

The Statewide Initiative Process

Preparation Stage:
Drafting, Public Review, and Titling

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Direct Democracy

San Franciscans had to be wondering whether “enough was enough” when the 319-page voter guide arrived ahead of the 2016 general election. The bloated pamphlet contained over 350 arguments relating to 25 local **ballot measures**, a bewildering blend of proposed changes to housing policy, tree maintenance, taxes, bonds, mayoral powers, elections, lobbying, and police accountability—not to mention a tax on soda. Next came the 224-page California voter information guide issued by the secretary of state, covering 17 initiatives relating to marijuana legalization, gun control, the death penalty, prescription drug pricing, a plastic bag ban, and more: forty-two ballot measures in all.

Direct democracy was intended to supplement the regular lawmaking process, to be, a safeguard for when the legislature “either viciously or negligently fails or refuses” to act.¹ Yet, on mundane and complex matters alike, whether they have considered them on the merits or not, and being accountable to no one but themselves, “on election day every voting Californian is a lawmaker.”² Indeed, the U.S. Supreme Court confirmed in 2015 that the people are in fact a legislature when they exercise their power to make laws.³ For more than one hundred years, California has had a *hybrid government* that is part representative, part direct democracy, a design that the nation’s founders carefully avoided.⁴

At first, California’s government reflected the U.S. founders’ belief that elected representatives working in separate branches—executive and legislative, namely—would check each other with overlapping powers, filter the passions of their constituents through a deliberative process, find compromises, and create good public policy. Lawmakers and presidents would compete for power, and these arrangements would safely allow ambition to counteract ambition, as James Madison noted in the *Federalist Papers*. Spurning this logic, in 1911 California Progressive reformers removed those checks by establishing the initiative, referendum, and recall, thereby

creating a hybrid government in which the people can make laws without their representatives' involvement. What we might call the first branch of California government is the people's power to govern themselves through the instruments of direct democracy. Article II of the state constitution affirms this view: "All political power is inherent in the people . . . and they have the right to alter or reform it when the public good may require."

The Statewide Initiative Process

At the state level, the **direct initiative** gives Californians the power to propose constitutional amendments and laws that fellow citizens will vote on without the participation of either the legislature or the governor. The initiative process exists in 23 other states, although specific requirements vary, and many states permit the **indirect initiative**, which allows legislatures to consider and sometimes amend citizen-initiated measures before they are presented to the public for a vote. The California legislature is barred from making changes of any kind to citizens' ballot **propositions**, either before or after an election (see Box 3.1), and it retains the power to propose constitutional amendments, bond measures, and changes to laws, all of which can appear as propositions in primary and general elections that are subject to popular vote—so-called "**legislatively referred**" measures.

Prior to the "Prop 13 revolution" that emboldened Californians to use the initiative process, Oregon led the states with the most initiatives. Since then, Californians have produced more propositions: from 1979 to 2016, voters considered 210 separate initiatives put forward by fellow citizens, compared to 157 in Oregon and 115 in Colorado.⁵ Considering all types of measures, including bonds, referenda, and legislatively referred initiatives, California still leads the states with more than 444 measures having been put to voters between 1979 and 2016.⁶ Voters reject most citizen initiatives, however. From 1912 to 2016, they only approved 35.1 percent of them.⁷ Proposed laws typically fail even before they make it to the ballot because their sponsors fail to gather enough signatures in time or too many submitted signatures are invalidated; in fact, 75 percent of proposed initiatives fail to qualify.⁸

Initiatives cover all manner of subjects at the state level. Issues that surface frequently include taxation, welfare, public morality, immigration, education, criminal justice, and civil rights. Most prevalent are measures that focus on government and the political process—reforms intended to change the rules for political participation or to control the behavior of elected officials—and it's no coincidence that term limits for statewide officials exist almost exclusively in states with the initiative process (Louisiana is the only exception). Requiring that two-thirds of all lawmakers agree to raise a tax or fee is another example of how Californians have played a vital role in manipulating the institutional context for political decision making by imposing rules on legislators. Without a doubt, initiatives have fundamentally altered California government and politics (see Table 3.1 and Figure 3.1).

Unfortunately, reforms are forced on government incoherently and are not based on a process that involves compromise. They also cannot be amended or changed once approved, except through the initiative process. For example, voters approved changes to the juvenile justice system in 2000, requiring that minors aged 14 to 18 who committed certain violent offenses be tried as adults, among other intricate provisions relating to gangs and parole. Unable to address some of

TABLE 3.1 Selected Landmark Initiatives in California, 1966–2016

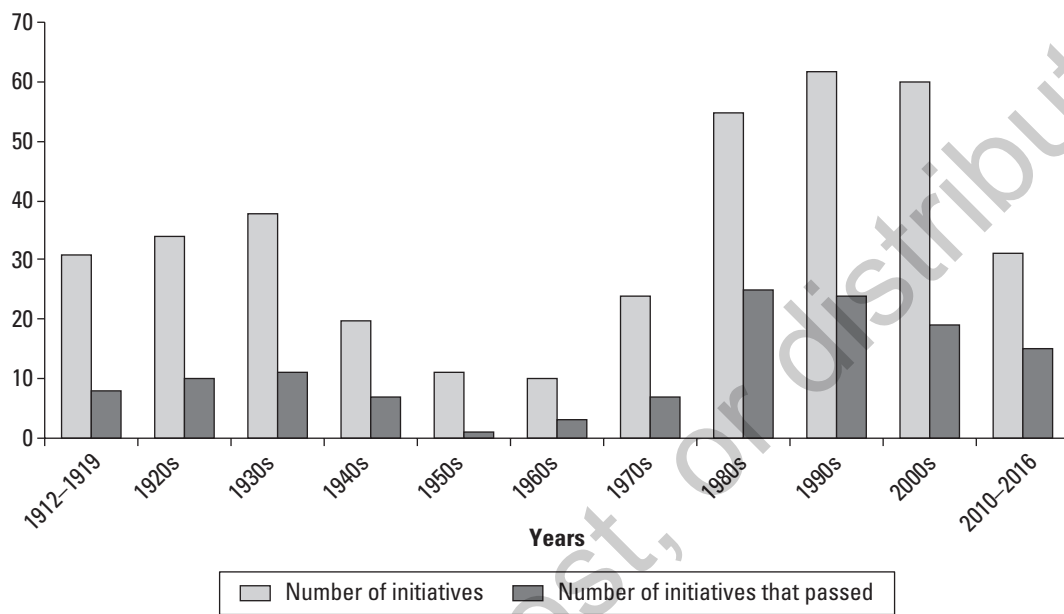
Number	Description	Year
Proposition 1A	Constitutional reform, legislative professionalization	1966
Proposition 9	“Political Reform Act” (campaign finance reform)	1974
Proposition 13	Property tax limitation	1978
Proposition 98	Minimum annual funding levels for education	1988
Propositions 140, 28	Term limits for state officeholders; 12 years total in either house	1990; 2012
Proposition 184	Three-strikes law	1994
Proposition 187	Ineligibility of illegal aliens for public services	1994
Proposition 215	Medical use of marijuana	1996
Proposition 5	Tribal state gaming compacts, tribal casinos	1998
Proposition 227	Elimination of bilingual education	1998
Propositions 11, 20	Citizens redistricting commission to redraw state and congressional districts	2008; 2010
Proposition 8	Definition of marriage (invalidated by U.S. Supreme Court in 2015)	2009
Proposition 14	Open primary elections (Top-Two Primary)	2010
Proposition 67	Recreational use of marijuana	2016

the injustices that arose from the law, and desiring to reduce costs and promote rehabilitation, Governor Brown pushed Proposition 57 to the voters in 2016 and they ultimately agreed that the law should require judges—not district attorneys—to determine whether minors should be tried as adults under certain circumstances.

The initiative process both directly and indirectly conditions the actions of all California elected officials, as intended. Some initiative measures can, however, exacerbate divisions, eroding their ability to act collectively for the common good. For instance, Proposition 26 reclassifies almost all regulatory fees and charges as taxes so that they are subject to the same two-thirds vote threshold that Prop 13 imposed. While this change may seem fairer because it requires both sides to come together in agreement, in fact it privileges the “super-minority” (a few people) over the simple majority (that is, the most people) because absolutely no revenue-raising measures can succeed without the minority’s consent (unless one party represents a supermajority, as the Democrats did after the elections of 2012 and 2016). Historically in the state legislature, supermajority rules like these have driven majority political party Democrats and minority political party Republicans into long standoffs over how to balance the state budget, regulate businesses, address public health issues, and clean up the environment. In other words, direct democracy conditions the way representative democracy works.

Citizens can propose laws at the city, county, and state levels in California. Any registered voter may propose a law (an *initiative statute*) or a change to the state constitution (a *constitutional amendment*),

FIGURE 3.1 Number of Statewide Initiatives that Qualified and Voters Approved in California, 1912–2016



Sources: California Secretary of State, “Initiative Totals by Summary Year, 1912–November 2016,” <http://www.sos.ca.gov/elections/ballot-measures/pdf/initiative-totals-summary-year.pdf>; Legislative Analyst’s Office, “Ballot Measures by Type, 1974 to Present,” accessed July 1, 2017, <http://www.lao.ca.gov/BallotAnalysis/BallotByType>.

Note: Excludes measures referred by legislature and referenda. Two initiatives in the 1980s and one initiative in 1999 qualified for the ballot but were removed from the ballot by court order.

and both types pass with simple majority approval. However, because the average person lacks the money and time to gather hundreds of thousands of valid voter signatures for statewide propositions, well-funded interest groups now dominate a system that was intended to *reduce* their influence. In practice, nearly anyone who can spend at least \$1.5 million (\$3 million on average, ranging past \$6 million) to hire a signature-gathering firm can qualify a measure for the ballot.⁹ Special interest groups, corporations, wealthy individuals, political parties, and even elected officials (playing the role of “concerned citizens”) use the state’s initiative process to circumvent regular lawmaking channels because it “is the only way for [them] to get the policy they want.”¹⁰ Large donors practically monopolize the system: a mere forty-eight entities, from businesses to individuals to unions, contributed half of the approximately \$2.3 billion spent on initiative campaigns from 2000 to mid-2012, while “small donors” who gave \$1,000 or less accounted for just over 2 percent of that total.¹¹ Although the process remains primarily a check against government unresponsiveness and corruption, Hiram Johnson’s Progressives would probably be surprised at how the process works today.

Preparation Stage: Drafting, Public Review, and Titling

The first step in bringing an idea to the ballot is drafting, or writing, the text of the proposed law. Measures are worded carefully to fit the needs and goals of their sponsors, and it is their responsibility to correct errors or ambiguities that may later provide opponents with a convenient excuse to challenge them in court. A proposed initiative must be submitted with \$2,000 to the attorney general's office, where it will be posted online for a 30-day public review period. Up to five days after the review period concludes, authors may change the wording before the attorney general assigns a title and summary of 100 words or fewer.¹² From that point on, the wording of the proposed law cannot be changed. The state also prepares a fiscal analysis of the proposed law if the attorney general requests one.

Qualification Stage: Circulating Petitions, Gathering Signatures, and Signature Verification

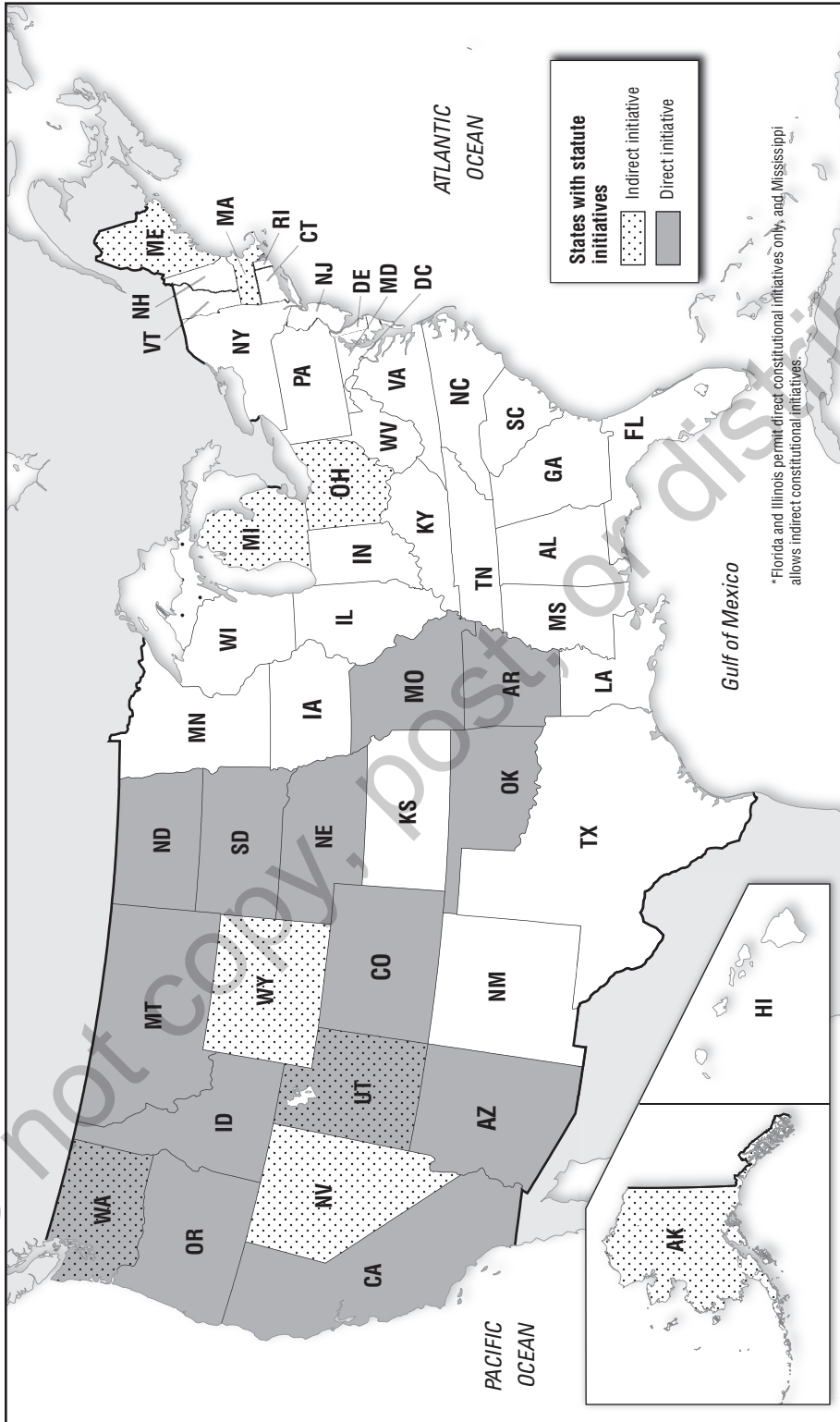
During the qualification stage, the initiative's proponents must circulate strictly formatted petitions containing the official title and summary and gather enough valid voter signatures to qualify the measure for the ballot. Signatures can come from anywhere in California because there are no specific quotas that must be met in each county, as some states require, but everyone who signs must be a registered voter in the county where the petition was signed. Signature requirements are based on a percentage of all votes cast for governor during the previous election: from 2014 to 2018 the requirement is 5 percent for an initiative (365,880 signatures) and 8 percent for a constitutional amendment (585,407 signatures). These totals dropped significantly in 2014 based on low voter turnout, a reduction that was expected to ease the burden of signature collection. (The number of petitions in circulation did increase immediately [to 94 in 2015], but this was not historically unusual.)

Proponents have 180 days (6 months) to collect signatures on their formal petitions. Usually a signature collection firm is hired to run the statewide effort, and the rule of thumb is to gather almost twice as many signatures as required because up to 40 percent or so will likely be invalidated later.¹³ In practice this means collecting about 700,000 signatures with costs ranging from \$2.75 to over \$11 per valid signature, depending on deadlines and company fees.¹⁴ Means of collecting signatures include *in person* in public places, such as in front of grocery stores or at churches using the "clipboard method" (by one person) or "table method" (one person sits at a table while a companion approaches passersby); *direct mail* (generally not cost-effective); and *door-to-door* (rare). Electronic signature gathering is not allowed.

After 25 percent of the required number of signatures have been gathered, the initiative's proponents must notify the secretary of state, who will then relay the measure to the legislature. Although the language cannot be changed at this point, both houses must hold public hearings that are meant to heighten awareness and enhance the public record about them.

Completed petitions must be submitted to the appropriate elections official (typically the county clerk or registrar of voters) in the county where each petition was filled out. There they will count and verify the signatures by using a random sampling technique to determine how many signatures qualify. If, at least 131 days before the next general election, the secretary of state concludes that enough registered voters signed the filed petitions, the measure is certified, given a number, and becomes known as "Proposition [number]."

MAP 3.1 States with the Initiative Process, 2017



Source: National Conference of State Legislatures, "Initiative and Referendum States," <http://www.ncsl.org/legislatures-elections/elections/chart-of-the-initiative-states.aspx>.

Campaign Stage: Persuading Potential Voters

Most initiative attempts fail during the qualification stage because insufficient signatures were gathered or because too many were found to be invalid, but for successful proponents, the campaigning stage begins the moment the secretary of state certifies their measure. In the coming months, they will usually raise and spend millions of dollars to mobilize or sway voters. A thriving political consulting industry has grown around the need to manage fund-raising, television and radio advertising, social media messaging, and mass mailings. The price of initiative campaigns has become supersized, and the most expensive in U.S. history have taken place in California (see Table 3.2). Unlimited donations to ballot measure campaigns are permissible, and it is not uncommon for supporters and opponents to spend \$100 million combined on highly controversial measures, a benchmark easily surpassed in 2016 with Prop 61, a proposal to tie state drug costs to the prices paid by the U.S. Department of Veterans Affairs. The pharmaceutical industry spent over \$109 million to defeat it; opponents, \$19 million (it failed). Their cash represented a big chunk of the \$447.7 million spent on ballot measures in 2016, a figure almost sure to be topped in 2018 or 2020.¹⁵ Not surprisingly, more money tends to be spent when big industries are directly affected in some way, whereas uncontroversial measures tend to attract little or no spending. Aside from campaign finance considerations, the secretary of state meanwhile prepares the official ballot guide that will be sent to all registered voters (available online in 2018), which includes an analysis of every measure's purpose, effect, and fiscal impacts, along with arguments and rebuttals.

Postelection Stage: Court Challenges and Implementation

Only a *simple majority* is needed to pass an initiative or to recall an elected official, but a *supermajority* (two-thirds vote) is required for any general obligation bond and most school bonds (55 percent). Initiative laws generally take effect the day after they are approved, unlike bills, which normally go into effect on January 1 the following year. Election results don't always settle issues, however. Opponents often file lawsuits as soon as the votes are counted, triggering expensive court battles over a measure's constitutionality, meaning, or validity. These battles can last years and may result in partial or total invalidation of the measure. A legal challenge to Proposition 8, a constitutional amendment defining marriage as between a man and a woman, was initiated shortly after the proposition's passage in 2008. The case twisted through the state courts, where it was eventually upheld by the California Supreme Court. It was then pushed into the federal court system, where it was struck down by a district court as unconstitutional. The U.S. Supreme Court declined to hear the case in 2013, allowing the appellate court's ruling to stand, so same-sex marriages in California became legal that year. In June 2015, the U.S. Supreme Court settled the issue by ruling that the Fourteenth Amendment requires all states to issue marriage licenses to same-sex couples and to recognize same-sex marriages performed in other states.

Public officials may also search for ways to get around laws they find objectionable, and there is always the likelihood that a contentious issue will be revisited in a future proposition, because new laws often have unintended consequences and because losers always have another chance to prevail.

The Power of the Initiative Process

Initiative use is robust for other reasons. Corporations and special interest groups find initiatives appealing because they know that successful measures can translate into financial gain or

FIGURE 3.2 Sample Ballot with Initiatives

OFFICIAL BALLOT

BT 001

PRESIDENTIAL GENERAL ELECTION

SANTA BARBARA COUNTY, CALIFORNIA

NOVEMBER 8, 2016

INSTRUCTIONS TO VOTERS: To vote for a candidate whose name appears on the ballot, **FILL IN THE OVAL** to the left of your choice using pencil or blue/black ink. **DO NOT** vote for more than the number of candidates allowed. To vote for a qualified write-in candidate, write the person's name in the blank space provided and **FILL IN THE OVAL** to the left. To vote on any measure, **FILL IN THE OVAL** to the left of the word "YES" or the word "NO." **All distinguishing marks or erasures are forbidden.** If you tear, deface, or wrongly mark your ballot, return it to the Elections Official and obtain another.

VOTE LIKE THIS: ●
TURN BALLOT OVER -- VOTE BOTH SIDES

<p>PARTY-NOMINATED OFFICES The party label accompanying the name of a candidate for party-nominated office on the general election ballot means that the candidate is the official nominee of the party shown.</p> <p>PRESIDENT AND VICE PRESIDENT Vote for One Party</p> <p><input type="checkbox"/> HILLARY CLINTON For President <input type="checkbox"/> TIM Kaine For Vice President</p> <p><input type="checkbox"/> OLGA ESTELA LA RIVA For President <input type="checkbox"/> DENNIS J. BANKS For Vice President</p> <p><input type="checkbox"/> DONALD J. TRUMP For President <input type="checkbox"/> MICHAEL R. PENCE For Vice President</p> <p><input type="checkbox"/> GARY JOHNSON For Vice President <input type="checkbox"/> BILL WELD For Vice President</p> <p><input type="checkbox"/> JILL STEIN For President <input type="checkbox"/> ALAMI BARAKA For Vice President</p> <p><input type="checkbox"/></p> <p>VOTER-NOMINATED AND NONPARTISAN OFFICES All voters, regardless of the party preference they disclosed upon registration, or not to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot.</p> <p>UNITED STATES SENATOR Vote for One</p> <p><input type="checkbox"/> LORETTA L. SANCHEZ Party Preference: Democratic United States Congresswoman</p> <p><input type="checkbox"/> KAMALA D. HARRIS Party Preference: Democratic Attorney General of California</p> <p>UNITED STATES REPRESENTATIVE 24TH DISTRICT Vote for One</p> <p><input type="checkbox"/> JUSTIN DONALD FAREED Party Preference: Republican Small Business Entrepreneur</p> <p><input type="checkbox"/> SALIM CARABAL Party Preference: Democratic Santa Barbara County Professional</p> <p>STATE SENATOR 19TH DISTRICT Vote for One</p> <p><input type="checkbox"/> HANNAH BETH JACKSON Party Preference: Democratic State Senator</p> <p><input type="checkbox"/> COLIN PATRICK WALCH Party Preference: Republican Entrepreneur/Highly Professional</p> <p>MEMBER OF THE STATE ASSEMBLY 37TH DISTRICT Vote for One</p> <p><input type="checkbox"/> S. MONIQUE LIMON Party Preference: Democratic Educator/School Boardmember</p> <p><input type="checkbox"/> EDWARD FULLER Party Preference: None Personal Care Services/Entrepreneur</p>	<p>SCHOOL CARPINTERIA UNIFIED SCHOOL DISTRICT Governing Board Member Trustee Area No. 1 Vote for no more than Two</p> <p><input type="checkbox"/> ROSOLIO DELGADO Businessman/Teacher</p> <p><input type="checkbox"/> BARBARA "BOLE" CLAFFEY Parent/Coach/Entrepreneur</p> <p><input type="checkbox"/> GARY BLUMBERG Student/COO CEO</p> <p><input type="checkbox"/></p> <p>DISTRICT CARPINTERIA VALLEY WATER DISTRICT Director Vote for no more than Two</p> <p><input type="checkbox"/> CASEY J. VAN WINKERDEN Construction/Teacher/Owner</p> <p><input type="checkbox"/> HOLLY HOLCOMBE Independent Financial Advisor</p> <p><input type="checkbox"/> STEVE BAUNTING Independent Financial Advisor</p> <p><input type="checkbox"/></p> <p>MEASURES SUBMITTED TO THE VOTERS</p> <p>STATE</p> <p>PROPOSITION 51 SCHOOL BONDS: FUNDING FOR K-12 SCHOOL AND COMMUNITY COLLEGE FACILITIES. INITIATIVE STATUTE. Authorizes \$9 billion in general obligation bonds for new construction and modernization of K-12 public school facilities, charter schools and vocational education facilities, and California Community Colleges facilities. Fiscal Impact: State costs of about \$1.7 billion to pay off both the principal (\$9 billion) and interest (\$5.6 billion) on the bonds. Payments of about \$600 million per year for 35 years.</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>PROPOSITION 52 MED-CAL HOSPITAL FEE PROGRAM. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE. Extends indefinitely an existing statute that imposes fees on hospitals to fund Med-Cal health care services, care for uninsured patients, and children's health coverage. Fiscal Impact: Uncertain fiscal effect, ranging from relatively little impact to annual state General Fund savings of around \$1 billion and increased funding for public hospitals in the low hundreds of millions of dollars annually.</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>PROPOSITION 53 REVENUE BONDS: STATEWIDE VOTER APPROVAL, INITIATIVE CONSTITUTIONAL AMENDMENT. Requires statewide voter approval before any revenue bonds can be issued or sold by the state for certain projects if the bond amount exceeds \$2 billion. Fiscal Impact: State and local fiscal effects are unknown and would depend on which projects are affected by the measure and what various government agencies and voters take in response to the measure's voting requirement.</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>PROPOSITION 54 LEGISLATURE. LEGISLATION AND PROCEEDINGS. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE. Prohibits Legislature from passing any bill unless published on Internet to 72 hours before vote. Requires Legislature to record its proceedings and post on Internet. Authorizes use of recordings. Fiscal Impact: One-time costs of \$1 million to \$2 million and ongoing costs of about \$1 million annually to record legislative meetings and make videos of those meetings available on the Internet.</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>PROPOSITION 55 TAX EXTENSION TO FUND EDUCATION AND HEALTHCARE. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE. Extends by twelve years the temporary personal income tax increases enacted in 2012 on earnings over \$250,000, with revenues allocated to K-12 schools, California Community Colleges, and in certain years, healthcare. Fiscal Impact: Increased state revenues—\$4 billion to \$8 billion annually from 2018-2030—depending on economy and stock market. Increased funding for schools, community colleges, health care for low-income people, budget reserves, and debt payments.</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>PROPOSITION 56 CIGARETTE TAX TO FUND HEALTHCARE, TOBACCO USE PREVENTION, RESEARCH, AND LAW ENFORCEMENT. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE. Increases cigarette tax by \$2.00 per pack and increases other tobacco products, and electronic cigarettes containing nicotine. Fiscal Impact: Additional net state revenue of \$3 billion to \$1.4 billion in 2017-18, with potentially lower revenues in future years. Revenues would be used primarily to augment spending on health care for low-income Californians.</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>PROPOSITION 57 CRIMINAL SENTENCES. PAROLE. JUVENILE CRIMINAL PROCEEDINGS AND SENTENCING. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE. Revises parole consideration for nonviolent felons. Authorizes sentence credits for rehabilitation, good behavior, and education. Provides juvenile court judge decides whether juvenile will be prosecuted as adult. Fiscal Impact: Net state savings likely in the tens of millions of dollars annually, depending on implementation. Net county costs of likely a few million dollars annually.</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>PROPOSITION 58 ENGLISH PROFICIENCY: MULTILINGUAL EDUCATION. INITIATIVE STATUTE. Preserves requirement that public schools ensure students obtain English language proficiency. Requires school districts to solicit parent/community input in developing language acquisition programs. Requires instruction to ensure English acquisition as rapidly and effectively as possible. Authorizes school districts to establish dual language immersion programs for both native and non-native English speakers. Fiscal Impact: No notable fiscal effect on school districts or state government.</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>PROPOSITION 64 MARIJUANA LEGALIZATION. INITIATIVE STATUTE. Legalizes marijuana under state law, for use by adults 21 or older. Imposes state taxes on sales and cultivation. Provides for industry licensing and establishes standards for marijuana products. Allows local regulation and taxation. Fiscal Impact: Additional tax revenues ranging from high hundreds of millions of dollars to over \$1 billion annually, mostly dedicated to specific purposes. Reduced criminal justice costs of tens of millions of dollars annually.</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>PROPOSITION 65 CARRYOUT BAGS. CHARGES. INITIATIVE STATUTE. Redirects money collected by grocery and certain other retail stores through mandated sale of carryout bags. Requires stores to deposit bag sale proceeds into a special fund to support specified environmental projects. Fiscal Impact: Potential state revenue of several tens of millions of dollars annually under certain circumstances, with the monies used to support certain environmental programs.</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>
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TABLE 3.2 Five Most Expensive Ballot Measure Campaigns (adjusted figures*)

Proposition	Election year	Subject	Total spent	Spent by proponents	Spent by opponents	Pass/fail (% margin)
87	2006	Oil taxes	\$184,340,000	\$71,461,000	\$112,879,000	F (45/55)
32	2012	Union dues	\$145,109,000	\$64,174,000	\$80,935,000	F (43/57)
30	2012	Taxes for education	\$141,350,000	\$73,124,000	\$68,226,000	P (55/45)
5	1998	Indian gaming	\$136,563,000	\$97,400,000	\$39,163,000	P (62/38)
61	2016	Drug pricing	\$128,258,000	\$19,152,000	\$109,106,000	F (47/53)

Sources: California Secretary of State, Powersearch: <http://powersearch.sos.ca.gov/>. Figures for Prop 5 from Center for Governmental Studies, *Democracy by Initiative: Shaping California's Fourth Branch of Government*, 2nd ed. (Los Angeles, CA: Center for Governmental Studies, 2008).

***Note:** All figures have been adjusted to 2016 dollars and rounded. Figures do not include independent expenditures.



MARK RALSTON/AFP/Getty Images

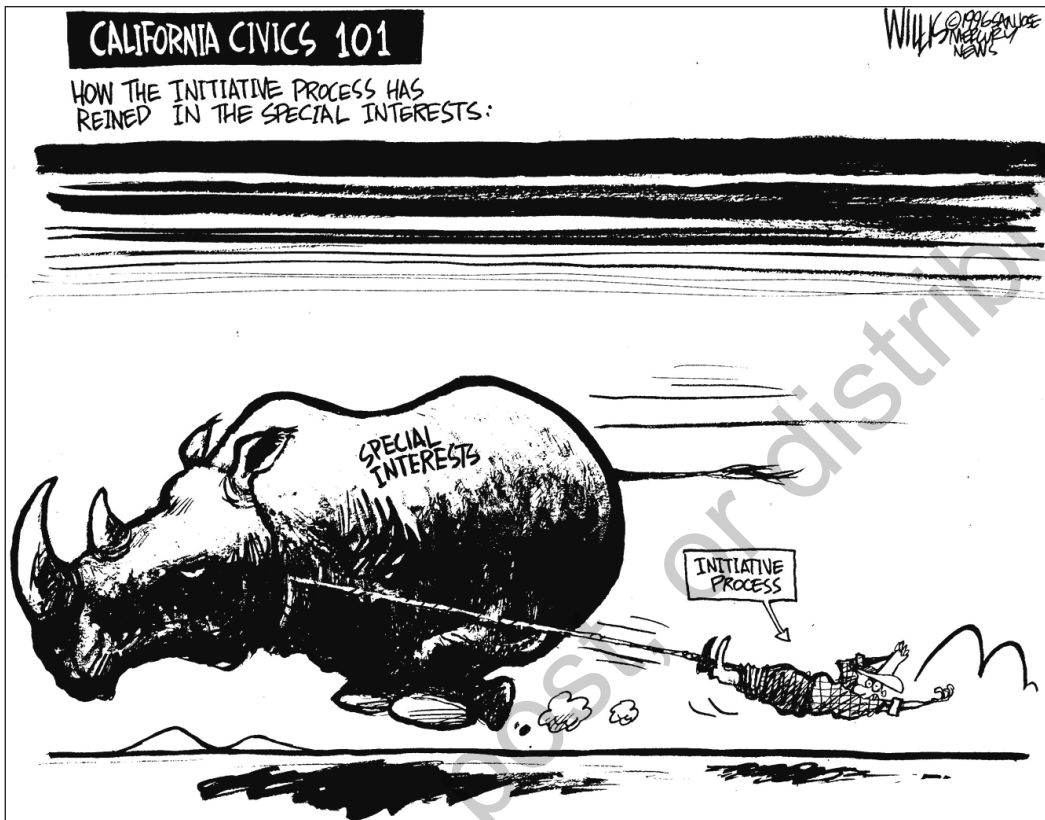
After other states banned transgender youth from using the locker room or bathroom of their choice, California's Fair Employment and Housing law (FEHA) was changed in 2017, creating an individual right to use bathrooms and locker rooms corresponding to one's preferred gender identity or expression. All single-user bathrooms must be also designated as "gender-neutral," and employers must honor the wishes of employees to be identified by their preferred gender pronoun.

friendlier regulations. Aspiring politicians and lawmakers build their reputations by sponsoring propositions that can't get traction in the legislature. Competition also plays a role: adversaries can take their fights to the ballot with dueling, "rival" measures that propose very different solutions to a problem. If *both* rival measures receive enough votes to pass, the one attracting *more* votes goes into effect. (On a side note, in a move only the savviest of politicians might attempt, Brown signed a bill into law requiring that constitutional amendments be listed on the ballot first, thus ensuring that his measure, Prop 30, would appear at the top of the ballot, well ahead of his rival's measure, Prop 38.¹⁶)

Today, the power of the average voter has been eclipsed by industry initiative activity and special interest group imperatives. Millionaires and billionaires, not average citizens, can afford to qualify their pet projects or big ideas. There are no limits on contributions to ballot campaigns, and two-thirds of all donations are in amounts of \$1 million or more.¹⁷ The result: voters endure fanatical campaigns waged by organizations and corporations with deep pockets, their strategies packaged in media barrages containing oversimplified messages. Usually armed only with these biased accounts, voters must decide on complex policies frequently crafted without the benefit of compromise, and these policies may set rules that are difficult to amend later. Not surprisingly, voters confronted with thick ballot guides often look for shortcuts such as endorsements on which to base their decisions, and confused voters tend to vote no, especially when the ramifications of voting yes are unclear. Still, residents and voters of all types (about 72 percent) like the system and think it's a "good thing that a majority of voters can make laws and change public policies."¹⁸ That said, fewer than 20 percent of adults think that the system is fine the way it is; three out of four people (76 percent) feel that major or minor changes are needed, from reducing the number of propositions to making the system less complicated and confusing.¹⁹ Given California's history, it is only a matter of time before citizens further reform the process (see Box 3.1). Representatives may also introduce reforms through regular lawmaking channels, as they did recently with SB 202, a law that ended the practice of voting on initiatives in primary elections. Now citizen-generated propositions appear only in general elections or special elections called by the governor; the legislature may place initiatives, constitutional amendments, or bonds on any state election ballot.

Referendum

Citizens may also repeal recently signed laws, parts of laws, or redistricting maps. To prompt a **referendum**, petitioners must collect the same number of valid signatures required for an initiative (365,880, from 2014 to 2018) within 90 days after the scorned law goes into effect. If the referendum qualifies for the ballot—since 2011, referenda may only appear on general election ballots—voters must choose to vote "yes" if they want to retain the law in question or "no" if they want to nullify it. Prompting referenda through petitions happens rarely: only forty-nine have qualified for the ballot since 1912, and voters have historically been more likely to repeal existing laws than to retain them (58.3 percent of laws were rejected through referenda; 41.7 percent were retained).²⁰ Gaming compacts negotiated between Native American tribes and the governor usually surface as referenda, and the people have approved all but one (rejected in 2014). Recently, plastic bag manufacturers recoiled from a new state law banning single-use plastic grocery bags and gathered enough signatures to trigger a referendum through Prop 67; in 2016 the people voted to keep the law.



A far more common type of referendum is a *bond measure*, first approved by the legislature and then passed along to voters for approval. The constitution requires that voters approve state borrowing above \$300,000. Bond measures authorize the state treasurer to sell bonds on the open market, which essentially are promises to pay back with interest any amounts loaned to the state. Bonds are typically used to finance multimillion- or multibillion-dollar infrastructure projects ranging from water restoration to library renovation, and since 2000, the average bond has cost more than \$5 billion (see Chapter 8). After drought laid bare some of the state water system's flaws, in 2014 voters approved Proposition 1, a \$7,545,000,000 water bond intended to improve water reliability. Most bond measures generate little controversy and around 60 percent pass, although some bond-funded ventures continue to generate conflict as they're implemented, such as a high-speed rail project that voters approved in 2008, now continually under fire as projected costs mount and plans are continually modified. Notably, financing state government projects with billion-dollar bonds involves substantial financial penalties and hidden costs: a sizable share of the state's annual budget each year is dedicated to paying interest, or "servicing the debt," and *taxpayers end up paying about twice the face amount of what is borrowed* after the interest and capital are repaid. Few voters are aware that a \$10 billion bond will actually cost around \$20 billion to pay off (the final price tag depends on interest rates, and inflation brings the actual costs closer to \$1.40 per dollar borrowed).

Recall

California is one of nineteen states allowing voters to remove and replace *state* elected officials between regular elections, meaning that they can “**recall**” lawmakers, justices, and anyone serving in an elected executive capacity such as the governor or attorney general. It is one of at least 29 states permitting the recall of *local* officials, including any person elected in a city or county, or to a court, school or community college board, or special district board.²¹ It should be noted that citizens do *not* have the right to recall federal representatives, meaning U.S. House and Senate members.

A California recall election contains two parts: one, voters answer “yes” or “no” as to whether the representative in question should be removed from office; two, they may choose a replacement from anyone listed on the ballot, regardless of whether they voted to remove the official. This method of removing a politician before his or her term ends differs categorically from impeachment, whereby charges of misconduct in office are leveled, a trial is held by the state Senate with a two-thirds vote required to convict, and the Assembly votes to impeach (a deed that hasn’t occurred in California since the mid-1800s).²² Nationwide, the majority of recall attempts are aimed at local officials such as judges, city council members, or school board members; recalls of state officials rarely triumph—although two state legislators in Colorado who had voted for stricter gun control legislation were singled out by the National Rifle Association and were successfully recalled by voters in September 2013.

Low recall success rates are partly ensured through fairly high signature requirements and relatively short deadlines. Signature thresholds vary with the office and size of the jurisdiction, or the area represented by the targeted official. For lawmakers and appeals court judges in California, for instance, petitioners have 160 days to meet the signature threshold, which is equal to 20 percent of the votes cast in the last election for the official being recalled. For mayors and other local officials, the number is based on registered voters: 30 percent if fewer than 1,000 people are registered, declining to 10 percent if over 100,000 are registered.²³ For statewide officials, signatures must be obtained from voters in at least five different counties, with minimums in each jurisdiction tied to the prior election results. These rules also apply to recalling the governor, and proponents have just over five months to submit valid signatures equal to 12 percent of the votes cast during the previous gubernatorial election (just over 878,000 signatures). In some states, the signature threshold to recall a governor looms as high as 40 percent of eligible voters.

No specific grounds for removal are needed to launch a recall in California—officials can be recalled for any reason or cause—but proponents must state their reasons on the petitions they circulate. Since 1913, 162 recalls have been launched against state elected officials in California, but a mere *nine* of these qualified for the ballot, and only five ultimately succeeded.²⁴ By far, the most dramatic example was the 2003 recall of Governor Gray Davis, discussed in Chapter 2. Freshman Democratic Senator Josh Newman found himself in the crosshairs in 2017 for voting to support higher gas taxes. Signature gathering was robust in his district, which he won by a razor-thin margin. Recall advocates’ chances for success narrowed after Democrats revised the law to require that every signature be verified (a full check), signatories be allowed to withdraw their names up to 30 days later, and cost estimates for a special election be gathered and publicized (changes that apply to all future recalls). These mandates pushed the possible recall election into 2018, when it could be held during the state’s June primaries. Ironically, it takes a simple majority to recall an incumbent, but the replacement wins by plurality vote (the most votes of all cast), so Arnold Schwarzenegger could have won with far less than the 48.7 percent he received in an election that featured 135 candidates.

Direct Democracy at the Local Level

It shouldn't be surprising that the three forms of direct democracy—the initiative, referendum, and recall—are available in every California county, city, and school district and are used more frequently at the local level than at the state level. Voters are regularly invited to weigh in on changes to their city constitutions (charter amendments), local laws, bonds, citizen initiatives, and recalls of local officials. Local measures are adopted more often than state propositions, but seldom sparks a sensation unless they stem from a scandal commanding local headlines, or the fortunes of deep-pocketed interests are at stake (such as land use changes or pension reforms affecting unionized employees), or public morality is at issue (sex and drugs).

Controversial decisions on school boards lead to the most recalls—about 75 percent of all recalls are against elected school board members—yet they remain relatively rare events, and the same is true of local referenda. On the other hand, citizens have the power to generate ordinances through the local initiative process, and they do so with local flair and variable success historically. In 2015–16, local ballot measures found receptive audiences in voters, who approved 78.8 percent of them.²⁵ The majority of local initiatives relate to matters of growth and development, also known as land use; governance, or political reform; taxation; and local funding for education.²⁶ Recent initiatives have concerned whether to shut marijuana dispensaries out of cities or regulate them; allow new housing developments or protect open space; impose term limits on city council members and/or county supervisors; conduct elections differently (San Francisco now allows Saturday voting); or alter public employees' benefits (eliminate pensions, for example). Ballot measures have touched on every manner of civil rights, liberties, and public morals; for instance, pornographic film actors in Los Angeles County must wear condoms during filming thanks to Measure B, a county initiative. **Parcel tax** proposals are appearing more frequently on local ballots as well; these are additional taxes or assessments based on square footage of a property, number of units, or a house's or building's value that voters can impose on themselves to pay for local infrastructure projects, such as renovating local schools or hospitals. Typically these “piggyback” taxes are attached to a property tax bill.

When well-funded interests have a stake in the outcome, especially large corporations or unions, campaign spending can quickly accelerate far beyond the reach of local citizens. The American Beverage Association, whose members include Dr Pepper Snapple Group, Pepsi-Cola, and Coca-Cola, spent \$22.5 million to defeat a one-cent-per-ounce tax on sugary drinks in San Francisco; proponents, including billionaire Michael Bloomberg, spent \$15.3 million. The industry had succeeded in defeating a similar two-cent-per-ounce proposal in 2014, but voters approved the 2016 measure.²⁷ Usually when the spending disparity stretches past 10-to-1, “The voters are hearing from only one side. Your voice is drowned out.”²⁸

With two exceptions, the procedures for circulating a petition for a city or county initiative are similar to those at the state level and are spelled out in the state's election codes: signature requirements, strict circulation guidelines, signature verification carried out by the county registrar of voters, and certification either by the registrar or the city clerk. One exception is that signature requirements vary among cities because they are based on prior turnout (for local laws) or voter registration (for charter amendments); thus, it takes 9,485 signatures to qualify an initiative ordinance in San Francisco but 21,494 in the City of San Diego.²⁹

The second glaring difference lies in local use of the *indirect initiative*. Unlike the state process, citizens must first file a notice of intent to circulate a petition, and, depending on the number of valid

BOX 3.1 Reforming the Initiative Process

Is the initiative process ripe for reform? Californians overwhelmingly support their right to make laws alongside the state legislature, but many acknowledge the process isn't perfect. Its built-in biases have long been recognized, and resource-rich special interests have advantages over average citizens at every stage, a situation that contradicts the original intent of empowering the many at the expense of the few. Fixing these problems and others will require balancing individual power and free-speech rights. Opinion is sharply divided over whether and how to address these complex issues and how effective any solutions would be.

Problems and Suggested Remedies

Problem: It is far easier for paid circulators to collect enough valid signatures than it is for volunteer-based groups; virtually anyone can qualify an initiative by paying a professional signature-gathering firm about \$1 to \$3 million (depending on number of signatures needed and proximity to deadlines).

Remedy: Ban paid signature gathering or require that a certain percentage of signatures be gathered by volunteers. Extend the deadline to a year, enabling grassroots volunteer movements more time to organize.

Problem: Big money dominates the initiative process.

Remedy: Because capping campaign donations violates free speech protections, improve disclosure laws instead: immediately and prominently displaying that donor information on initiative petitions and campaign advertisements.

Problem: It is difficult to trace donors to ballot campaigns.

Remedy: Require in-ad disclosure of top donors to campaign committees; make online state government resources easier to discover and navigate.

Problem: Ballot measures are confusing and complex.

Remedy: Publicize legislative hearings to generate more substantive discussion about a measure's probable impacts. Use more diverse media to help voters find reliable, comprehensive election resources and information. If two conflicting measures are being considered in the same election, place them together in the ballot pamphlet and explain which will prevail if both pass.

Problem: There are too many initiatives.

Remedy: Require the legislature to vote on proposed laws first. After a public hearing on a measure, the legislature could vote on passing it, with or without any changes that the initiative's authors may approve or reject. Courts could be given a role in verifying that the legislature's version respects the authors' intent. Also, if a measure requires a supermajority vote of the legislature, require the same threshold for the ballot measure.

Problem: It is too difficult to revise initiatives once they become law. They cannot be changed except through future ballot measures, even if flaws are discovered.

Remedy: Allow the legislature to amend measures after a certain amount of time, holding lawmakers to strict guidelines, special conditions (such as a supermajority vote), or further review.

Problem: The process clutters the state constitution with redundant and contradictory amendments.

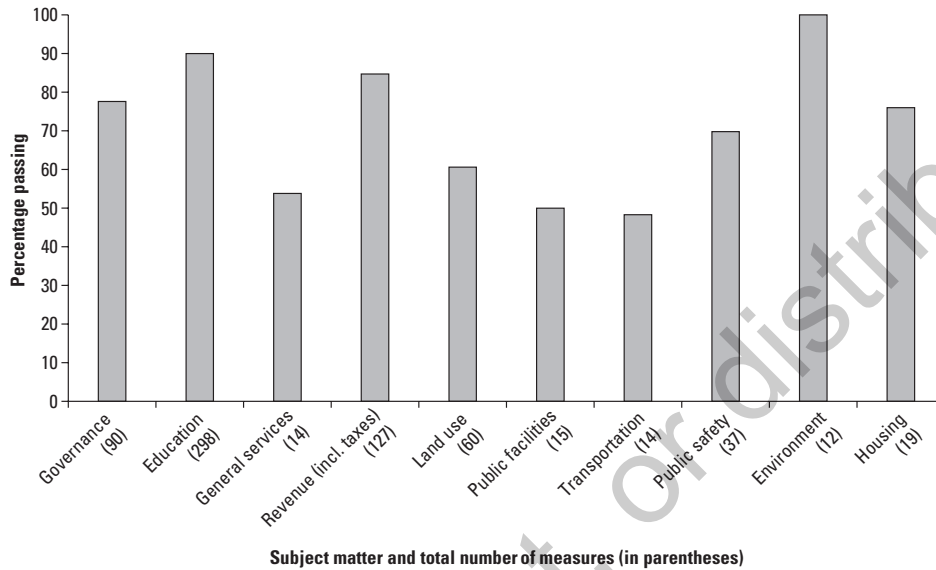
Remedy: Enable more frequent, comprehensive reviews of the state constitution to weed out obsolete, unnecessary, or contradictory language. Alternatively, require a constitutional revision commission to meet periodically and make recommendations that voters or lawmakers may act upon.

Problem: Too many initiatives are declared unconstitutional.

Remedy: Hold legislative hearings before measures qualify, and publicize conflicts. Empower the attorney general or a panel of active or retired judges to review proposed measures and assess whether they are consistent with the California state constitution. Inform voters of any discrepancies, and give authors the option to withdraw their measures.

For further reading, see Center for Governmental Studies, *Democracy by Initiative: Shaping California's Fourth Branch of Government*, 2nd ed. (Los Angeles, CA: Center for Governmental Studies, 2008), <http://policyarchive.org/handle/10207/bitstreams/5800.pdf>.

FIGURE 3.3 Local Ballot Measures in California: Subject Matter and Approval Rates, 2015–2016*



Source: California Elections Data Archive, “Table B, Summary of Outcomes for All County, City, and School District Ballot Measures by Topic of Measure and County, 2016,” Institute for Social Research (Sacramento, CA) and Office of the California Secretary of State (Sacramento, CA), n.d., <http://www.csus.edu/isr/projects/ceda%20reports/2016/table-b-2016.pdf>.

Note: Of 872 total measures, 687 passed and 185 failed (1 “other” was omitted).

*“Local” refers to county, municipal, and school board. Numbers in parentheses represent the total number of local ballot measures.

signatures gathered, the local governing board (either the city council or county supervisors) may first consider and adopt a proposed measure without alteration before it is submitted to voters. If the local governing body approves the measure, then it becomes a local law.

Los Angeles requires nearly 300,000 valid signatures (not less than 20 percent of registered voters) for the Board of Supervisors either to adopt the ordinance at their next regular meeting or to call a special election for voters to consider it. Local initiatives are placed on ballots as “Measure [letter],” such as “Measure U,” as distinct from state propositions, which are assigned numbers. In 2015–16, citizens of 206 California cities considered one or more local ballot measures, 872 in all.³⁰

Conclusion: The Perils and Promises of Hybrid Democracy

The tools of direct democracy—the initiative, referendum, and recall—render California’s government a hybrid type in which citizens possess the power to make or reject laws and elect or eject representatives, one of only 11 states that permit all three.³¹ Yet even among this minority, California’s uncommon brand of direct citizen empowerment sets it apart. From being the first state to legalize medical marijuana to having staged the only modern recall of a governor, California politics is

distinctively different not only because of its hybrid form but also because of the policies and outcomes it has produced.

California's blend of representative and direct democracy gives the people tremendous power to govern themselves, but, ironically, citizens generally do not feel as if they are in control. In an outsized state with a sprawling population, money is a megaphone, and the initiative process favors the well-funded. Whether it's because of the money they can spend to spread their messages across major media markets, the blocs of voters they can mobilize, or the time they can dedicate to campaigning, resource-rich special interests overshadow a process that was established to give voice to the powerless.

The initiative process creates winners who use public authority to establish their version of reform and their vision of "better" policy that reflects their values and interests. It also produces losers who have the right to overcome their opponents by imposing their vision of good government through future ballots, should enough voters agree with them. This give-and-take over time is the essence of political struggle, but in a purely representative democracy, conflicts are harnessed by elected officials and saddled to a lawmaking institution where they are tamed through deliberation and compromise. Because initiatives offer one-size-fits-all solutions and are not open to amendment, direct democracy precludes bargaining and compromise. Unlike bills, which pass through many hands and multiple points where they can be challenged, tweaked, reconsidered, or adjusted to accommodate concerns, the referendum, recall, and initiative take *one* unchanging form that demands merely a yes or no response from voters at *one* point in time. The initiative process in California also unleashes political conflicts to a diverse population where deafening, one-sided arguments are promulgated through social media and paid political advertising. Simple messages and emotional appeals are easier to broadcast across the expanse of California than the nuances and complexities normally associated with lawmaking and policymaking.

Furthermore, neither the initiative nor the referendum lends itself to an integrated set of laws or institutional rules. Thus, new reforms are layered upon prior reforms in California, and newer laws are imperfectly fitted to existing statutes, an incremental process that tends to breed a disordered system of governing. This is a key reason the Golden State's government appears illogical. In fact, state building through the ballot box has proceeded incoherently for decades, often in response to scandals and crises, but often because of voters' hopeful desire for better government.

Even though voters make far fewer decisions at the ballot box than legislators make in a typical morning in the Capitol, the political, fiscal, and social impacts of initiatives and referenda can profoundly upset the status quo—frequently with unintended consequences. Yet direct democracy is sacred in California. Despite the systemic flaws that people see in the initiative process, at least six in ten citizens believe they make better public policy decisions than elected officials do,³² and voters continually reshape their government with the goal of "making things work." California's hybrid democracy doesn't ensure that things will get better or that government will work more efficiently, but direct democracy feeds citizens' hopes that it will. For better or worse, Californians will continue to use direct democracy to restructure their relationships with their government and with each other.

Key Terms

ballot measure: a proposed law or amendment to the state constitution or local charter that appears on an election ballot for the voters' consideration, usually labeled as "Proposition #" or "Measure [letter]." (p. 25)

direct initiative: a citizen-proposed law that requires a vote of the people instead of the legislature to become law. (p. 26)

indirect initiative: a citizen-proposed law that must be first considered by the legislature, which then may adopt it; if not adopted, it will appear on the next election ballot. In California, only *local* initiatives may be enacted through this method. (p. 26)

legislatively referred measure: a proposed state law (statute), constitutional amendment, or bond (ballot measure) that the legislature has passed and that requires voter approval to take effect. (p. 26)

parcel tax: a method of raising local revenues by assessing a characteristic of a property, such as square footage or number of units. (p. 37)

proposition: a proposed state law or constitutional amendment that appears on an election ballot for the voters' consideration; another word for "ballot measure." (p. 26)

recall: an election in which the people may decide to force a sitting elected official from office and replace him or her with a new representative. (p. 36)

referendum: a law passed by a legislature that is subject to the vote of the people and will be invalidated if rejected. (p. 34)

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