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THE CALIFORNIA INITIATIVE PROCESS AT ITS CENTENNIAL

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Wealthy donors with a firm grip on elected leaders. Special interest groups pushing wedge issues and ultimatums. Frustrated citizens who want a viable way around the legislative process to change the state's laws. This was California in 1911, when voters approved a constitutional amendment that created the state's most famous direct democracy tool: the ballot initiative. What began as part of a Progressive Era effort to reign in the political influences of a prosperous few has provided Californians with a powerful tool to bypass the Legislature and the Governor, but oftentimes has people wondering: how much have we really progressed?

Undoubtedly, the option of taking issues directly to the voters has been exercised often. From 1912 through 2010, 1,654 statewide initiatives were circulated in California and 21 percent qualified for the ballot.¹ California voters approved one-third of those initiatives that qualified, but the basic numbers don't tell the whole story. Some initiatives are repeat attempts after initial failures on topics such as taxes and women's reproductive rights.² Other measures are outside

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1. The updated statistics regarding initiative circulation, qualification, and approval cited herein are based upon records on file with the California Secretary of State's office. For a detailed account of the topic and status of each proposed initiative from 1911 to 2002, see CAL. SEC'Y OF STATE, A HISTORY OF CALIFORNIA INITIATIVES (2002), available at www.sos.ca.gov/elections/init_history.pdf.

2. For an example of this phenomenon in the context of reproductive rights, see Cal. Proposition 73: Waiting Period and Parental Notification Before Termination of Minor's Pregnancy. Initiative Constitutional Amendment, *reprinted*

the mainstream, tinkering with narrow issues such as foreign divestiture³ or religious music in schools.⁴ And while some initiatives qualify for the statewide ballot through heroic grassroots efforts, others are funded almost entirely by a single well-heeled business or individual.

The fact is California's initiative system has not kept pace with the political, governmental, and technological structures that evolved around it. Moreover, some say that ballot initiatives are too easily qualified by those with money and too hard to qualify by those without money. (Indeed, just two initiatives made it to the June 2010 statewide ballot, both largely funded by single corporations.⁵) John F. Kennedy said democracy is not a "final achievement," but rather "a call to an untiring effort." In other words, democracy is never "done." It is iterative. It is deliberative. And left unattended, it will stagnate and stay in the hands of a powerful few.

To take meaningful aim at reforming our direct-democracy system, we must focus on making the initiative process as transparent as possible at every stage. It is transparency that is the key to enabling more deliberation.

Transparency is about opening up the process: leveling the playing field between interest groups and voters, disclosing the money and machinations behind the initiatives, and increasing access to

in Voter Information Guide (2005), available at http://www.sos.ca.gov/elections/bp_nov05/voter_info_pdf/entire73.pdf; Proposition 85: Waiting Period and Parental Notification Before Termination of Minor's Pregnancy. Initiative Constitutional Amendment, reprinted in Voter Information Guide (2006), available at http://www.sos.ca.gov/elections/vig_06/general_06/pdf/proposition_85/entire_prop85.pdf; Proposition 4: Waiting Period and Parental Notification of Minor's Pregnancy. Initiative Constitutional Amendment, reprinted in Voter Information Guide (2008), available at <http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop4-title-sum.htm>.

3. See *California Public Divest from Israel Act*, LEGIS. ANALYST'S OFFICE, http://www.lao.ca.gov/laoapp/ballot_source/BalDetails.aspx?id=850 (last visited Apr. 25, 2011).

4. See Description of Proposed Initiative Regarding Christmas Music in Public Schools, LEGIS. ANALYST'S OFFICE, <http://www.lao.ca.gov/ballot/2009/090571.aspx> (last visited Apr. 25, 2011).

5. See Michael Hiltzik, *Money Talks Loudly in California Election*, L.A. TIMES, May 2, 2010, at 1, available at <http://articles.latimes.com/2010/may/02/business/la-fi-hiltzik-20100502>.

information. Two categories of reform hold the biggest potential for affecting deliberation: time and information.

Improving the “front end” of the initiative system—the qualification process—most certainly would encourage more deliberation throughout the life of an initiative. During the qualification stage, an initiative proponent has just 150 days to gather several-hundred-thousand petition signatures⁶—something few people can accomplish without organized operations throughout many California counties. When widespread natural support does not exist, people are employed to aggressively collect petition signatures—typically earning \$1 to \$3 per signature, but sometimes much more.⁷ Such bounties create an incentive to aggressively seek signatures, even when an initiative means little to a signature gatherer. This is where money makes the first big difference, and knowing who is funding a measure would be incredibly useful to voters considering whether to help qualify the measure for a statewide ballot.

As a legislator, I authored measures that would have required signature gatherers to disclose on every petition whether they are being paid or volunteering their time, and would have banned anyone from paying circulators on a per-signature basis. Powerful opponents prevailed in defeating my bills and others like them.

In addition to more information in the initiative qualification stage, having more time could make the deliberation process more effective. It is worth considering how much longer a grassroots group of volunteers might need to obtain enough petition signatures than one that can afford to spend a million dollars or more for signatures. Some proponents of this reform go even further, recommending a two-tiered system that allows more circulation time or a lower signature threshold for those without big funding. Of course, where best to make such distinctions is in the eye of the beholder. While many reforms aim to put the ordinary citizen with a good idea and limited resources on equal footing with the powerful interests, the changes would certainly result in longer ballots. Are more initiatives costly

6. CAL. ELEC. CODE § 9014 (West Supp. 2011).

7. See, e.g., CTR. FOR GOVERNMENTAL STUDIES, *DEMOCRACY BY INITIATIVE: SHAPING CALIFORNIA’S FOURTH BRANCH OF GOVERNMENT* 173 (2d ed. 2008), available at http://www.cgs.org/images/publications/cgs_dbi_full_book_f.pdf (noting payments as high as \$3.75 per signature).

distractions or good for raising a wider variety of discussions in a democracy?

Deliberative decision-making that includes following the money behind an initiative gets a little easier for voters once an initiative qualifies for the ballot—if they know where to look. State ballot measure committees must file detailed financial disclosure statements with the Secretary of State, with names and dollar amounts for each contribution and expenditure, and those filings are public record. Through CAL-ACCESS, my office’s online campaign finance disclosure database, people have access to important information about who is spending the money to champion or kill a measure.⁸

Yet loopholes remain in the laws related to the information in, and timing of, disclosure reports. Since money is an inextricable and everlasting part of politics, transparency is crucial when it comes to who has the money, how much, and how the money is used. As the amount of money being spent for and against initiatives continues to mushroom, the need for reform is especially striking when it comes to “independent expenditures.” In California, independent expenditure committees can call themselves anything they want, and sometimes their names are meant to deceive voters. A committee named “Californians for Healthier Children” sounds great, but the funders behind the committee could have intentions vastly different than what the name implies. How can we ask voters to make important policy decisions without the facts about the sponsors of the TV, radio, and direct-mail pleas? As a legislator, I authored measures that would have required proponents to list their top five financial contributors on initiative petitions, and I was in favor of requiring that the same information be listed in all campaign ads. Again, powerful opposition killed these reform efforts.

Unlike their peers in some other states, California’s information-hungry voters are well-equipped with the Secretary of State’s Official Voter Information Guide—a lengthy publication that is mailed to every voting household and made available in every polling place, public library, college, and county elections office, as well as on the Internet in downloadable print and audio formats.⁹ Not every state

8. See *Campaign Finance Activity: Propositions & Ballot Measures*, CAL-ACCESS, <http://cal-access.ss.ca.gov/Campaign/Measures>.

9. See *Voter Information*, CAL. SEC’Y OF STATE, <http://www.sos.ca.gov/>

with an initiative system offers such detailed information to voters before they receive their ballots. The California voter information guide provides the full text of each ballot measure, a nonpartisan policy and fiscal analysis by the Legislative Analyst's Office, and equal space for proponents and opponents to place their own arguments and rebuttals. Herein lies more opportunity for consideration of how deliberative voters could be. California law requires the state voter guide to be mailed to voters between forty and twenty-one days before Election Day.¹⁰ (The guide is available on the Secretary of State's website a few weeks earlier.) Is this study period a challenging time crunch for the thorough and thoughtful voter? Voting begins as early as twenty-nine days before Election Day. While some believe voters do not truly pay attention until just before casting ballots, others think the key to more deliberation is more time to review the information once all of it is in hand.

Here is another fork in the reform road. Should the state voter guide be even longer, including more arguments for and against initiatives and listings of top funders for and against each measure? Alternatively, should there be a word limit to the entire initiative text—and not just the ballot title and summary? Other direct-democracy-minded countries deliberate over ballot measures totaling 50 or 100 words; in California, the text of a ballot measure is often pages long, with complicated legal or constitutional language.

This October, California's initiative system turns 100 years old. Direct democracy is still popular among Californians, and often serves as a mirror of society—reflecting major concerns or mounting support for policy changes, which often have a ripple effect on the deliberations of elected officials. But the initiative system must change if it is to fulfill the purpose of being every citizen's tool for change. Before voting on a statewide ballot initiative, or even helping get it to the ballot, it makes sense that a voter would benefit from maximum transparency—the best possible chance to get to the heart of an initiative.

The reform ideas above—and many others—bring us back to a central question: would voters act more deliberatively if they had more time and information?

elections/elections_bp.htm.

10. CAL. ELEC. CODE § 9094(a) (West Supp. 2011).

This issue of the *California Western Law Review* offers a thoughtful foundation for real deliberation about deliberation.