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Researching Initiatives and Referendums in Arkansas

Joseph A. Custer

SUMMARY. This bibliographic essay and guide to researching Arkansas initiatives and referendums is intended to assist anyone interested in this vital subject. doi:10.1300/J113v26n03_04 [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2007 by The Haworth Press. All rights reserved.]

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INTRODUCTION

Researching initiatives and referendums in the State of Arkansas has become easier through use of the Internet, which provides an excellent medium for voters to gain information on ballot measures. The ubiquitous caveat remains, however, regarding Internet information: It can be fleeting and, in the case of unofficial Web sites, very dubious.

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The statewide vote on initiatives during 1996-2005 exceeded the record of the previous decade, which had more than doubled initiatives voted on in the 1970s.¹ Advocates argue that the increase in the number of initiatives on the ballot is beneficial because citizens can use this tool to create new laws and reforms that state legislatures are unwilling or unable to enact. Cynics are quick to point out the frustrations associated with the process. State legislatures struggle with signature fraud, non-disclosure of initiative campaign finances, and lack of debate and deliberation.² Other large concerns regard lack of representative minority interests and the simple “yes or no” format. Many argue that the simple format oversimplifies or confuses voters about the complex issues involved in many initiatives. Often there is no issue exposure to expert analysis and balanced competing needs and considerations.³

In this environment, it is important—now more than ever—that all voters be given every opportunity to research proposed initiatives and referendums. This article is a reference guide to research resources available to the Arkansas citizens wanting to become better informed on initiatives and referendums for their State.

EARLY HISTORY OF ARKANSAS INITIATIVES AND REFERENDUMS

The earliest reported effort in Arkansas to put a State constitutional amendment establishing the initiative and referendum⁴ process to a vote was in the early 1890s. “Men who connected with the General Assembly at the time declared that the resolution was greeted with jeers and laughter and when put to a vote reserved only one vote—that of the Senator who introduced it.”⁵

The second effort came in late 1905, but the resolution never reached a vote.⁶ Just one month after it was introduced, the Arkansas General Assembly adjourned *sine die* without giving the matter further attention.⁷

Senator E. R. Arnold of Clark County still was not discouraged. In 1909, on the second day of the General Assembly Session, he reintroduced the same I&R proposal defeated previously. Now, backed by out-of-state leaders from the Progressive movement, newly elected Democratic Governor George W. Donoghey and Williams Jennings Bryon, the job was finally done. This determined group drove the first initiative and referendum amendment through the Arkansas legislature on September 5, 1910. Five days during the summer of 1910, Bryon

rode the rails with Governor Donoghey, covering 1,750 miles, giving 55 speeches to numerous, impressive gatherings across Arkansas.

When asked about his part in the Arkansas fight over the initiative and referendum campaign, Bryon responded:

About three years ago or four, I will not attempt to state positively which, I made a speech before the legislature of your state, at the invitation of the legislature. I, at that time, spoke in favor of the initiative and referendum. Some one had introduced a bill in the legislature providing for the submission of this amendment . . . I mention this to you to show you that I advocated this amendment in Arkansas before your legislature was ready to submit it . . .⁸

The Arkansas Gazette predicted upon hearing of Bryon's trip to the state:

When his speeches have been finished we suspect several thousand people will leave actually burning with impatience to get to the polls and vote for the amendment.⁹

That prediction appeared to be on the mark. A very large affirmative majority was tallied: 92,781 to 38,648.¹⁰

WHAT HAPPENED AFTER 1910?

It took several years after 1910 before initiatives and referendums gained much strength in Arkansas. Initiatives and referendums were routinely challenged by the Arkansas Supreme Court on legal technicalities. Finally in 1925, an appeal to the Arkansas Supreme Court reversed an earlier 1920 decision that, at the time, had dealt another supreme blow to I&R in Arkansas (overturning the voter-approved 1920 I&R constitutional amendment).¹¹

A very circuitous route was taken in the 1925 *Brickhouse* case which gave I&R provisions teeth in Arkansas. Tom J. Terral, the newly elected Governor, took full advantage of an extremely rare occurrence. The regular Arkansas Supreme Court justices had to dismiss themselves due to the facts of *Brickhouse*. Ben B. Brickhouse was the mayor of Little Rock, and had been restrained by Circuit Judge Marvis Harris from issuing municipal bonds. The tribunal stated that the municipal bond amendment of 1924 was not legally adopted by popular vote. The issue really came down to whether a majority consisted of the total popular

vote that cast votes for candidates or rather, just the number of voters who specifically voted on the amendment. Two other amendments were passed in the same manner in 1924. One of the other two amendments provided for an increase in the number of Arkansas Supreme Court justices, from 5 to 7. The Arkansas Constitution, Article VII, Section 20 provided:

No judge or justice shall preside in the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by consanguinity or affinity, within such degree as may be prescribed by law; or in which he may have been of council or have presided in any inferior court.¹²

Thus, with the self-imposed dismissal, the judges gave way to the Governor's individually picked, special court. Although the means were messy, the end product justified the confusion. A majority of the special Arkansas Supreme Court reversed *Brickhouse*, thus validating the 1920 I&R constitutional amendment. The decision made it possible for voters to go to the polls and vote a constitutional amendment up or down, regardless of what percentage of the total popular vote cast ballots on the candidates. Those who did not vote on the amendment would not have any effect on the outcome. The 1920 amendment, now the law in Arkansas, had been drafted in such a clever and precise manner as to clear up any confusing and conflicting interpretations in the 1910 amendment, i.e., majority vote needed. This made it much harder for the regular Arkansas Supreme Court to make imaginative rulings. Any amendment that had been passed by a majority of the affirmative vote on amendments since the 1920 I&R amendment was immediately made law.

The specific, clear language in the superseding I&R amendment of 1920 reads as follows:

Majority—Any measure submitted to the people herein provided shall take effect and become a law when approved by a majority of the votes cast upon such measure, and not otherwise, and shall not be required to receive a majority of the electors voting at such elections.¹³

With the issue of “majority” finally resolved, Arkansas moved on. Several I&R measures have been passed over the years. The voting

trend generally approves of measures for general welfare, while defeating measures aimed to assist minorities.

The voters' interpretation of general welfare was largely in touch with the Southern mood at the time. For example, in 1928 voters in Arkansas enacted a regressive initiative to ban the teaching of evolution in public schools.¹⁴ In 1930 Arkansas enacted a measure to require Bible-reading in public schools.¹⁵ On the other hand, Arkansas voted for an initiative to increase workers' compensation in 1938.¹⁶

Regarding minority rights, the early record of I&R resolutions in Arkansas is as bleak as any Southern State. Voters continually overturned efforts to eliminate the poll tax, which was finally abolished in 1964.¹⁷ In 1956, Arkansas voters—with 56% of the affirmative vote—passed an initiative requiring the use of any constitutional means possible to block school integration.¹⁸ Recent Arkansas history since the 1960s shows a more favorable trend of voters using I&R enactments to truly support minority interests.

SELECTED CASE LAW

The following list provides selected Arkansas case law related to initiative and referendum issues.

Porter v. McCuen, 310 Ark. 674, 839 S.W.2d 521 (1992).

Provisions authorizing direct popular participation in law-making should be liberally construed so as not to restrict its use.

Case also holds that the title of an amendment does not have to contain a synopsis. However, it should be complete enough to convey an intelligible idea of the scope and impact of the proposed law.

Plugge v. McCuen, 310 Ark. 654, 841 S.W.2d 139 (1992).

A preamble should not be included in the title of a ballot in Arkansas where the preamble is not part of the text of the proposed initiative, referendum or amendment.

Tindall v. Searan, 192 Ark. 173, 90 S.W.2d 476 (1936).

Given the hierarchical supremacy of state law over enactments of local government units, the people of a county cannot, under initiative and referendum authority, validly enact provisions which are contrary to a general state law.

Hanson v. Hodges, 109 Ark. 479, 160 S.W. 392 (1913).

Arkansas state legislation to be emergency measures are immune from the initiative process.

Jumper v. McCollum, 179 Ark. 837, 18 S.W.2d 359 (1929).

Legislative declaration of emergency used for purpose of exempting a measure from the operation of the referendum as final and conclusive.

Gregg v. Hartwick, 292 Ark. 528, 731 S.W.2d 766 (1987).

Deannexation of land deemed proper proposition for initiative or referendum.

Moorman v. Priest, 310 Ark. 325, 837 S.W.2d 886 (1992).

Reorganization of city government deemed proper proposition for initiative or referendum, such as changing the number of wards or changing the number of representatives in each ward or district.

This case also found that courts may consider the validity of proposed legislation in cases where the proposed referendum sought to be removed from the ballot is in direct conflict with state statute. In addition, the Court ruled that whether an ordinance is subject to initiative or referendum is a judicial question.

Stilley v. Henson, 342 Ark. 346, 28 S.W.2d 274 (2000).

Resolution of the sales or use tax rates deemed proper proposition for initiative or referendum.

Cochran v. Black, 240 Ark. 393, 400 S.W.2d 280 (1966).

Housing authority was and could have been legally dissolved or terminated by initiative ordinance number 1, adopted by the vote of the people.

Terral v. Arkansas Light and Power Co., 137 Ark. 523, 210 S.W.2d (1919).

Public utility rate change found subject to initiative or referendum.

Tomlinson Bros. v. Hodges, 110 Ark. 528, 162 S.W.2d 64 (1913).

The power of initiative and referendum is not extended beyond "general county and municipal business."

Scroggins v. Kerr, 217 Ark. 137, 228 S.W. 2d 995 (1950).

The power of initiative and referendum is usually restricted to legislative ordinances, resolutions or measures.

Greenlee v. Munn, 262 Ark. 663, 559 S.W.2d 928 (1978).

The power of initiative and referendum is not extended to administrative action.

Gregs v. Hartwick, 292 Ark. 528, 731 S.W.2d 766 (1987).

The test of what is legislative and what is an administrative proposition, with respect to the initiative or referendum, depends on whether it is one to make new law or to execute law already in existence. If new law, it is legislative. If executing a law already in existence, it's considered administrative. An annexation was construed as municipal legislation and a law to which referendum power applied.

Summit Mall Company, LLC v. Lemond, 355 Ark. 190, 132 S.W.3d 725 (2003).

Allowed referendum to be applied to planned commercial district rezoning.

Camden Community Development Corp. v. Sutton, 339 Ark. 368, 5 S.W.3d 439 (1999).

Held recommendation of rezoning and city boards' rejection of rezoning recommendation were administrative acts not subject to referendum. Court ruled that rezoning ordinance may not be subject to initiative and referendum measures but must be adopted in accordance with statutory procedures.

SELECTED ARKANSAS STATUTES

The following selected statutes from the Arkansas Code are provisions relating to initiative and referendums.

1. *Signing of Petition—Penalty for Falsification* Ark. Code Ann. § 7-9-103.
2. *Form of Initiative Petition—Sufficiency of Signatures* Ark. Code Ann. § 7-9-104.
3. *Form of Referendum Petition—Sufficiency of Signatures* Ark. Code Ann. § 7-9-105.
4. *Required Attachments to Petitions* Ark. Code Ann. § 7-9-106.
5. *Procedure for Circulation of Petition* Ark. Code Ann. § 7-9-108.
6. *Voter Registration Signature Imaging System* Ark. Code Ann. § 7-9-124.

7. *Initiative and Referendum Generally* Ark. Code Ann. § 14-14-914.
8. *Initiative and Referendum Requirements* Ark. Code Ann. § 14-14-915.
9. *Judicial Jurisdiction over Initiative and Referendum* Ark. Code Ann. § 14-14-916.
10. *Initiative and Referendum Elections* Ark. Code Ann. § 14-14-917.

SELECTED SECONDARY MATERIALS

Monographs and dissertations provide research with valuable background information on initiatives and referendums.

Beard, Charles A. and Birl E. Schultz. *Documents on the State-Wide Initiative, Referendum and Recall*. New York: The Maxmillan Co., 1912.

Includes good description of the first Arkansas initiative and referendum constitutional amendment passed in 1910.

Book of States. Lexington, KY: Council of State Governments, 1935-.

An annual reference book. In the 2006 edition, tables 6.9 through 6.18 deal with initiatives and referendums. Tables 6.19 through 6.21 deal with recalls.

Butler, David and Ramney, Austin, eds. *Referendums: A Comparative Study of Practice and Theory*. Washington, D.C. American Enterprise Institute, 1978.

States that only 7.5 percent of constitutional initiatives are measures to regulate business and labor. One of these constitutional initiatives was passed by Arkansas in 1944 to prohibit union membership as a precondition for employment (succeeded with 55 percent yes).

Cronin, Thomas E. *Direct Democracy: The Politics of Initiatives, Referendum, and Recall*. Cambridge, Harvard University Press, 1999.

In chapter eight, "Direct Democracy and its Problems," author writes about the lack of sensitivity majorities at the ballot box may have regarding minorities. Unfortunately, Arkansas has some history of this and it was displayed again in 1986. A measure was placed on the State ballot forbidding public funding of abortions and making the protection of unborn children official state policy. The Arkansas Supreme Court intervened striking the measure from the ballot stating the wording was inaccurate and misleading.

Dunning, Archibald Williams. *Studies in Southern History and Politics*. New York. Columbia University Press, 1914.

Discusses the fact that no Southern State had adopted the recall as of 1914, and only Arkansas had adopted direct legislation through initiative and referendum.

Gaffney, Edward McGlynn. *Two Cheers for Popular Sovereignty and Direct Democracy: Historical Reflections*. Paper prepared for democracy symposium. Williamsburg, VA, 2002.

Table 2 in book rates the states by historical use of direct democracy. Arkansas ranks seventh with .95 initiatives on the ballot per year.

Piott, Steven L. *Giving Voters a Voice: Origins of the Initiative and Referendum in America*. Columbia, MO: University of Missouri Press, 2003.

Each state in which proponents conducted an active campaign to win adoption of direct legislation is studied in detail. The book analyzes the crucial roles played by individuals who led the movement to empower voters by enabling them to enact or veto legislation directly, and reveals the arguments, the stumbling blocks, and political compromises that are often slighted in generalized overviews. Each state, including Arkansas, possessed its own political dynamic.

Initiative and Referendum Petitions: A Guide for Sponsors and Canvassers. Little Rock, AR. Published by the Arkansas Secretary of State, Election Division.

A biannual distributed to the full Arkansas State Documents Depository. Helpful instrument for the general public interested in the petition process in Arkansas.

Oberholtzer, Ellis Paxson. *The Referendum in America: Together with Some Chapters on the History of the Initiative and the Recall*. New York. C. Scribner, 1911.

Discusses how initiatives voted on by male voters of Arkansas townships were the final authority in how school lands were sold. Discusses other various Arkansas historical referendums such as the choice of county seats, school finance, local option liquor laws and fence laws.

Persily, Nathaniel and Anderson, Melissa Cully. *Regulating Democracy Through Democracy: The Use of Direct-Legislation in Election Reform Law*. University of Pennsylvania Law School, 2005.

Paper discusses how in 1996 Arkansas voters approved an initiative to lower contribution limits from \$1,000 to \$100 for legislative races. The courts later struck it down.

Reaves, Robert Gibbs. *Amending the Arkansas Constitution by the Initiative Process*. Dissertation at University of Arkansas, 1948.

Well-researched dissertation that does a good job at explaining the convoluted early years of initiatives and referendum in Arkansas.

Schmidt, David D. *Citizen Lawmakers: The Ballot Initiative Revolution*. Philadelphia, Temple University Press, 1989.

In chapter one, "History," author writes that Arkansas and Colorado were the only states during the depression era to pass an initiative to increase workers compensation.

Tarr, Alan G. ed. *Constitutional Politics in the States: Contemporary Controversies and Historical Patterns*. Westport, CT. Greenwood Press, 1996.

Chapter five discusses the Arkansas Supreme Court's place in Arkansas school finance and direct democracy.

Tarr, Alan G. and Williams, Robert F. eds. *State Constitutions for the Twenty-first Century*. Albany. State University of New York Press, 2006.

Discusses the role of the American Independent Party in passing the first I&R referendum by constitutional amendment in 1910.

Thomas, David Y. *The Initiative and Referendum in Arkansas Come of Age*. Fayetteville, University of Arkansas, 1933.

Author states there were radical and conservative referendums adopted from 1910 through 1932. The most radical were prohibition (defeated in 1912), free textbooks (defeated in 1912), and the child-labor law (adopted in 1914). The most conservative were the anti-evolution law (adopted in 1920) and reading the Bible in public schools (adopted in 1930).

2006 Initiative and Referendum: Facts and Information for the 2006 General Election. Little Rock, AR. Published by the Arkansas Secretary of State, Election Division.

Biannual election publication that has helpful fact sheet, local measures section, petition form, frequently asked questions section, sample signature section and sample petitions.

Waters, M. Dane. *The Initiative and Referendum Almanac*. Durham, NC: Carolina Academic Press, 2003.

This almanac, which is part of the Initiative and Referendum Institute's Citizen Lawmaker Series of Educational Tools, lists the basic steps involved in establishing an initiative in Arkansas.

ADDITIONAL SELECTED SECONDARY MATERIALS

Legal encyclopedias, A.L.R. annotations, law review articles and other periodicals can help the researcher learn more about initiatives and referendums in the state of Arkansas. The following list of selected materials provides an indication of each item's usefulness.

Board of Trustees of the Leland Stanford Junior University, *Limitations on Initiative and Referendum*, 3 Stan. L. Rev. 497 (1951).

Discusses the unique practice in Arkansas of allowing the whole State to vote on matters affecting only one locality. The article argues that this Arkansas provision is clearly inconsistent with the purpose of initiative and referendum.

Thomas M. Carpenter, *In Whose Court is the Ball? The Scope of the People's Power of Direct Legislation*, 28-SPG Ark. Law. 35 (1994).

Twenty-four states now have an initiative and referendum measure for state government. In Arkansas, this authority is extended to local government.

Corpus Juris Secundum, 82 C.J.S. *Statutes* §§ 108-144 (1999 & Supp. 2006).

Legal encyclopedia article provides a good introduction to initiatives and referendums. For example, Section 110 states that legislative power is vested in the legislature and the people under initiative and referendum constitutional provisions; this right of the people cannot be abridged by the legislature.

Thomas B. Cotton, *The Arkansas Ballot Initiative: an Overview and Some Thoughts on Reform*, 53 Ark. L. Rev. 759 (2000).

This article explains the initiative process in Arkansas from the first stages of drafting to the final popular vote on the initiative.

Elana Cunningham Wills, *Tearing Down Brickhouse: Could Judicial Demolition of Brickhouse v. Hill Prompt a New Arkansas Constitution?*, 54 Ark. L. Rev. 19 (2001).

The Supreme Court, if it overruled *Brickhouse*, could render continued piece-meal amendments of the Arkansas Constitution infeasible, and prompt much needed constitutional reform. Of course, the Court could overrule *Brickhouse* and make its decision prospective only. The decision would apply only to the amendment before the Court and to those voted on subsequently. Prospective application may be the most likely outcome of overruling *Brickhouse*, but it is interesting to explore the possibility of the retroactive application of such a decision.

Elizabeth Garrett and Daniel A. Smith, *Veiled Political Actors and Campaign Disclosure Laws in Direct Democracy*, 4 Election L.J. 295 (2005).

In several states, prior to the advent of electronic disclosure for contributions and expenditures on ballot campaigns, groups involved in ballot campaigns that wanted anonymity could shield their identities by relying on the slow process of making disclosure records available to the public. Three states with the initiative process (Arkansas, Montana, and Wyoming) do not provide campaign finance data on ballot measures via the Internet. A “major weakness” of the disclosure laws in Arkansas, Wyoming, and several other states “is that the filing schedule allows last minute contributions and independent expenditures to be hidden from voters until after the election.” See Campaign Disclosure Project, *Grading State Disclosure 28* (2004), available at <http://campaigndisclosure.org/gradingstate2004/gsd04printreport.pdf> (quotation in context of Arkansas, but there are similar findings for Arizona, Wyoming and other states).

Beth Bates Holliday, *Initiative and Referendum*, 42 American Jurisprudence 2d §§ 1-53 (2000 & Supp. 2006).

Strong legal encyclopedic introduction to initiatives and referendums.

Kurt G. Kastorf, *Logrolling Gets Logrolled: Same-Sex Marriage, Direct Democracy, and the Single Subject Rule*, 54 Emory L.J. 1633 (2005).

During the 2004 election, Georgia was one of eleven states to allow voters to weigh in on whether its State constitution should exclude gays and lesbians from marriage. The drafters of the Georgia proposal, like those of Arkansas, Kentucky, Michigan, North Dakota, Ohio, Oklahoma, and Utah, went further than simply adopting a

restrictive definition of marriage. The proposed amendment also restricted couples in civil unions from obtaining any of the benefits of marriage, banned state courts from recognizing the judgments of other states, and carved out an exception to the Georgia court system's subject matter jurisdiction.

J. R. Kemper, *Adoption of Zoning Ordinance or Amendment Thereto as Subject of Referendum*, 72 A.L.R.3d 1030 (1976).

This annotation collects the cases in which the courts have been called upon to resolve the issue of whether or not the power of referendum may properly be employed by the electors of a municipality to approve or reject a zoning ordinance, or an amendment thereto, previously passed and adopted by the council or other legislative body of such community.

Kurtis A. Kemper, *Constitutional Validity of State or Local Regulation of Contributions by or to Political Action Committees*, 2003 A.L.R.5th 21 (2003).

This annotation collects and analyzes the state and federal cases discussing the constitutional validity of state or local regulation of contributions by or to political action committees (PACs). Included in the annotation are cases in which provisions of statutes or regulations specifically applicable to PACs are challenged as well as cases in which statutes or regulations, while containing provisions specifically applicable to PACs, are challenged as a whole and a PAC is among the challenging parties.

Calvin R. Ledbetter Jr., *Adoption of Initiative and Referendum in Arkansas: The Roles of George W. Donaghy and William Jennings Bryan*, 51(3) Ark. Historical Q. 199-223 (1922).

Arkansas voters approved the 1910 State constitutional amendment on the initiative and referendum. Support came from the Farmer's Union, the Democratic Party, and Governor George W. Donaghy. Bryan stumped the State in favor of the amendment.

Joseph Lubinski, *The Cow Says Moo, the Duck Says Quack, and the Dog Says Vote! The Use of the Initiative to Promote Animal Protection*, 74 U. Colo. L. Rev. 1109 (2003).

Not every anti-cruelty proposal will succeed. The lone animal defeat in 2002 occurred in Arkansas, where voters rejected an attempt to make animal cruelty a felony. Arkansas' proposed Animal Cruelty

Act would not have automatically made animal cruelty a felony, but instead would have given prosecutors the discretion to charge a person either with the old misdemeanor or the new felony. Opponents of the measure, as in other elections, attempted to paint the initiative as just the first of many attempts by radical animal activists to limit human rights by creating rights for animals.

Supporters of stronger anti-cruelty laws pointed to studies that suggest animal abuse is often a prelude to violence against humans. Supporters further noted that thirty-seven other states already had felony animal cruelty statutes on the books. The *Arkansas Democrat-Gazette* endorsed the measure, writing that it was put on the ballot to prevent knowing, malicious, deliberate, extreme acts of cruelty—like cock-fighting, dog-fighting, and torturing of animals. The paper also stressed the measure was not put on the ballot by some out-of-state animal rights organization, but instead reached the voters through the signatures of 87,000 Arkansans. Voters weren't convinced, however, and defeated the measure handily: 462,549 to 281,334.

The margin of defeat seemed surprising to many. After the election, there was speculation that opposition to the measure did not stem from a concern about the effects of the proposal itself, but was instead simply “a crude demonstration of raw political power” on the part of the measure's opponents. The initiative, looked at through this lens, was not just a vote on animal cruelty—it was a message to animal protectionists to take their cause elsewhere. The measure's supporters, Citizens for a Humane Arkansas, spent \$294,775, while opponents, Arkansans for Responsible Animal Laws, spent an equivalent \$289,231. Despite the relatively modest campaign spending, animosity between proponents and opponents nonetheless forced them to make the money (and its sources) an issue in the campaign. Thus, even measures that might find popular support in some areas of the country must be carefully crafted in more conservative areas likely to resist animal protection reform. In such circumstances, careful management of the campaign is key.

J. E. Macy, *Power of Legislative Body to Amend, Repeal, or Abrogate Initiative or Referendum Measure, or to Enact Measure Defeated on Referendum*, 33 A.L.R.2d 1118 (1954).

The question dealt with is how far the power of a legislature or municipal council to enact measures on a subject is suspended by action of the electorate with which those measures would conflict. Mainly,

the questions arise under conventional initiative and referendum provisions, but cases are included under provisions for referendums on particular questions, where the problems are the same.

Jennifer Modersohn, *Constitutional Law—First Amendment Rights of Direct Democracy Participants versus the State’s Interest in Regulating the Election Process*. *Buckley v. American Constitutional Law Foundation, Inc.* 119 S. CT. 636, 22 U. Ark. Little Rock L. J. 105 (1999).

Like the attempt to eliminate property taxes in Arkansas, controversial issues are often the focus of direct democracy campaigns. Confronted with numerous state imposed regulations, the active participants of direct democracy are sometimes forced to defend their fundamental rights, including the First Amendment right of free speech.

Stephen B. Niswanger, *A Practitioner’s Guide to Challenging and Defending Legislatively Proposed Constitutional Amendments in Arkansas*, 17 U. Ark. Little Rock L.J. 765 (1995).

There are two different ways to propose constitutional amendments to the voters in Arkansas. One method permits the people of the State to propose amendments through the initiative process. Amendment VII to the Arkansas Constitution provides the requirements for the initiative process. The other method permits the General Assembly to propose amendments and submit them to the electorate for approval or rejection. Article XIX, Section 22 of the Arkansas Constitution provides the requirements for the process by which the General Assembly proposes amendments. This comment discusses the history of the constitutional provision governing legislatively proposed amendments and attempts to demonstrate why amendments proposed by the General Assembly should be subject to some of the same legal propositions that govern initiated amendments under Amendment 7 of the Arkansas Constitution. In particular, the requirements for ballot titles and popular names in amendments initiated under Amendment 7 should be applicable to ballot titles and popular names in amendments proposed by the General Assembly under Article XIX, Section 22.

Steve Sheppard, *Intelligible, Honest, and Impartial Democracy: Making Laws at the Arkansas Ballot Box, or Why Jim Hannah and Ray Thornton were Right About May v. Daniels*, 2005 Ark. Law Notes 123 (2005).

There is a long-standing tension in America between the ideals of direct democracy and the rule of law. In its simplest form, rule by

democracy requires that the majority gets what it wants, but the rule of law requires not only respect for certain procedures but also, as we know it today, respect for those who would oppose the majority. Nowhere in Arkansas law does one see this tension as clearly as in our perennial disputes over ballots for initiatives proposing new statutes or constitutional amendments. Initiatives have been used to enact state-wide and municipal laws since 1925.

H. A. Wood, *Character or Subject Matter of Ordinance Within Operation of Initiative and Referendum Provisions*, 122 A.L.R. 769 (1939).

This annotation is concerned with the question of what ordinances or municipal enactments by their nature or subject matter are within the operation and purview of initiative and referendum provisions. A liberal interpretation is taken of the term “ordinances,” so cases are included involving resolutions and other forms of municipal enactment, where the question has arisen as to the applicability of initiative or referendum provisions.

SELECTED LEXISNEXIS AND WESTLAW DATABASES

LexisNexis (a Reed Elsevier division) and Westlaw (Thomson West) are two premier, fee-based, legal research databases. Below are selected databases that might prove helpful to the researcher.

LexisNexis Selected Library and File Names

Bills (full text): ARK; ARTEXT
Cases (state): ARK; ARCTS
Cases (state and federal): ARK; ARMEGA
Constitution: ARK; ARCNST
Law Review: ARK; ARKLR
Statutes (annotated): ARK; CODE

Westlaw Selected Database Identifiers

Bills (full text): AR-BILLTXT
Cases (state): AR-CS
Cases (state and federal): AR-CS-ALL
Journals and Law Reviews combined: AR-JLR
Statutes (annotated): AR-ST-ANN

SELECTED WEB SITES

Electronic resources can assist the researcher a great deal. Emphasis on Arkansas.

Arkansas Constitution at <http://www.sos.arkansas.gov/ar-constitution/arconst/arconst.htm>.

The Constitution of Arkansas is available as a PDF document on this Web site.

Arkansas Ethics Commission at <http://arkansasethics.com>.

Includes the *Rules of Campaign Finance & Disclosure* at http://arkansasethics.com/rules/Campaign_Finance_and_Disclosure.doc.

Arkansas General Assembly at <http://www.arkleg.state.ar.us>.

This site provides information about the Senate and House, Senate/House calendars, legislators and committees, research sources and a new research publications link.

Arkansas State Government at <http://www.state.ar.us/>.

The official Web site to the State of Arkansas. A true state government portal for all Arkansas state government, with links to education, government, living, state facts, tourist information, working, and directories for agencies, forms, and online services.

Arkansas Governor at <http://www.governor.arkansas.gov/>.

This site includes Executive Orders and Proclamations, the Governor's Initiatives, the Governor's Proposed Budget, and links to the State directory, agency information and constitutional officers.

Arkansas Supreme Court at <http://courts.state.ar.us/courts/sc.html>.

Provides access to Arkansas Supreme Court and Arkansas Court of Appeals opinions by hand-down date, by party name and date, or by full-text search; opinions are usually available on the date handed down (HTML and WordPerfect formats). Links to corrected opinions and parallel citations also available.

Arkansas court rules, administrative orders, Arkansas Judicial Code, and regulations/rules of related commissions/entities are searchable by keyword. Click on "Recent Arkansas Court Rules and Administrative Orders" link to access a reverse-chronological listing, by hand-down date, of the per curiam orders by which the court

rules, administrative orders, etc., were adopted or modified. Search Arkansas Supreme Court and Court of Appeals dockets by case number or party name. Updated daily.

Ballot Measures at http://www.votesmart.org/election_ballot_measures.php?src=mystate.

The Project Vote Smart Web site has compiled a list of ballot measures for each state. Voters can read the text of the initiative and find links to sites of supporters and opponents.

Election Reform Information Project at <http://www.electionline.org>.

Gives updates from around the nation on election reform activities.

Initiative & Referendum Institute at <http://www.iandrinstitute.org>.

This Web site is recommended as one of the best online resources for information about initiative and referendum processes in all fifty states.

For Arkansas, the site includes a history of the initiative and referendum process; indicates which processes are available in Arkansas (the initiative, the popular referendum, and the legislative referendum); provides information on the elections; provides an initiative historical listing; provides the basic steps to undertake an initiative campaign in Arkansas; provides relevant constitutional and statutory provisions; and provides links to the Arkansas Secretary of State's initiative and referendum history and election results.

League of Women Voters at <http://www.lwv.org>.

The site includes links to projects, to actions, to voter information; searchable by state.

National Agricultural Law Center at <http://www.nationalaglawcenter.org>.

The National Agricultural Law Center serves as an agricultural and food law information center affiliated with the National Agricultural Library. Its Web site, developed by the University of Arkansas, provides access to Center publications and serves as a gateway to agricultural law resources on the Internet. The Center maintains an agricultural and food law collection in the Young Law Library at the University of Arkansas School of Law, adds cataloging to the agricultural database, AGRICOLA, and prepares and disseminates research bibliographies. In addition, the Center participates in the online agricultural reference network AgNIC.

National Conference of State Legislators at <http://www.ncsl.org>.

The site includes state legislature Internet links, with links to all state legislatures, searchable by content area, e.g., bills, constitution, issue reports, legislators, etc. The site also includes a ballot measures database, searchable by state, topic area, year, election, and measure type.

Secretary of State, Election Division at <http://www.sosweb.state.ar.us>.

Election Laws of Arkansas (compilation of election laws); Election Calendar; Candidate Information Handbook; Initiative & Referendum Petitions booklet and Arkansas Directory of Elected Officials.

State Board of Election Commissioners at <http://www.state.ar.us/sbec/>.

Running for Public Office handbook; Training for Election Officials and Election Commissioners; ADA Compliance and accessibility reports and Voting Systems—Approval of Voting Systems in Arkansas.

NOTES

1. Matsusaka, John G.; *Direct Democracy and Electoral Reform*, chapter seven of *The Market Place of Democracy*. Washington DC. Brookings Institution (2006).

2. Ibid.

3. Ibid.

4. Hereinafter “I&R.”

5. *Arkansas Gazette* (LR) January 23, 1909.

6. Reaves, Robert G.; *Amending the Arkansas Constitution by the Initiative Process*. PhD. Dissertation, University of Arkansas, 1948, at 26.

7. Ibid at 28.

8. *Arkansas Gazette*, September 11, 1910.

9. *Arkansas Gazette*, August 24, 1910.

10. Reaves at 48.

11. *Brickhouse v. Hill*, 167 Ark. 513 (1925).

12. Repealed by Ark. Const. Amend. 80, § 22(A), effective July 1, 2001.

13. Const. Amend. No. 7 (1920).

14. Schmidt, David; *Citizen Lawmakers: The Ballot Initiative Revolution*, Philadelphia. Temple (1989).

15. Ibid.

16. Ibid.

17. Ibid.

18. Ibid.

