregon Constitution proliferates with the
everyday details of government which logically should be dealt with in
statutory law. No legislature has the power to limit the power of a
subsequent legislature to enact, amend or repeal laws to meet the
changing needs of the state and the people. Each successive legislature
must do this for itself. Yet using the initiative to place statutes in the
constitution violates this principle of legislation.

If the Oregon Constitution were limited to the major functions of
a constitution—defining the powers of government, creating its most
important institutions and protecting civil liberties, it would be a far
leaner, cleaner document, and a good deal easier to understand.
Clearing the Oregon Constitution of existing statutory material and
restoring order and coherence to the fundamental law of the state is a
matter of constitutional revision. The Oregon constitution requires that
a proposed constitutional revision be approved by two thirds of the
members of both houses of the legislature and referred to the people for
approval by a majority of the votes cast. Constitutional revision, as
opposed to amendment, may not be proposed by initiative petition.
Article XVII, section 2. See Appendix D for a summary of earlier revision
attempts. The City Club has previously gone on record in support of
constitutional revision (“Report on Constitutional Revision Review,”
February 10, 1967). But irrespective of revision the argument that the
state should not continue loading the constitution with statutory
baggage, particularly baggage which impairs the functioning of effective
government, is particularly persuasive in view of the recent trend in
constitutional amendment.
2. Use of the initiative power to mandate revenues and expenditures, and the requirement of a balanced budget

The ease of amendment, coupled with the desire to place initiated material beyond reach of the state legislature, has in recent years led to constitutional amendments with serious state budgeting consequences. Initiatives can affect the state general fund in a number of ways: by increasing or cutting off revenue, by mandating tax credits or other tax expenditures, by creating new programs or altering programs without corresponding revenue adjustment, by requiring funding of existing programs regardless of financial constraints, and by overriding local control of taxing and spending decisions.

The balanced budget requirements of the Oregon Constitution appear in three sections:

Article IX, section 2. The Legislative Assembly shall provide for raising revenue sufficiently to defray the expenses of the state for each fiscal year, and also a sufficient sum to pay the interest on the State debt, if there be any.

Article IX, section 6. Whenever the expenses, of any fiscal year, shall exceed the income, the Legislative Assembly shall provide for levying a tax, for the ensuing fiscal year, sufficient with other sources of income, to pay the deficiency, as well as the estimated expenses of the ensuing fiscal year.

Article XI, section 7. The Legislative Assembly shall not in any manner create any debt or liabilities which shall singly or in the aggregate with previous debts or liabilities exceed the sum of fifty thousand dollars...and every contract of indebtedness entered into or assumed by or on behalf of the State in violation of the provisions of this section shall be void and of no effect.

The cumulative effect of these constitutional provisions is to require the legislature to "pay as you go." If the legislature makes a policy choice to increase basic school support or to impose mandatory prison terms, the legislature must also increase revenues or cut other programs or services to pay the bill.

The legislature's internal rules require that any bill with a revenue or fiscal impact, if referred to a substantive committee, must have a subsequent referral to the committee controlling revenue laws or the Ways and Means Committee which controls appropriations. These two committees are the gate keepers charged with balancing state spending needs and projected revenue. A bill will not pass out of Ways and Means unless the committee has fitted that expenditure into the overall state budget after weighing the expenditure against the other proposed claims on the projected revenue available. Committee approval of a measure
increasing or reducing state revenue will ordinarily depend on a careful judgment about the effects upon needed state spending.

The initiative process, whether exercised to amend the constitution or to enact a statute, imposes no similar discipline. The initiative allows the voters to make expensive policy choices without considering where the funding will come from and without considering what other state functions may or will be affected. Yet the balanced budget requirement remains, and the legislature must still adopt a balanced budget.

3. The impact of selected ballot measures 1990-1994

The committee has examined the estimated fiscal impact of selected measures which qualified for the ballot in 1990, 1992 and 1994, including both those which passed and those which failed. Impact is calculated as a percentage of the general fund budgets for the subsequent years which are affected (or would have been affected in the case of those which failed to pass), because a measure that reduces general fund revenue by 20 percent means a 20 percent cut in general fund expenditures assuming no additional revenue is raised. A measure obligating new spending equal to 20 percent of the general fund also means an equivalent cut in expenditures for other programs and services assuming no additional revenue is raised. In the committee’s analysis the general fund includes revenue applied from the lottery. The general fund is normally budgeted for a biennium, and, where individual years are noted, the general fund is assumed to be one half of the biennial figure.

The fiscal impact figures cited are those given in the Voters’ Pamphlet with the exception of Ballot Measure 5 where no fiscal impact statement was provided. The general fund budget figures employed and the Ballot Measure 5 impact figures are those set forth in the legislative fiscal office publication, “Budget Highlights 1995-1997,” which sets forth the actual 1991-1993 general fund figures, the estimated 1993-1995 general fund, and the 1995-1997 budgeted general fund. Impact upon local government is not calculated.37

• 1990 BALLOT MEASURE 5, general election (constitutional amendment: property tax limit) (no fiscal impact statement provided). Passed.

This measure reduced the percentage of true cash value of the local real property tax to 1.5 percent over five years and required the State to make up the revenue lost to school districts without providing a source of revenue. Impact on the state general fund—increased demand for funds by:

<table>
<thead>
<tr>
<th>Biennium</th>
<th>Impact</th>
<th>Percent of General Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991-1993</td>
<td>$461,000,000</td>
<td>8%</td>
</tr>
<tr>
<td>1993-1995</td>
<td>$1,523,000,000</td>
<td>22%</td>
</tr>
<tr>
<td>1995-1997</td>
<td>$2,720,300,000</td>
<td>33%</td>
</tr>
</tbody>
</table>

**1992 BALLOT MEASURE 7, general election (constitutional amendment: split-roll property tax). Failed.**

This measure would have increased revenue to local schools and reduced Ballot Measure 5's drain on the general fund. Estimated impact on the state general fund—would have reduced demand for funds by:

<table>
<thead>
<tr>
<th>Years</th>
<th>Impact</th>
<th>Percent of General Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993-1994</td>
<td>$280,000,000</td>
<td>8.2%</td>
</tr>
<tr>
<td>1994-1995</td>
<td>$440,000,000</td>
<td>12.9%</td>
</tr>
<tr>
<td>1995-1996</td>
<td>$454,000,000</td>
<td>11.0%</td>
</tr>
<tr>
<td>1996-1997</td>
<td>$634,000,000</td>
<td>15.4%</td>
</tr>
</tbody>
</table>


**1994 BALLOT MEASURE 11, general election (statute: mandatory prison sentences for certain offenses). Passed.**

This measure imposed mandatory prison sentences upon certain classes of offenders above and beyond existing sentencing guidelines. Estimated impact on the state general fund—increased demand for funds by:

<table>
<thead>
<tr>
<th>Years</th>
<th>Impact</th>
<th>Category of Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996-2001</td>
<td>$461,800,000</td>
<td>construction</td>
</tr>
<tr>
<td></td>
<td>$101,000,000</td>
<td>annual operating cost by 2001</td>
</tr>
<tr>
<td></td>
<td>$441,000</td>
<td>annual indigent defense costs</td>
</tr>
<tr>
<td></td>
<td>$ unknown</td>
<td>amount for construction and operation of 3,000 additional prison beds after 2001.</td>
</tr>
</tbody>
</table>


**1994 BALLOT MEASURE 15, general election (constitutional amendment: "kids first"). Failed.**

This measure would have required the legislature to budget a minimum dollar amount for K-14 based on 1993-1995 appropriations with adjustments for inflation and enrollment irrespective of other state needs or requirements. Estimated impact on the state general fund—would have increased demand by:

<table>
<thead>
<tr>
<th>Years</th>
<th>Impact</th>
<th>Percent of General Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995-1996</td>
<td>$713,000,000</td>
<td>17.3% in current year; annual expenditure with future adjustment for demographic changes and inflation not calculated.</td>
</tr>
</tbody>
</table>

• 1994 BALLOT MEASURE 17, general election (statute: prison work programs). Passed.

This measure requires work programs in the prison system. Estimated impact on state general fund—increased demand by:

<table>
<thead>
<tr>
<th>Years</th>
<th>Impact</th>
<th>Percent of General Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996-1997</td>
<td>$20,000,000</td>
<td>0.5% annually</td>
</tr>
</tbody>
</table>

Source: Fiscal impact statement, 1994 Oregon Voters' Pamphlet

• 1994 BALLOT MEASURE 20, general election (constitutional amendment: equal tax). Failed.

This measure would have substituted a 2 percent transaction tax for all state and local taxes and most fees. Estimated impact—reduction of the state general fund and local government revenue by at least:

<table>
<thead>
<tr>
<th>Years</th>
<th>Impact</th>
<th>Percent of General Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995-1996</td>
<td>$490,000,000</td>
<td>unknown</td>
</tr>
</tbody>
</table>

(Readers should note the estimate assumed that all transaction taxes could be collected.)

4. Limitations on the initiative in other states

These initiatives illustrate the problem which the committee considers fundamental. The initiative is a valuable instrument of government when used as a legislative device to resolve important political questions which the legislature has failed to resolve. It is not a suitable mechanism for allocating resources to meet the multiple responsibilities of government. It is simply not possible for the electorate voting individually on one initiative measure to weigh and reconcile the intricate budgetary choices as the Ways and Means committee does in producing a biennial budget.

Some states have avoided this dilemma by precluding initiatives which have the effect of depriving funding for existing functions of government. The state of Alaska debated this issue in its constitutional convention in 1955 and adopted Article XI, section 7, of the Alaska Constitution to deal with it:

"The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedication of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety."
This provision was construed in *Thomas v. Bailey, et al.*, 595 P.2d 1 (1979), a case in which the Supreme Court of Alaska held that this section prohibited an initiative to give away state lands to Alaska residents. The opinion noted limitations placed by other state constitutions on the initiative power, and referring to the Alaska Constitutional Convention said:

"Initiatives for the purpose of requiring appropriations were thought to pose a special danger of 'rash, discriminatory and irresponsible acts.' The delegates were influenced by the experience of other states whose constitutions placed no restrictions on the subject matter of initiatives. They adopted the appropriations restriction to avoid the bad experiences of those states." At p 7.

The court cited Article III, section 51, of the Missouri Constitution which exempts from the initiative laws "for the appropriation of money other than new revenues created and provided for thereby," and Article III, section 4, of the Montana Constitution which exempts from the initiative "appropriations of money." The court also cited a number of constitutional restrictions in other states on the application of the referendum power to appropriations.


5. California's "elected anarchy"

California provides a cautionary example of the danger of approving multiple and conflicting budgetary demands and restraints by the initiative process. In 1978 California voters approved Proposition 13 which rolled back property assessments to 1975 levels and limited increases to no more that 2 percent per year unless there was a change in ownership. Proposition 13 transferred responsibility for allocating local tax funds from local taxing districts such as cities and schools to state government, and mandated super majority legislative approval of subsequent tax increases. The passage of Proposition 13 triggered a competitive effort to carve up the state general fund by means of the initiative and to place these insulative barriers in the constitution beyond the reach of legislative control. Because of the requirements of Proposition 13 and the competitive response of public and private interests to protect their concerns, effective control of the state budget has been transferred to one third of either house of the California legislature, a hollow authority because initiative measures eliminated inheritance taxes (1980), mandated at least 40 percent of the general fund go to schools (1988) and passed mandatory prison sentences greatly increasing
criminal justice expenditures (1994), all sharply reducing legislative control of spending.

These initiatives have had a dramatic effect on California described by Peter Schrag in his article “California’s Elected Anarchy.” The state’s budget deficit is currently seven billion dollars. The state’s bond rating has gone from one of the highest in the nation to one of the lowest. The public school system, from one of the top systems in the nation qualitatively and in funding per pupil, has plunged to fortieth in the nation in funding per pupil. California now spends roughly half as much per pupil as New York and New Jersey. The property tax has been described as a crazy quilt in which adjoining properties of equal true cash value are now assessed widely different taxes depending upon the last date of purchase, and which allows people whose property taxes were frozen at 1975 rates to pass their homes to their children without reassessment. As Schrag puts it:

"California is now spending its scarce revenues not through a comprehensible legislative process in which priorities are evaluated against one another but through a crazy quilt of ad hoc decisions that frustrates healthy development and defies rational budgeting, intelligent policy formulation and civic comprehension."
IV. CONCLUSIONS AND RECOMMENDATIONS

A. Discussion of proposed remedial measures

Most witnesses think of the constitution as our fundamental law. Some think of the initiative as the ultimate democratic control of the people over their government. Paradoxically, as California demonstrates, unrestricted use of the initiative power to amend the constitution can quickly destroy the people’s actual control over their government at both state and local levels.

Some witnesses have proposed increasing the percentage of signatures to qualify proposed constitutional amendments for the ballot from the present 8 percent to as high as 15 percent. Most witnesses agreed that initiating a constitutional amendment should be more difficult than initiating a statute. Sixty-eight percent of the respondents to the Market Decisions survey agreed that petitions to amend the constitution should require more signatures than petitions to enact a statute. Eighty percent supported a minimum number of signatures from each congressional district to qualify a measure for the ballot.

The committee believes that it makes good sense to require that constitutional amendment be more difficult, that it reflect a substantial consensus, that it not be employed to lock into the constitution budgetary decisions which cannot be rationally determined by ad hoc ballot measure decision, and that initiative constitutional amendment be made an increasingly deliberative process.

The committee believes these objectives are not best addressed by changes simply making it harder to get enough signatures to qualify a measure for the ballot whether by increasing the number of signatures required or by requiring them to be obtained proportionately from congressional districts. Such changes would simply increase the power and advantage of individuals or interests with money compared with individuals or interests with less or no resources.

Increasing the size of the majority required to adopt a constitutional amendment is preferable to making qualification for the ballot more difficult. To require that a majority of registered voters approve an amendment would enable voters who fail to vote to affect the outcome. The better choice would be to require the approval of three fifths (60 percent) of those voting upon a constitutional amendment whether initiated by the people or referred to them by the legislature.

The destabilizing use of the initiative to place budgetary decisions dedicating revenue, or requiring appropriations, into the constitution, can best be dealt with by restricting the initiative power to amend the constitution to matters relating to the structure, organization and powers of government, and precluding amendments which dedicate revenue or make or require appropriations above a reasonable minimum,
provisions similar to those in force in the Alaska constitution discussed above.

The lack of formal deliberate consideration in the initiative process was emphasized by many witnesses and, in some respects, is the most difficult problem to resolve. The committee has previously discussed the difficulty, if not impossibility, of providing that kind of careful and formal consideration in a ballot measure campaign. The committee believes this difficulty can be mitigated by providing that an initiated constitutional amendment which qualifies for the ballot be referred to the legislature for hearing by standing committees and then be placed on the next general election ballot. The legislature need take no action upon such proposed initiated amendment, but may refer an alternative proposed amendment on the same subject to the ballot. If an alternative proposed amendment is referred, the proposed amendment receiving at least three fifths and the greater number of votes would be approved. If the chief petitioners conclude the legislative alternative is preferable to their initiative, the secretary of state will remove their initiated measure from the ballot on their request.

A simplified form of this procedure is already provided by Oregon statute for city initiative measures and has been in use since 1907. Under ORS 250.325 an initiative petition filed with the city clerk is transmitted to the city council which may adopt or reject the initiated proposed measure, or propose a competing measure for the ballot. If the council rejects the petition, or takes no action, the clerk then submits the initiated measure to the voters. This procedure is comparable to the state of Washington's "initiative to the legislature."

Under the committee's proposed referral to the legislature of an initiated constitutional amendment that has qualified for the ballot, the measure will always go to the ballot (unless its chief petitioners withdraw it); however, it would receive deliberative, formal legislative hearings which may reveal flaws warranting rejection at the ballot, or an alternative amendment may be proposed by the legislature for the people to consider along with the initiated proposed amendment. In either case the people will be better able to make an informed choice.

The committee views the adoption of three constitutional amendments accomplishing these changes (Recommendations 1, 2 and 3) as the first and highest priority. The reference procedure proposed above for initiated constitutional amendments, designed to introduce deliberative process into the initiative, can also benefit statutory initiatives. In the legislative hearings the full impact and comparative value of a proposed statute can be explored. Legislators are reluctant to repeal or amend statutes which have been adopted by the initiative even though such measures may be seriously flawed, and even though the opportunity to amend or repeal initiative statutes weighed heavily with the Oregon Supreme Court in sustaining the constitutionality of initiated statutes in Kadderly v. City of
Portland. It would be far easier for legislators to propose alternatives for or to urge a no vote on an undesirable proposed statute before it has been adopted by the people.

Initiated statutes which dedicate revenue or require appropriations can have as great an adverse impact upon the budgeting process as similar constitutional amendments save for the fact that the legislature retains the power to amend or repeal statutes. However, as noted above, legislators are reluctant to repeal or amend statutes enacted by the people. The committee recommends that the same prohibition with respect to dedication and making or requiring appropriations be applied to initiated statutes unless such statutes provide for new revenues to cover the dedication or appropriation.

The committee views these recommendations for constitutional amendment dealing with initiated statutes (Recommendations 4 and 5) as a second priority.

The committee also recommends that the legislature enact certain procedural and process improvements which have been considered in the text, together with appointment of a constitutional revision commission (Subsidiary Recommendations 1 through 6).

The initiative has become a major and valued part of the legislative process of Oregon. At the very least it provides the people with a mechanism by which to propose constitutional amendments and statutes which the legislature has been unwilling or unable to refer or enact. The initiative is a major check on and political counterweight to the people's elected legislators and the legislative process. However, the initiative is not subject to the discipline and deliberation of the legislature's process, and it has increasingly become the means by which interests with sufficient money can simply bypass the legislature and enact budgetary and other statutory decisions into the Oregon Constitution. California is the most sobering example of the effects of budget making by the initiative.

This committee firmly believes that with the changes recommended the initiative power will be clarified and strengthened and the process of constitutional amendment will be restored to its role of dealing with matters of fundamental law. Legislators and others will not be so strongly tempted to put their statutory policies into the constitution to escape the legislative process, or to make amendment by subsequent legislatures impossible. Finally, when constitutional amendments and statutes are proposed by the initiative they will receive legislative deliberation before they are placed on the ballot. A more effective system of checks and balances will be established.

Based upon the testimony it has heard and the evidence it has considered the committee presents below its findings, draws conclusions and makes several recommendations.
B. Findings

(1) When Oregon was admitted to the Union its constitution established a traditional republican form of government with three branches: legislative, executive and judicial. The state’s legislative power was vested solely in the legislature. Constitutional amendments required approval by two successive legislatures and then referral to a vote of the people. In 1902 the people of Oregon, impelled by the unresponsiveness and corruption of political parties and the legislature, forced amendment of the constitution to establish the initiative and referendum by petition. These changes enabled the people to propose laws, and to approve or reject them, without action by the legislature or governor, and to order a vote of the people on laws passed by the legislature without an emergency clause and approved by the governor. The initiative amendment also allowed the people to initiate directly proposed amendments to the constitution of the state. Other than the one-subject requirement, and the prohibition against using the initiative to propose a constitutional revision, the Oregon Constitution imposes no express restriction upon the initiative.

(2) The legislature and the people of Oregon have made several constitutional and statutory changes in the initiative and referendum process since its adoption. The most important include: prohibition of paying signature gatherers (1935) and its subsequent repeal (1983); expansion of the governor’s veto power to allow veto of an emergency clause without affecting other provisions of a measure (1921); change of the base vote for determining the number of required signatures from the highest vote cast for a judge of the Supreme Court of Oregon to the highest vote cast in the most recent election of the governor and change of the percentage requirements (1968); and allowance of verification of signatures on initiative and referendum petitions by sample (1986).

(3) The initiative process has enabled the people to propose constitutional amendments and statutes which the legislature has been unwilling to enact or refer to the people. Prime examples have been women’s suffrage, an enforceable legislative reapportionment amendment, pollution abatement in the Willamette River through establishment of the State Sanitary Authority, property tax limitation and transfer of the major responsibility for funding schools to the state.

(4) Since the adoption of the initiative the legislature has continued to be the main lawmaking mechanism of the state, a mechanism that allows competing views about specific measures and competing claims on the state’s budget to be considered and acted on through hearings and debate by elected representatives committed to spending full time on legislative matters during biennial sessions and substantial time between sessions.
In recent years a large segment of the people has lost confidence in the legislature. Legislators are seen as subject to control by special interests with large resources for campaign contributions, as interested primarily in reelection, as unresponsive to voters and as undeserving of thanks for their public service. The public focus has been on what the people see as legislative failures instead of on legislative accomplishments. Politicians are scorned as a class rather than viewed as leaders of our democratic political process.

The growth of professionalism in politics, long thought to be desirable, is now thought by many to be a defect. That belief was reflected by the adoption in 1992 of legislative term limits, a limitation which will reduce professionalism, specialization, expertise, knowledge of government and institutional memory in the legislature; and which will result in increased reliance on staff, agency bureaucracy and professional lobbyists. In this atmosphere the initiative is viewed by many as a defensive weapon and a shortcut to narrow legislative objectives.

Dissatisfaction with the legislature is now paralleled by dissatisfaction with the initiative process. A recent statewide poll shows that many voters believe that the initiative is too accessible to special interests, and the use of paid signature gatherers provides too easy a means to amend the state constitution, and results in too many complicated ballot measures for people to make informed decisions.

The initiative as a legislative device does not easily enable the people to consider the effect of proposed measures on the overall functions and responsibilities of government, or on limited public resources, nor does it allow an opportunity to compromise conflicting policy views and interests. The initiative with its focus on single issues inherently ignores both competing and complementary interests. This inherent weakness in the initiative process has become increasingly apparent in recent years.

The initiative has been used to propose measures which, if adopted, would derange public finance, seriously damage public credit and drastically impair governmental services. The people have adopted measures which mandate large state expenditures without providing revenue to meet them. Such far-reaching proposals have lacked the kind of consideration which only a deliberative legislative process can afford. The financial impact statements presently published in the Voters' Pamphlet do not fully reveal the effect of some measures upon the state finances and operations.

Recent decisions by the United States Supreme Court have held that state law prohibiting use of paid signature gatherers violates the First Amendment of the United States Constitution. It is unlikely that Oregon can prohibit payment of signature gatherers on a per signature basis or require payment by salary or hourly wage in lieu of payment per signature.
(11) Since the recent return of paid gatherers the initiative has been increasingly used by interests and individuals with access to large sums of money. Such interests now can obtain sufficient signatures to place almost any plausible measure on the ballot. This ease of qualification encourages single issue interests as well as politicians to use the initiative to bypass the legislature.

(12) The relative ease with which an initiated measure can be placed on the ballot by well-funded interests and the small percentage differential between the number of signatures required for constitutional amendments and statutes have led petitioners, including legislators, into the recent practice of seeking constitutional amendment for matters which should be statutory with the object of preventing the legislature or the people from amending or changing such laws from time to time as needed without amending the constitution.

(13) Public discussion of initiative measures is increasingly dominated by paid advertising and radio talk shows, sources which do not necessarily produce either balanced discussion or reliable information. Such discourse tends to fan the distrust of representative government. The people receive insufficient information about the financial backing of initiative measures during both signature gathering and after qualification for the ballot to identify and evaluate the interests promoting and opposing such measures.

(14) The number of initiated measures on the ballot in recent years does not exceed the number during the earliest years of the initiative; however, the money spent on them and the media attention given to them have increased greatly, diverting both public and media attention and public financial support from legislative elections.

(15) The experience of California in the past decade illustrates what can happen to public institutions and public policy when the initiative is employed by well-financed single interest groups to subvert deliberative consideration of the public interest and formation of a state's public policy.

(16) The importance of an accurately descriptive ballot title to the success or failure of both a petition drive and a ballot measure warrants retaining judicial review of challenged ballot titles despite the burden that review places upon the Oregon Supreme Court.

(17) The major problems identified with the initiative do not reflect incapacity of the electorate to make many decisions at the ballot box. They do reflect increasing use of the initiative to make decisions which because of their complexity cannot be resolved by single issue ballot measures, and this trend is destructive of the ability of the people to govern.
C. Conclusions

(1) The legislature has been, is and should continue to be the principal legislative mechanism of Oregon.

(2) The initiative has been, is and should continue to be an important alternative in the legislative process.

(3) The initiative process as applied to proposed constitutional amendments and statutes should be modified in the respects hereinafter recommended.

(4) Amendments to the Oregon Constitution whether proposed by the initiative or by the legislature should relate only to the structure, powers and limitations of government and the rights of the people with respect to their government. Initiative measures of less fundamental nature should be enacted as statutes. Initiated statutes that dedicate revenue, or which make or require appropriations in excess of $500,000 per annum, or higher amount prescribed by the legislature, should be limited to those measures which provide new revenues for such dedication or appropriation.

(5) The process of amending the Oregon Constitution should be substantially more difficult than adopting, repealing or amending a statute.

(6) Amendments to the Oregon Constitution, whether proposed by initiative or legislative referendum, should require the approval of more than a bare majority of those who vote on the amendment to insure that a change in Oregon’s fundamental law is the considered choice of the people.

(7) The initiative process should be integrated with the legislative process to allow consideration and study of the initiated measure in the legislative hearing process before constitutional amendments or statutes proceed to the general election ballot.

(8) Campaign contributions and expenditures related to initiative measures and legislative referenda should be subject to the maximum disclosure requirements allowed by the Oregon and United States Constitutions.

D. Recommendations: First Priority

(1) Amend the Oregon Constitution to require that initiated constitutional amendments relate only to the structure, organization and powers of government, and the rights of the people with respect to their government; and to provide further that the initiative power to amend the constitution shall not be used to dedicate revenue or to make or repeal appropriations, or to require state expenditures in excess of $500,000 per annum or such higher limit as the legislature shall provide by law.
(2) Amend the Oregon Constitution to provide that an initiated constitutional amendment which qualifies for the ballot shall be referred to the legislature at its next regular session. The legislature shall consider the initiated proposed amendment before a standing committee of each house, or a joint committee of both houses. The legislature need not take action upon the initiated proposed amendment, but may refer a proposed alternative amendment, identified as such, with the initiated measure to the people at the next general election. The secretary of state shall place the initiated amendment on the ballot at the next general election unless the chief petitioners request in writing that it be removed from the ballot. If an alternative proposed amendment is referred along with the initiated amendment, the proposed amendment which receives at least three fifths and the greater number of votes shall be adopted.

(3) Amend the Oregon Constitution to provide that approval of constitutional amendments initiated by the people or referred to them by the legislature shall require a three-fifths majority of those voting upon the amendment.

E. Recommendations: Second Priority

(1) Amend the Oregon Constitution to provide that the initiative power to enact statutes shall not be used to dedicate revenue, or to make or repeal appropriations, or to require state expenditures in excess of $500,000 per annum or such higher limit as the legislature shall provide by law, other than the dedication or appropriation of new revenues created and provided by the initiated statute.

(2) Amend the Oregon Constitution to provide that an initiated proposed statute which qualifies for the ballot shall be referred to the legislature at its next regular session. The legislature shall consider the proposed statute before a standing committee of each house, or a joint committee of both houses. The legislature need not take action upon the proposed statute, but may enact the initiated proposed statute, or may refer a proposed alternative statute, identified as such, to the people at the next general election. If the initiated proposed statute is not enacted by the legislature, or does not become law, the secretary of state shall place the initiated proposed statute on the next general election ballot unless the chief petitioners request in writing that it be withdrawn within thirty five days (Saturdays and Sundays excepted) following general adjournment of the legislature. If an alternative proposed statute is referred along with the initiated proposed statute, the proposed statute which receives a majority and the greater number of votes shall be enacted.

F. Subsidiary Recommendations to the Legislature

(1) Provide that the attorney general shall assign the same ballot title to essentially the same measures.
(2) Provide that chief petitioners of a proposed amendment or statute shall submit a copy of the proposed petition to legislative counsel for technical review and non-binding advice before filing the petition with the secretary of state.

(3) Provide that the scope of the financial impact statement required by ORS 250.125 be expanded to express the direct impact of a proposed measure as a percentage of the estimated general fund in subsequent biennia insofar as possible.

(4) Provide that the secretary of state, in addition to the financial impact statement provided for each separate ballot measure, shall prepare a general statement in the Voters' Pamphlet at the head of the ballot measures listing the estimated financial impact of each ballot measure upon the general fund and the combined effect if all were to be approved.

(5) Provide that initiated and referred constitutional amendments and statutes be clearly identified as constitutional amendments and statutes and be grouped separately in the Voters' Pamphlet and on the ballot.

(6) Establish a constitutional review commission to consider whether a partial or entire revision is desirable, whether provisions essentially statutory in nature should be changed from constitutional to statutory form, and to make recommendations on revision to the legislature.

Respectfully submitted,

Paul E. Bragdon
Michael Chappie Grice
Delna Jones
Kenneth Lewis
Frank Mungeam
Kristine Olson
Leslie Sack
Caroline P. Stoel
Cory Streisinger
Les Swanson
Jan Thenell
Susan Ward
Randall Kester, secretary
Hardy Myers, vice chair
John C. Beatty, chair

B. J. Seymour, research advisor
Charles Shattuck, research advisor
Paul Leistner, research director
ACKNOWLEDGEMENTS:

The committee wishes to acknowledge the contribution of the many witnesses who submitted to cross examination with grace and without subpoena. They provided their knowledge and experience and surprisingly often added a dash of humor to an intensely serious subject.

The committee appreciates the keen interest, close scrutiny and support of the City Club Research Board. Our research advisors, Ms. Seymour and Mr. Shattuck, have been faithful and invaluable colleagues. Paul Leistner, the research director, has provided exceptional staff support and organization for the committee from the outset. Sunny Radcliffe, the committee's intern, provided valuable research assistance.

Finally, as chair of the committee, I wish to acknowledge the contribution of the members of the committee, talented and diverse individuals, who sifted the testimony and evidence before them, debated the issues and reached consensus.

John C. Beatty, committee chair
EXHIBIT A: Recommendation 1

PROPOSED CONSTITUTIONAL AMENDMENT

Be it Enacted by the People of the State of Oregon:

The Oregon Constitution is amended by creating a new subsection to be added to and made a part of Article IV, section 1(2), such subsection to read as follows:

(f) Initiated amendments to the constitution shall relate only to the structure, organization and powers of government, and the rights of citizens with respect to their government, and notwithstanding Article IX, section 1 of this Constitution, the initiative power of the people reserved by this section shall not extend to proposed amendments which dedicate revenue, or make, repeal, or require appropriations or expenditures in excess of $500,000 per annum, or such greater amount as the Legislative Assembly shall establish by law.

EXHIBIT B: Recommendation 2

PROPOSED CONSTITUTIONAL AMENDMENT

Be it Enacted by the People of the State of Oregon:

The Oregon Constitution is amended by amending Article IV, section 1, subsections (2)(c), (4)(a) and (4)(d) to read as follows:

(c) An initiative amendment to the Constitution may be proposed only by a petition signed by a number of qualified voters equal to eight percent of the total number of votes cast for all candidates for Governor at the election at which a governor was elected for a term of four years next preceding the filing of the petition. When the secretary of state has completed the verification process for a proposed initiative amendment to the Constitution pursuant to paragraph (a) of this section, the secretary of state shall forward the proposed amendment to the Constitution to the Legislative Assembly at its next regular session. The Legislative Assembly shall consider the proposed amendment before a standing committee of each house or a joint committee of both houses. The Legislative Assembly need not take action on the proposed initiative amendment, but may refer a proposed alternative amendment, identified as such, to the people at the next general election. The secretary of state shall place the proposed initiative amendment on the next general election ballot unless the chief petitioner or petitioners request the secretary of state in writing to withdraw the proposed initiative amendment.
amendment within thirty five days (Saturdays and Sundays excepted) following general adjournment of the Legislative Assembly.

(4) (a) Petitions or orders for the initiative or referendum shall be filed with the Secretary of State. The Legislative Assembly shall provide by law for the manner in which the Secretary of State shall determine whether a petition contains the required number of signatures of qualified voters. The Secretary of State shall complete the verification process within the 13-day period after the last day on which the petition may be filed as provided in paragraph (e) of subsection (2) of paragraph (b) or (c) of subsection (2) of this section, and if the required number of signatures have been obtained for an initiative, the Secretary of State shall forward the proposed initiative amendment to the Constitution to the Legislative Assembly as provided by paragraph (c) of subsection (2) of this section.

(4)(d) If the Legislative Assembly has referred to the people an alternative to a proposed amendment to the Constitution pursuant to paragraph (c) of subsection (2) of this section, the proposed initiative amendment to the Constitution and the legislatively referred alternative shall be designated as alternatives on the ballot. Notwithstanding section 1, Article XVII of this Constitution, an initiative or referendum measure becomes effective 30 days after the day on which it is enacted or approved by a majority of the votes cast thereon; provided, that if an initiative and a legislatively referred alternative shall each receive a majority of votes, only the one receiving the greater number of votes shall be considered approved. A referendum ordered by petition on a part of an Act does not delay the remainder of the Act from becoming effective.

EXHIBIT C: Recommendation 3

PROPOSED CONSTITUTIONAL AMENDMENT

Be it Enacted by the People of the State of Oregon:

The Oregon Constitution is amended by amending Article XVII, section 1 to read as follows:

Any amendment or amendments to this Constitution may be proposed in either branch of the legislative assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the secretary of state to the people for their approval or rejection, at the next regular general election, except when the legislative assembly shall order a special election for that purpose. If a majority three fifths of the electors voting on any such amendment shall vote in favor of it, it shall thereby become a part of this Constitution. The votes for and against such amendment or amendments, severally, whether proposed by the legislative assembly or by initiative petition, shall be canvassed by the secretary of state in the

---

48 THE INITIATIVE AND REFERENDUM IN OREGON
presence of the governor and if it shall appear to the governor that a *majority three fifths* of the votes cast at said election on said amendment or amendments, severally, are cast in favor thereof; it shall be his duty forthwith after such canvass, by his proclamation, to declare the said amendment, or amendments, severally, having received said *majority three fifths* of votes to have been adopted by the People of Oregon as part of the Constitution thereof, and the same shall be in effect as part of the Constitution from the date of such proclamation. When two or more amendments shall be submitted in the manner aforesaid to the voters of this state at the same election, they shall be so submitted that each amendment shall be voted on separately. No convention shall be called to amend or to propose amendments to this Constitution, or to propose a new Constitution, unless the law providing for such convention shall first be approved by the People on a referendum vote at a regular general election. This article shall not be construed to impair the right of the people to amend this Constitution by vote upon an initiative therefor, as provided in Article IV, section 1, as amended, but approval of a *majority three fifths* majority of the people shall be required for any amendment whether proposed by the initiative or referred by the legislature.

**EXHIBIT D: Recommendation 4**

**PROPOSED CONSTITUTIONAL AMENDMENT**

Be it Enacted by the People of the State of Oregon:

The Oregon Constitution is amended by creating a new subsection to be added to and made a part of Article IV, section 1(2), such subsection to read as follows:

(f) Notwithstanding Article IX, section 1 of this Constitution, the initiative power of the people reserved by this section shall not extend to proposed laws which dedicate revenue, or make, repeal, or require appropriations or expenditures in excess of $500,000 per annum, or such greater amount as the Legislative Assembly shall establish by law, other than the dedication or appropriation of new revenues created and provided by the initiated law.

**EXHIBIT E: Recommendation 5**

**PROPOSED CONSTITUTIONAL AMENDMENT**

Be it Enacted by the People of the State of Oregon:

The Oregon Constitution is amended by amending Article IV, section 1, subsections (2)(b), (4)(a) and (4)(d) to read as follows:

(b) An initiative law may be proposed only by a petition signed by a number of qualified voters equal to six percent of the total number of votes cast for all candidates for Governor at the election at which a
governor was elected for a term of four years next preceding the filing of the petition. When the secretary of state has completed the verification process for a proposed initiative law pursuant to paragraph (a) of this section, the secretary of state shall forward the proposed law to the Legislative Assembly at its next regular session. The Legislative Assembly shall consider the proposed law before a standing committee of each house or a joint committee of both houses. The Legislative Assembly need not take action on the proposed law, but may enact the proposed law or may refer a proposed alternative law, identified as such to the people at the next general election. The secretary of state shall place the proposed law on the next general election ballot unless the chief petitioner or petitioners request the secretary of state in writing to withdraw the proposed initiative amendment within thirty-five days (Saturdays and Sundays excepted) following general adjournment of the Legislative Assembly.

(4)(a) Petitions or orders for the initiative or referendum shall be filed with the secretary of state. The Legislative Assembly shall provide by law for the manner in which the secretary of state shall determine whether a petition contains the required number of signatures of qualified voters. The secretary of state shall complete the verification process within the 15-day period after the last day on which the petition may be filed as provided in paragraph (e) of subsection (2) of paragraph (b) or (c) of subsection (2) of this section, and if the required number of signatures have been obtained for an initiative, the secretary of state shall forward the proposed initiative amendment to the Constitution to the Legislative Assembly as provided by paragraph (b) of subsection (2) of this section.

(4)(d) If the Legislative Assembly has referred to the people an alternative to a proposed law pursuant to paragraph (b) of subsection (2) of this section, the proposed initiative law and the legislatively referred alternative shall be designated as alternatives on the ballot. Notwithstanding section 1, Article XVII of this Constitution, an initiative or referendum measure becomes effective 30 days after the day on which it is enacted or approved by a majority of the votes cast thereon: provided, that if an initiative and a legislatively referred alternative shall each receive a majority of votes, only the one receiving the greater number of votes shall be considered approved. A referendum ordered by petition on a part of an Act does not delay the remainder of the Act from becoming effective.
VI. ENDNOTES

1. Article IV, section 1(3)(c).

2. Article XVII, section 1.

3. Article XVII, section 2.


12. This highly evolved system of checks and balances in Republican Rome anticipated the checks and balances debated in the American Constitutional Convention.

ENDNOTES
13. Wilson, p 511.


15. The constitution of the Weimar Republic was suspended. No constitution replaced it. The Reichstag passed an act enabling the government to rule by decree. Upon President Hindenburg's death the offices of president, supreme commander of the army and chancellor were merged in Adolph Hitler as Fuhrer and Reichskanzler and confirmed in 1934 in a national plebiscite by 88.2 percent of the vote. *Encyclopedia Britannica*, Vol.10, 1956, p 285.


18. Or Laws 1903, pp 244-249.

19. Article XVII, section 1.


21. Or Laws 1903, pp 244-249.

22. Or Laws 1907, Ch 226.

23. Or Laws 1935, Ch 41.


25. Or Laws 1951, Ch 590.


28. Madison distinguished between a democracy as direct popular government, and a republic as indirect representative popular government. He saw democracy limited to small city-states and lacking the cure for the evils of faction which the arrangements of a federal republic provided. *The Federalist*, pp 38, 50, 133-136, 150.

52 THE INITIATIVE AND REFERENDUM IN OREGON
29. Information compiled by Committee Member Ken Lewis from historical data on Oregon initiatives published in the *Oregon Blue Book 1995-96*.

30. *Or Laws 1995, Ch 534*.


34. Information extracted from Contribution and Expenditure Reports provided by the Oregon Secretary of State, Elections Division.

35. See *The Federalist* (Madison, No. 51), p 355. Note the checks and balances provided by the Roman constitutional arrangement described previously.

36. Ballot Measure 5 was approved 574,833 to 522,022, or 52.65 percent to 47.35 percent.

37. Budgeting on a biennial basis requires an estimate of revenues to be received by the state during a forthcoming biennium. Such estimates in turn require prediction of the state’s economy more than two years in advance of the budgeting decisions. State revenue is primarily derived from the state income tax and for that reason is subject to considerable variation depending upon general economic conditions. There are variations between the actual, estimated, and budgeted general funds which can only be determined after a biennium has closed. However, the figures presented are sufficiently close to serve the purpose of showing impact.

38. The estimate did not consider the possibility that the tax would be tied up in litigation jeopardizing state and local revenues and credit.


41. The recommendations for constitutional amendment are separately identified and separately drafted as exhibits for the purpose of analysis. They may all be combined or combined in different combinations for initiative or legislative referendum purposes.
VII. APPENDICES

This section includes the following appendices:

• Appendix A: List of Witnesses Interviewed by Committee Members
• Appendix B: Bibliography
• Appendix D: Changes in Oregon’s Initiative and Referendum, 1902 - 1995

Additional Materials of Interest

The City Club’s Initiative and Referendum Committee reviewed and assembled a wide variety of materials during the course of its study of Oregon’s initiative system. The committee feels that readers may find the following documents particularly useful. Copies of these materials are available from the City Club of Portland upon request:

• Table of Frequency of Use and Type of Measure, Oregon Initiative and Referendum, 1902-1994

Detailed table, prepared by Kenneth Lewis, committee member, listing, by election, the number of statewide initiatives and referenda. The table breaks out the information by type of measure (legislative referendum, initiatives, referendum by petition), and by constitutional versus statutory measures, measures adopted versus those that failed, and the governor in office at the time of each election. (Length: 6 pages)

• List of Captions of all Oregon Initiatives and Referenda 1902 to 1994

The subjects of the almost 700 statewide initiatives and referenda that Oregonians have voted on since 1902 are a testament to the creativity and energy of Oregon’s version of “direct democracy.” For a full flavor of this variety, the committee suggests readers examine the list of one-line captions describing the subject of each measure provided in the Oregon Blue Book, published biennially by the Oregon Secretary of State. (Length: 11 pages)

To request a copy of one or both of these documents, please contact the City Club at:

City Club of Portland  Phone: (503) 228-7231
317 S.W. Alder St., Suite 1050  FAX: (503) 228-8840
Portland, OR 97204  E-Mail: pdxcityclub.org
A. LIST OF WITNESSES INTERVIEWED BY THE COMMITTEE

Susan Banducci, professor, Oregon State University
Bill Beck, director, Intergovernment Relations, School District No. 1, Portland
Len Bergstein, political consultant
Richard M. Botteri, attorney
Rebecca Marshall Chao, president, Regional Financial Advisors
John Charles, executive director, Oregon Environmental Council
Thomas E. Cronin, president, Whitman College
Warren C. Deras, attorney
David Frohnmayer, president, University of Oregon; former Oregon attorney general and Oregon state representative
Anna Goldrich, League of Conservation Voters
Mark Haas, political reporter, KATU-TV
Tim Hibbitts, professional pollster
Charles F. Hinkle, attorney
Greg Kafoury, attorney; initiative activist
Jeffrey A. Karp, professor, Lewis & Clark College
Phil Keisling, Oregon secretary of state
Theodore Kulongoski, Oregon attorney general; former Oregon state senator and Oregon state representative
Hans Linde, senior judge, Oregon Supreme Court
William Lunch, professor, Oregon State University
James Lemmert, professor, University of Oregon
Lon Mabon, initiative activist, Oregon Citizens' Alliance
Kevin Mannix, Oregon state representative
E. Kimbark MacColl, historian and author
Lloyd Marbet, initiative activist, Coalition for Initiative Rights
Don McIntire, property tax activist; former president, Oregon Taxpayers United
Floyd McKay, journalist and political commentator; professor, Western Washington State University
Colleen O'Neil, Coalition for Initiative Rights
Fred D. Miller, executive, Portland General Electric
Ralph Munro, Washington State secretary of state
H. Clay Myers, former Oregon secretary of state and Oregon state treasurer
Norma Paulus, Oregon superintendent of public instruction; former Oregon secretary of state
Roy Pulvers, staff attorney, Oregon Supreme Court
Tim Raphael, Oregon Student Public Interest Group
Don Whiting, Washington State assistant secretary of state
Courtney Wilton, Multnomah County Tax Supervision and Conservation Commission

B. BIBLIOGRAPHY


Banducci, Susan A, and Jeffery A. Karp. Handouts provided at appearance before City Club Initiative and Referendum Study Committee, December 5, 1994.


Linde, Hans A.: Memorandum to City Club Initiative and Referendum Study Committee regarding meeting minutes from Linde appearance before the committee, December 19, 1994.

Memorandum to the City Club Initiative and Referendum Study Committee, November 29, 1994.

Linde, Hans A.:


Mungeam, Frank and Jan Thenell. Memorandum to the City Club Initiative and Referendum Study Committee regarding the relationship of the media to the initiative and referendum, May 8, 1995.


Olson, Kristine. Memorandum to City Club Initiative and Referendum Study Committee regarding principal court challenges & summary of legal issues involved, 1995.

Oregon Legislative Assembly—1995 Regular Session:

A-Engrossed Senate Joint Resolution 12, March 27, 1995.
A-Engrossed Senate Joint Resolution 37, May 18, 1995.
A-Engrossed Senate Joint Resolution 4, April 6, 1995.
B-Engrossed House Joint Resolution 14, June 1, 1995.
House Bill 2146.
House Bill 2147.
House Bill 2149.
House Joint Resolution 3.
Senate Joint Resolution 3.
Senate Joint Resolution 32.
House Bill 2148.


Oregon Secretary of State, Elections Division:

- 1994 *Campaign Finance Manual*
- 1994 *State Initiative and Referendum Manual*
- 1996 Initiative Log, June 7, 1995

Oregon Secretary of State.:

- 1992 *Voters' Pamphlet.*
- 1993-94 *Oregon Blue Book.*
- 1994 *Voters' Pamphlet*
- 1995-96 *Oregon Blue Book.*

*The Oregonian:*


**APPENDICES**


Stoel, Caroline. Historical Background (unpublished document prepared for City Club Initiative and Referendum Study Committee), May 1995.


Ward, Susan and Michael Chappie Grice. Memorandum to the City Club Initiative and Referendum Study Committee regarding the impact of the initiative process on local governments and public schools, May 13, 1995.

Washington Secretary of State:


Background materials on Washington State's initiative and referendum system provided to City Club Initiative and Referendum Study Committee, June 1995.


1. Summary

- A sampling of 608 Oregon voters reveals strong sentiment to improve the Oregon initiative process:

  59% disagree “The initiative process is fine just the way it is and nobody should tinker with it.”

  66% disagree “The more measures we have on the ballot the better because that gives Oregonians control over government.”

  60% say “We should keep the initiative process but fix some of the abuses.” (after hearing arguments for and against making changes in the initiative process.)

  13% are “very satisfied” with the way the process now works...and among those who say they are “somewhat satisfied,” (45%) more than half still favor reforms.

- While remaining committed to the initiative process, people identify specific concerns with the way it now works:

  77% agree “It’s too easy for special interest groups to buy their way on to the ballot using paid petition gatherers.”

  71 % agree “Because it is so easy to amend the Constitution now, there is a danger that we will tamper with the basic rights of citizens.”

  69% agree “There were so many complicated measures on the ballot last November that I don’t trust the election results to reflect what people would decide if they had time to really study each measure.”

Oregon voters are concerned that the initiative process will be corrupted and polluted by excessive reliance on paid petition gatherers. They believe the Constitution is too easily available to amendment. And they even worry that excessive use of the initiative dilutes the assurance that democracy rests on informed deliberation rather than the mechanical act of voting.
• This well-tempered view about protecting the initiative process from excess or abuse reveals itself in the reforms people are willing to consider:

95% support public disclosure of where the money to support petition drives comes from

78% support placing limits on the practice of paying for signatures

80% support a requirement that a petition to amend the Constitution collect a minimum number of signatures in each Congressional District

78% support a requirement that the Attorney General review each petition and provide an opinion as to its Constitutionality

68% support increasing the number of signatures required to place a constitutional amendment on the ballot

60% support increasing the number of signatures required to place any measure on the ballot

The survey shows public support for other reform ideas as well. (The breadth of support for reform shown in the survey is an accurate portrayal of public sentiment, but it should be remembered that before people would actually vote in these numbers for these reforms at the polls, they would need to convince themselves that the proposal is actually as advertised and does not contain hidden flaws or problems.)

There are only slight differences among demographic groups, party registration, or geographic areas in support for improvements to the initiative process.

• Oregonians do draw the line at changes in the initiative process which smack of shifting power to the legislature:

59% disagree “It should be left up to the legislature, rather than voters, to decide some of the measures that get to the ballot.”

47% oppose restricting amendment to the Constitution to referral by the legislature (versus 45% in support).

Voters appear ready to exercise self-restraint but not to transfer power to the legislature.

NOTE ON SPONSORSHIP: An ad hoc group of organizations interested in preserving and improving the initiative process in Oregon resolved to test the public climate for reform. Participants in meetings of the group have included businesses, unions, non-profit organizations and individuals. This research has been financed by a number of the participating organizations. The group has not taken a position on advocating specific changes in the initiative process, and this report is not intended to represent the views of individual organizations.
2. Initiative Process Questionnaire and Responses
   February, 1995

Hello. I'm—from MDC, the public opinion research firm. We are doing a brief survey with registered voters about the initiative process in Oregon.

S1 First, I would like to confirm that you are a registered voter in Oregon. (IF NO, ASK TO SPEAK TO REGISTERED VOTER. IF NONE AVAILABLE, TERMINATE)

S2 What county do you live in? (OREGON COUNTY LIST)

<table>
<thead>
<tr>
<th>Percentage</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>43%</td>
<td>Tri-County</td>
</tr>
<tr>
<td>27%</td>
<td>Willamette Valley</td>
</tr>
<tr>
<td>11%</td>
<td>Eastern Oregon</td>
</tr>
<tr>
<td>7%</td>
<td>Coast</td>
</tr>
<tr>
<td>13%</td>
<td>Southwestern Oregon</td>
</tr>
</tbody>
</table>

S3 Do you recall whether you voted in the election last November, or did you not vote in that election?

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>88%</td>
<td>Yes, voted in November election</td>
</tr>
<tr>
<td>11%</td>
<td>No, did not vote in November election</td>
</tr>
<tr>
<td>1%</td>
<td>Don't know/can't remember</td>
</tr>
</tbody>
</table>

Q1 Generally speaking, do you think things in Oregon are headed in the right direction, or are they off on the wrong track?

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>47%</td>
<td>Right direction</td>
</tr>
<tr>
<td>30%</td>
<td>Wrong track</td>
</tr>
<tr>
<td>24%</td>
<td>Don’t know/no response</td>
</tr>
</tbody>
</table>

Q2 The initiative process in Oregon allows citizens and groups to collect signatures on a petition to place measures on the ballot for voters to decide. To get an amendment to the Constitution placed on the ballot the number of signatures required is 8 percent of the number of votes cast for Governor at the last election. For a measure which is not an amendment to the Constitution the number of signatures is 6 percent. Groups can pay people to collect signatures. Looking back at the election in November, there were a number of measures on the ballot. Thinking about those measures—just the measures, not the candidates—how did you feel about the outcome of the election? Would you say you were generally very satisfied, somewhat satisfied, somewhat dissatisfied or very dissatisfied?

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>6%</td>
<td>Very satisfied</td>
</tr>
<tr>
<td>52%</td>
<td>Somewhat satisfied</td>
</tr>
<tr>
<td>28%</td>
<td>Somewhat dissatisfied</td>
</tr>
<tr>
<td>13%</td>
<td>Very dissatisfied</td>
</tr>
<tr>
<td>2%</td>
<td>Don’t know/no response</td>
</tr>
</tbody>
</table>

APPENDICES
Q3 Considering the initiative process here in Oregon in which voter signatures are collected to put a measure on the ballot, overall, how do you feel about the way that process works—would you say you are very satisfied, somewhat satisfied, somewhat dissatisfied or very dissatisfied?

13% Very satisfied (GO TO Q4)
45% Somewhat satisfied (GO TO Q4)
26% Somewhat dissatisfied
14% Very dissatisfied
1% Don't know/no response (GO TO Q4)

Q3A What is the main reason you are dissatisfied? (CLARIFY)

Q4 Now I have a series of statements that some people agree with and others disagree with. For each statement please tell me how you feel—do you strongly agree, agree somewhat, disagree somewhat or disagree strongly? (ROTATE)

<table>
<thead>
<tr>
<th>Statement</th>
<th>STRONGLY AGREE</th>
<th>AGREE SOMEWHAT</th>
<th>DISAGREE SOMEWHAT</th>
<th>STRONGLY DISAGREE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. It's too easy for special interest groups to buy their way onto the ballot using paid petition gatherers.</td>
<td>53%</td>
<td>24%</td>
<td>13%</td>
<td>7%</td>
</tr>
<tr>
<td>B. The initiative process is fine just the way it is and nobody should tinker with it at all.</td>
<td>13%</td>
<td>24%</td>
<td>34%</td>
<td>25%</td>
</tr>
<tr>
<td>C. We should make it harder to amend the Constitution so that it doesn't get cluttered up with minor matters that should be in the law books rather than the Constitution.</td>
<td>58%</td>
<td>25%</td>
<td>8%</td>
<td>7%</td>
</tr>
<tr>
<td>D. Because it is so easy to amend the Constitution now, there is a danger that we will tamper with the basic rights of citizens contained in the Constitution.</td>
<td>44%</td>
<td>27%</td>
<td>16%</td>
<td>10%</td>
</tr>
<tr>
<td>E. The more measures we have on the ballot the better, because that gives Oregonians control over government.</td>
<td>11%</td>
<td>20%</td>
<td>36%</td>
<td>30%</td>
</tr>
<tr>
<td>F. There should be some review of proposed initiative measures before they are put on the ballot to make sure they aren't unconstitutional or have serious flaws.</td>
<td>69%</td>
<td>20%</td>
<td>6%</td>
<td>3%</td>
</tr>
<tr>
<td></td>
<td>STRONGLY AGREE</td>
<td>AGREE</td>
<td>SOMEWHAT DISAGREE</td>
<td>SOMEWHAT AGREE</td>
</tr>
<tr>
<td>---</td>
<td>----------------</td>
<td>-------</td>
<td>------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>G. It should be left up to the Legislature, rather than voters, to decide some of the measures that get to the ballot.</td>
<td>16%</td>
<td>22%</td>
<td>18%</td>
<td>41%</td>
</tr>
<tr>
<td>H. Some special interest groups use the initiative process primarily to boost membership and get publicity.</td>
<td>39</td>
<td>33</td>
<td>12</td>
<td>8</td>
</tr>
<tr>
<td>I. It is hard to cast an informed vote when there are as many measures on the ballot as there were last November.</td>
<td>41</td>
<td>23</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>J. There were so many complicated measures on the ballot last November that I don't trust the election results to reflect what people would decide if they had time to really study each measure.</td>
<td>40</td>
<td>29</td>
<td>17</td>
<td>11</td>
</tr>
<tr>
<td>K. People in certain parts of Oregon are using the initiative to try to force their views on the rest of us.</td>
<td>46</td>
<td>27</td>
<td>14</td>
<td>10</td>
</tr>
<tr>
<td>L. People who want to change the initiative process just don't trust the voters.</td>
<td>16</td>
<td>27</td>
<td>28</td>
<td>17</td>
</tr>
</tbody>
</table>

**QS** A number of different ideas for reforming the initiative process have been proposed. For each proposal that I read, please tell me whether it is something that you strongly support, support somewhat, oppose somewhat or strongly oppose. (ROTATE)

<table>
<thead>
<tr>
<th></th>
<th>STRONGLY SUPPORT</th>
<th>SUPPORT SOMEWHAT</th>
<th>OPPOSE SOMEWHAT</th>
<th>STRONGLY OPPOSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Require that the Attorney General review each initiative measure that is proposed and provide an opinion to the public whether the proposal is Constitutional or not.</td>
<td>47%</td>
<td>31%</td>
<td>10%</td>
<td>8%</td>
</tr>
<tr>
<td>B. Require that any group that collects signatures for a initiative petition make a public filing about where the money comes from and how it is spent.</td>
<td>78</td>
<td>17</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>
C. Put limits on the practice of paying people to gather signatures for initiative petitions.  

D. Require an independent legal review of proposed initiatives to make sure that they are technically correct.  

E. Increase the number of signatures that must be collected to place a Constitutional amendment on the ballot  

F. Increase the number of signatures required to put any measure on the ballot—that is, ordinary laws, as well as Constitutional amendments.  

G. Require that a minimum number of signatures for any petition must be gathered in each of the Congressional Districts of the state. The intent of this is to make sure there is support for the proposal in more than just one part of the state.  

H. Increase the number of votes it takes to pass a Constitutional amendment at the polls. For example, some states require that a Constitutional amendment get 50 percent of the vote to pass.  

I. Do not allow amendments to the Constitution by initiative. That is, allow a vote on amendments to the Constitution only when the Legislature refers the measure to voters.  

J. Prohibit use of paid signature gatherers altogether.  

Q6 Which of the following views comes closest to your own feeling?  

Q6A Mr. Jones says: One of the most important rights we citizens have is being able to gather signatures on a petition to put a measure to the voters. The initiative process is a safeguard citizens can use when the Legislature doesn’t do its job. The more things citizens get to vote on
directly, the better. People who want to restrict the right to vote on measures at the polls or make it harder to use the initiative process are backroom politicians who are afraid to let the people have their say.

Q6B Ms. Smith says: The initiative process is an important safeguard. But it is being abused and needs some reform. It is too easy now for special interests to use paid signature gatherers. It is also too easy to amend our basic law—the Constitution—which contains fundamental protections for citizens. Voters are faced with so many measures it is unfair to expect them to sort them all out. We should keep the initiative process, but fix some of the abuses.

36% A. Mr. Jones
60% B. Ms. Smith
5% Don’t know/no response

Q7 Overall, how would you describe your interest in most elections: very interested, somewhat interested, not very interested, not at all interested?

67% Very interested
31% Somewhat interested
2% Not very interested
0 Not at all interested

Q8 Overall, about how often do you vote in elections: always vote, vote most of the time, vote in just some elections, don’t vote very often?

67% Always vote
27% Vote most of the time
4% Vote in just some elections
2% Don’t vote very often

Q9 And just for statistical purposes, what is your age, please?

23% 18-34
44% 35-54
32% 55+
1% No response

Q10 Are you registered as a Republican or a Democrat?

39% Republican
44% Democrat
11% Independent
4% Something else
2% Don’t know/no response

Q11 RECORD GENDER

47% Male
53% Female

APPENDICES 67
D: CHANGES IN OREGON'S INITIATIVE AND REFERENDUM, 1902 - 1995
(Researched and written by Randall Kester, committee member.)

The following outline lists the principal changes that have been made in the Oregon initiative and referendum process from its inception in 1902 until and including the 1995 Legislative Assembly.

Under the original Oregon Constitution, the procedure for amending the constitution required passage by two successive legislatures and approval by a majority of the electors who voted in the election (Article 17, section 1).

The amendment authorizing the initiative and referendum was first passed by the legislature of 1899 (HJR 1, Or Laws 1899, p 1129). It was then passed by the 1901 legislature (Or Laws 1901, pp 4-5), and submitted to the people, who approved it at a general election on June 2, 1902.

The 1903 legislature implemented the amendment by establishing the forms for petitions and signature sheets and procedure for verification of signatures. The act provided that the secretary of state should decide in the first instance "whether or not the petition entitles the parties to have the measure referred to the people," with an appeal to the Supreme Court from that decision. It also provided for a ballot title designated for that purpose by those filing the petition; and it allowed the proponents and opponents to furnish to the secretary of state, at their own expense, pamphlets advocating or opposing the measure, which would be delivered by the county clerks to each registered voter (Or Laws 1903, pp 244-249).

The 1903 act did not specify the number of signatures required, but said only "signed by the number of voters...required by the constitution." But the constitutional amendment did not specify the number of signatures for an initiative. Instead it said 5 percent of the legal voters for a referendum petition, and not more than 8 percent for an initiative. The basis on which the number of voters was determined was the whole number of votes cast for justice of the Supreme Court at the last preceding general election.
The 1902 amendment of the constitution, which adopted the initiative and referendum, applied only to statewide measures and not to cities. By initiative petition adopted by the voters in 1906, the constitution was amended by adding section 1a to Article IV, which extended the initiative and referendum powers to the voters of “every municipality and district as to all local, special and municipal legislation.”

In 1906, the voters also adopted by initiative petition an amendment to the constitution changing the manner of amending the constitution. The new method eliminated the second referral to the legislature; so the constitution could now be amended by either (1) passage by the legislature and approval by the voters, or (2) by initiative passed by the voters without action by the legislature. In either event only a majority of those voting was required.

The 1907 legislature repealed the 1903 act and enacted a revised procedure which specifically applied to cities as well as the state (Or Laws 1907, Ch 226). The 1907 act did not repeat the language in the 1903 act which said that the secretary of state should decide whether or not the petition entitles the parties to have the measure referred to the people. Instead, it provided that if the secretary of state refused to accept and file any petition, the courts should decide whether the petition is “legally sufficient.”

The 1907 act also provided that the attorney general (instead of the proponents) would prepare the ballot title of not more than 100 words, with an appeal to the Circuit Court to determine if the ballot title is “insufficient or unfair.” The decision of the Circuit Court was to be final. It also provided for a voters’ pamphlet with the proponents and opponents paying the cost of printing their arguments and the state paying the rest, including mailing to each voter. In the case of cities which had not adopted their own procedures, the procedure in this act was made applicable to the cities.

The 1907 act did not specify the number of signatures required on a petition for a statewide initiative or referendum, but it did specify not less than 10 percent of the voters of the city on a petition for referendum of a city ordinance, franchise or resolution.

Also, with respect to an initiative petition for city action, the 1907 act set up a two-step process. When the petition is filed with the city clerk, he transmits it to the city council, which may adopt or reject it. If the council rejects it, or takes no action, the clerk then submits it to the voters. The council may also submit a competing ordinance at the same election. If the council adopts the ordinance as originally submitted, it is still subject to a referendum. (NOTE: This procedure is similar to that now in use in the state of Washington.)

In 1908, the voters adopted by initiative a comprehensive corrupt practices act which, among other things, limited the expenditures of
candidates (Or Laws 1909, Ch 3). While it did not impose limits on campaign expenditures for initiatives or referendums, it did prohibit paying any voter for giving or refraining to give his vote on any measure.

The 1909 legislature extended the referendum power to the people of any county or district (other than municipal corporations, which were covered by the 1907 act) with respect to any act of the legislature which related only to such county or district (Or Laws 1909, Ch 210). Ten years later this was extended to "all local laws for their county" (Or Laws 1919, Ch 251).

The 1913 legislature provided that the ballot title, prepared by the attorney general, should contain: (1) the names of the persons or organizations under whose authority the measure was initiated or referred, (2) a short title not exceeding 10 words, and (3) a general title expressing its purpose in not more than 100 words. It retained the procedure for appeal to the Circuit Court, whose decision would be final (Or Laws 1913, Ch 36). It also revised in minor respects the petitioning procedure and voters' pamphlets (Or Laws 1913, Ch 359). Additional minor changes were made in 1917 (Or Laws 1917, Ch 176).

In 1917, the voters approved a constitutional amendment requiring that city, town and state officers all be elected at the same time (Or Laws 1919, p 6); and, to implement that amendment, the 1919 legislature adopted a comprehensive set of election laws, including provisions regarding initiative and referendum measures (Or Laws 1919, Ch 283). Insofar as pertinent here, it made no substantial change in the initiative or referendum procedure.

In 1921 the voters approved a constitutional amendment permitting the governor to veto any provision in a bill declaring an emergency, without affecting any other provision of such bill. The significance of that in this connection is that legislative enactments take effect 90 days after the end of the session, unless an emergency is declared, and a referendum petition can only be filed with respect to an act that does not become effective earlier than 90 days after the end of the session (i.e. that does not have an emergency clause). A referendum petition must be filed within 90 days after the end of the session (i.e. before a non-emergency act takes effect). By vetoing an emergency clause, the governor can permit a referendum that would otherwise not be allowed.

The 1923 legislature defined certain offenses in connection with the initiative, referendum or recall, and made them punishable as felonies (Or Laws 1923, Ch 247).

The 1927 legislature modified the procedure for initiative and referendum by eliminating the requirement that the ballot title contain the name(s) of the sponsoring person or organization; by providing for an additional ballot title of not more than 25 words whenever voting machines are used; and by providing an appeal from the attorney general to the Supreme Court (instead of Circuit Court) (Or Laws 1927, Ch 255).
The 1933 legislature required the sponsors of an initiative or referendum petition to file a statement of contributions and expenditures at the time of filing their initial petition for a ballot title; a similar statement at the time of filing their completed petition; and a similar statement between 5 and 10 days before the election, including the maximum amounts they intended to expend before the election (Or Laws 1933, Ch 436).

The 1935 legislature repealed the requirements for filing the statement of contributions and expenditures with the initial petition and before the election, leaving only the requirement of filing the financial statement with the completed petition (Or Laws 1935, Ch 160).

The 1933 act also provided that if no negative argument is submitted for the voters' pamphlet, the attorney general should file an impartial statement of the purpose and probable effect of the measure, to be printed in the pamphlet at state expense. This portion was repealed in 1935 (Or Laws 1935, Ch 160).

The 1935 legislature revised the provisions regarding the Voters' Pamphlet (Or Laws 1935, Ch 117); and these were again revised by the 1941 legislature (Or Laws 1941, Ch 409).

The 1935 legislature also, for the first time, prohibited paying for securing signatures on any petition for an initiative, referendum or recall (Or Laws 1935, Ch 41). This was continued in successive codifications until it was repealed in 1983 (Or Laws 1983, Ch 756, Sec. 13), forecasting the decision of the U.S. Supreme Court in *Meyer v. Grant*, 486 US 414 (1988), which held that a Colorado statute which prohibited paying circulators of initiative petitions was an unconstitutional infringement on freedom of speech.

The 1937 legislature amended the provisions for numbering local measures in respects not pertinent here (Or Laws 1937, Ch 140).

The 1945 legislature made minor changes in the procedure for an appeal to the courts from a refusal by the secretary of state to accept and file a petition for an initiative or referendum (Or Laws 1945, Ch 85).

The 1949 legislature made minor changes in the printing of ballots (Or Laws 1949, Ch 55).

The first requirement for a financial impact statement was made by the 1951 legislature, which provided that whenever an initiative or referendum involves the expenditure of public money by the state or the raising of funds by the state by imposing any tax or incurring any indebtedness, a three-person committee consisting of the secretary of state, the state treasurer and the governor's executive secretary shall estimate the amount of expenditure, tax revenue or indebtedness and interest required if the measure were to be enacted. Any person dissatisfied with the estimate could have it reviewed by the State Tax Commission. Unless the measure involves only administrative expenses
not exceeding $50,000 per year, the estimate shall be printed on the ballot and in the voters' pamphlet (Or Laws 1951, Ch 290).

The 1951 legislature also provided for an impartial statement explaining the ballot measure, to be published in the voters' pamphlet. The statement would be prepared by a three-person committee, of whom two are to be appointed by the governor, one from the proponents and one from the opponents, and they pick the third. If the first two failed to agree on the third, the governor would appoint that one also (Or Laws 1951, Ch 546).

The 1953 legislature passed a number of measures affecting the initiative and referendum. It amended the financial impact statement by including any measure which involves a reduction in state revenues (Or Laws 1953, Ch 150). It changed the ballot title to include a caption of not more than 6 words, an abbreviated statement of not more than 50 words of the chief purpose of the measure, and a descriptive summary of not more than 150 words expressing its purpose (Or Laws 1953, Ch 359). It provided for assistance from the legislative counsel in preparation of initiative measures (Or Laws 1953, Ch 492). It changed the numbering system for ballot measures (Or Laws 1953, Ch 632). And it provided for excluding from the voters' pamphlet certain types of offensive matter (Or Laws 1953, Ch 647).

The 1953 legislature also proposed a constitutional amendment (SJR 6) which would prescribe the number of signatures required on an initiative for a constitutional amendment at not more than 10 percent of the legal voters of the state. The original amendment of 1902 did not distinguish between statutory measures and constitutional amendments, requiring not more than 8 percent for both. The 1953 proposal retained the 8 percent requirement for statutory measures and 5 percent for a referendum petition. It also retained the last vote for Supreme Court justice as the basis for determining the necessary signatures. The proposed amendment was referred to the people and adopted in 1954 (Or Laws 1955, p 5-6).

The 1957 legislature enacted a comprehensive revision of the election laws, and, with respect to the initiative and referendum, it provided for a ballot title of two parts—a caption not exceeding 6 words and an abbreviated statement of the chief purpose in not more than 25 words (thus eliminating the not-over-150 word statement required in 1953) (Or Laws 1957, Ch 608, sec 170). The appeal from the attorney general to the Supreme Court was retained (Ibid, section 171). The provision for a fiscal impact statement was retained, but the responsibility was placed on the secretary of state, with the assistance of the state treasurer, the director of the Department of Finance and Administration and the State Tax Commission (Ibid, sec 179). It also provided for a three-person committee to prepare an impartial explanation of the ballot measure, not exceeding 500 words with the secretary of state (instead of the governor) appointing two and they selecting the third (Ibid, secs 180-181).
The 1957 revision also clarified and standardized the initiative and referendum procedure as applied to counties, municipalities and districts (Ibid, secs 182-185). It continued the prohibition against paying for signatures (Ibid, sec 188). It continued the provisions for pro and con arguments in the voters' pamphlet (Ibid, secs 201-206), and it continued the secretary of state's power to exclude from the voters' pamphlet certain types of offensive material (Ibid, sec 204).

During the 1950s and 60s there were various proposals for a completely revised constitution for the state, principally for the purpose of eliminating provisions that were thought to be more of a statutory than constitutional nature. To accomplish this, the 1959 legislature adopted HJR 5, which proposed a constitutional amendment permitting a revision (in addition to the previous method of amendment) by a two-thirds majority of each house and approval by a majority of the votes cast. HJR 5 was referred to the people and adopted, and it became effective December 6, 1960.

The 51st Legislative Assembly (1961) passed SJR 20, providing for appointment of a Commission for Constitutional Revision; that commission reported to the 52nd legislature on December 15, 1962, recommending a revised constitution. The proposed revision was embodied in HJR 1, which was introduced on January 18, 1963. It passed the House on May 6, 1963, but failed in the Senate on May 28, 1963 (S and H Jnl pp 173, 355, 872-3).

The Commission's proposal would have required an initiative petition for a statute to be signed by a number equal to 6 percent of the votes cast for governor and for a constitutional amendment 8 percent of the votes cast for governor, whereas the former requirement for a statute was not more than 8 percent of the votes cast for justice of the Supreme Court, and for a constitutional amendment not more than 10 percent of the votes cast for justice of the Supreme Court. With respect to a referendum on a legislative act (not a constitutional amendment, because that goes to the voters anyway), the required number of signatures on a petition would be changed from 5 percent of the votes for a Supreme Court justice to 4 percent of the votes cast for governor. Otherwise, the changes in language with respect to initiative and referendum were largely cosmetic.

The Commission explained its recommendation on the ground that (1) the vote for governor is generally a more stable base than the vote for Supreme Court justice, and (2) under their proposed revision Supreme Court justices would be appointed and periodically confirmed, instead of elected by the people. The new percentages were intended to be mathematically equivalent to a small increase in the minimum numbers required.

HJR 1, as originally introduced in 1963, contained the initiative and referendum provisions as recommended by the Commission, but before final action it was amended so that an initiative petition for a
constitutional amendment would require signatures equal to 10 percent of the number of votes cast for governor, instead of 8 percent as the commission had proposed. It was still defeated.

Following the defeat of the proposed constitutional revision in the 1963 legislature, an attempt was made to submit the same revision to the voters by initiative petition. The attorney general ruled that the initiative power reserved to the people to amend the constitution did not permit submission of a revised constitution, as distinct from an amendment. Acting on that advice, the secretary of state refused to furnish a ballot title for the measure. Two former governors, Hon. Robert D. Holmes and Hon. Charles A. Sprague, commenced a mandamus proceeding to compel the secretary of state to furnish a ballot title, but the Oregon Supreme Court upheld the attorney general’s position. Holmes v. Appling, 237 Or 546, 392 P2d 636 (1964).

In 1965 the proposed revision, with some changes (not involving the initiative), was proposed by HJR 1 and SJR 11, but neither passed. The interest in revision continued, however, and a City Club committee issued a report dated February 10, 1967 (Vol. 47, no. 37) recommending that the 1967 legislature adopt and refer to the people a substantially revised constitution. The report was adopted by the City Club on February 17, 1967. A supplemental City Club report was issued on May 5, 1967. Since the latter report was for information only, no action by the members was required.

In the 1967 legislature, separate versions of a constitutional revision were introduced in both the House and Senate, but none was passed. However, by a separate enactment, HJR 16 was passed, which changed the signature requirements for a petition for a constitutional amendment to 8 percent of the votes for governor (instead of 10 percent of the votes for Supreme Court justice); for a statute to 6 percent of the votes for governor (instead of 8 percent of the votes for Supreme Court justice); and for a referendum to 4 percent of the votes for governor (instead of 5 percent of the votes for Supreme Court justice). HJR 16 was referred to the people and adopted at a special election on May 28, 1968.

Attempts at complete revision continued, and the 1969 legislature adopted SJR 23 which was defeated by the voters. It however would have continued the 8 percent/6 percent/4 percent signature requirements adopted by the voters in 1968. The same signature requirements have been continued until this date.

The 1979 legislature substantially revised the election laws (Or Laws 1979, Ch 190), but the changes with respect to initiative and referendum were largely cosmetic (Ibid, secs 140-171, 188-200). However, it altered the ballot title requirements to include (a) a caption of not more than 10 words, (b) a question of not more than 20 words phrased so that an affirmative response to the question corresponds to an affirmative vote on the measure, and (c) a concise and impartial statement of the chief purpose of the measure in not more than 75 words (Or Laws 1979,
Ch 675). It also introduced a standard of minimum readability (Ibid, sec 3). Another new requirement was a statement of sponsorship, signed by at least 25 electors, to be filed with the prospective petition (Or Laws 1979, Ch 345).

The 1979 legislature also permitted an amendment of a proposed initiative measure, without filing another prospective petition, if the amendment does not change the substance of the measure, does not require a new ballot title, and if no petition has been filed seeking a different title (Or Laws 1979, Ch 345).

While the 1979 legislature had continued the prohibition against paying for signatures on a petition for initiative, referendum or recall (Or Laws 1979, Ch 190, sec 377), and the prohibition was repeated in 1981 (Or Laws 1981, Ch 234, sec 18), the prohibition was repealed in 1983 (Or Laws 1983, Ch 756, sec 13).

In lieu of the prohibition, the 1983 act required a statement to be filed with the prospective petition showing whether paid circulators will be used, and another statement showing any change in whether or not paid circulators were in fact used (Or Laws 1983, Ch 756, sec 9).

In 1992, a special session of the legislature adopted the requirement that if the circulator is being paid, a statement to that effect shall be included on each signature page (Or Laws 1992, Spec. Sess., Ch 1).

The present law (ORS 250.045) contains both requirements, i.e., that the chief petitioner notify the filing officer, and that each signature sheet contain the statement, if the circulator is being paid.

The 1985 legislature passed SJR 27, which proposed a constitutional amendment giving the legislature power to provide by law for the manner in which the secretary of state determines whether a petition contains the required number of signatures. The amendment was adopted by the people in 1986, and a statistical sampling was authorized by Or Laws 1989, Ch 68, sec 6.

The 1991 legislature amended the fiscal impact requirement by raising from $50,000 to $100,000 the threshold below which the fiscal estimate does not have to be published in the voters' pamphlet or printed on the ballot (Or Laws 1991, Ch 971).

The 1987 legislature amended the requirements for a ballot title to (1) a caption of not more than 10 words that reasonably identifies the subject of the measure, (2) a question of not more than 20 words stating the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure, and (3) a statement of not more than 85 words (instead of 75) summarizing the measure and its major effect (Or Laws 1987, Ch 556, Ch 875).

The 1993 legislature made another wholesale revision of the election laws, which, with respect to a statewide initiative or referendum, required the chief petitioner to appoint a treasurer, file a statement of
organization, a designation of the measure and a statement of how the petitioners intend to solicit funds with a supplemental statement showing the actual contributions and expenditures (Or Laws 1993, Ch 493, Section 70). It also revised the requirements for the Voters’ Pamphlet, and provided for a public hearing on the fiscal impact estimate (Or Laws 1993, Ch 811).

At the 1994 general election there were 18 ballot measures, of which 2 were referred by the legislature and 16 were by initiative petition. Both measures referred by the legislature were for constitutional amendments, and both were approved by the voters. Of the 16 initiatives, 10 were for constitutional amendments and 6 were for statutes. Of the statutory proposals, 4 were passed and 2 were defeated. Of the constitutional initiatives, 4 were passed and 6 were defeated.

Of the measures passed at the 1994 general election, the only one that affected the initiative and referendum process was Ballot Measure 9, which amended the campaign finance statutes so as to restrict the allowable contributions and expenditures. The monetary limitations were not applied to ballot measure campaigns, and contributions to such campaigns were permitted as tax credits under some circumstances.

As this is being written, Ballot Measure 9 is being challenged in court, and the result is uncertain. However it has a severability clause, so that even if portions are held unconstitutional, the tax credit for ballot measure contributions may remain.

The 1995 legislature adopted a number of measures relating to elections and to the initiative and referendum in particular. A constitutional amendment was proposed, to be submitted at the next regular primary election which would require signatures on an initiative petition (except for measures to be voted on at the 1995 general election) from each congressional district in proportion to the number of such districts (SJR 4).

It allowed the chief petitioners to withdraw a petition prior to its submission for signature verification; and it required each sheet of signatures on a prospective petition and on a circulated petition to be attached to a full and correct copy of the measure. The requirement was continued that if circulators are being paid, a statement to that effect must appear on each signature sheet. (Or Laws 1995, Ch 607, secs 25, 26).

It prohibited paying anyone for signing or refraining from signing a petition, and it prohibited selling or purchasing signature sheets (Or Laws 1995, Ch 646). Note that this applies to paying for signatures, and not to paying solicitors for obtaining signatures.

It also made changes in ballot title requirements (Or Laws 1995, Ch 534).