

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING
THE INITIATIVE AND REFERENDUM
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**Report of the Joint Subcommittee
Studying the Initiative and Referendum
to
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1980**

To: Honorable John N. Dalton, Governor of Virginia
and
The General Assembly of Virginia

INTRODUCTION

First adopted by Western states, the initiative and referendum were a basic part of the Progressive reform movement that flourished in the early part of this century. Twenty-four states now have provisions allowing the use of one or both of these procedures. (For a list of these states, see Appendix). They have become an integral part of the political structures of many states, but, until recently, have been largely ignored by political scientists and politicians elsewhere.

Widespread interest in the initiative and referendum was renewed by California's famous Proposition 13 of 1977, an initiative which forced a significant tax cut. Much of the impetus for the adoption of the initiative and referendum has come from taxpayer organizations. Several proposals were introduced in the 1979 General Assembly. The Assembly deferred action and established a joint subcommittee to study the question. (See Appendix for authorizing resolution.)

Definitions

The initiative is a method whereby citizens are able to propose legislation, have it placed on the ballot, and enacted into law by a direct vote of the people. The referendum places a measure already enacted into law before the voters for approval. Accompanying the authorization of the use of the procedures are various combinations of petition requirements, minimum vote, and restrictions on subject matter.

The mechanisms are not unknown in Virginia. Several cities have authorization for initiatives and referendums in their charters. The voters must approve any proposed amendment to the Constitution before it can become effective. The General Assembly has passed legislation contingent to its being approved by the voters.

There are compelling arguments on both sides of this issue. In one sense, the debate is a philosophical one. Should the governmental structure remain entirely representative in nature or should some degree of direct democracy be allowed? Regardless of the answer, there are a number of practical considerations which could render the theoretical questions immaterial. The issues are summarized in the form of a debate that is included in the Appendix.

Recommendation

We make no recommendation on the merits of these issues, but request that the General Assembly continue the study for a year. One of the prime reasons for this recommendation is a time factor. Any authorization of a statewide initiative and referendum would require amending the Constitution. Any proposal to amend the Constitution requires a majority vote of two sessions of the General Assembly, with an election for the House of Delegates occurring between the two sessions. Thus, no final legislative action could take place until after the next election for members of the House, which would be the 1982 session. In the past, when the Privileges and Elections Committees have had constitutional amendments referred to them in the even-numbered year sessions, they have carried them over. Consequently it is most likely that any recommendation we might make will not be acted upon during this session. We feel, therefore, it is more sensible for this Subcommittee, which now has the background, to study the matters, rather than a new subcommittee.

Included in the Appendix is a resolution requesting the continuation of the study. We request the concurrence of the General Assembly in this recommendation.

Respectfully submitted,

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APPENDIX

1. Senate Joint Resolution No. 167, 1979, authorizing creation of a subcommittee.
2. List of states with initiative and referendum.
3. Summary of arguments for and against initiative and referendum.
4. Draft resolution requesting continuation.

Appendix 1

SENATE JOINT RESOLUTION NO. 167

Requesting the Committees on Privileges and Elections of the Senate and House of Delegates to study various provisions for the adoption of legislation directly by the people through initiative and referendum.

WHEREAS, with limited exceptions such as referendums on Constitutional amendments and the issuance of State bonds, the Constitution of Virginia vests the legislative power of the Commonwealth in the General Assembly and does not provide any initiative or referendum mechanism for direct legislative action by the people; and

WHEREAS, various proposals to authorize such direct legislative action have been introduced in recent sessions of the General Assembly; and

WHEREAS, twenty-one states now provide in their constitutions for initiative measures and a greater number have some provision for referendums to approve legislation and significant issues have been addressed in recent years through such direct legislation; and

WHEREAS, substantial and complex policy and procedural issues must be considered to evaluate these proposals and their potential benefits or drawbacks for Virginia; and

WHEREAS, careful study of the provisions of other states, their scope, the petition requirements involved, the role of the legislature in previewing or amending legislation adopted directly by the people, and the actions taken through initiative and referendum in other states in recent years should precede any action by the General Assembly on these issues; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Committees on Privileges and Elections of the Senate and House of Delegates are requested to study the merits for Virginia of provisions for the adoption of legislation directly by the people through initiative and referendum. The chairman of each committee is requested to appoint three members of his committee and two citizens of the Commonwealth to form a subcommittee for this study. The Committees are requested to review the subcommittee's findings and recommendations and to submit their findings and recommendations to the nineteen hundred eighty General Assembly.

Appendix 2

States Which Have Adopted

Some Form of the Initiative and Referendum

Alaska	Montana
Arizona	Nebraska
Arkansas	Nevada
California	North Dakota
Colorado	Ohio
Florida	Oklahoma
Idaho	Oregon
Illinois	South Dakota
Maine	Utah
Massachusetts	Washington
Michigan	Wyoming
Missouri	

Also: District of Columbia

Appendix 3

A Summary Presentation of the Arguments Regarding the Initiative and Referendum

Affirmative

The initiative process is a logical extension of the underlying political philosophy of this country. It allows the people, the ultimate source of sovereignty, to decide for themselves if they will be governed by a particular law. It is the most direct and pure method of determining the will of the people.

In recent years, many citizens of this country have come to feel that their government and elected officials are not being properly responsive to the popular will. Participation in elections is sometimes not enough to dispel this alienation. Election campaigns seldom confront issues directly. Because campaigns are primarily concerned with creating an image which stresses personality and other peripheral issues, the voter often does not know and cannot determine where the candidates stand on issues of importance to him. After the candidate is elected, he is subjected to intense lobbying by special interest groups. There is no one to represent the general public. Legislation favored by the public, but opposed by one or two well-financed interest groups, is all too often either killed or weakened to the point of uselessness.

By using the initiative, citizens can avoid this frustration of their will on important issues. Instead of being confronted by candidates who emphasize personality and image and are deliberately vague on issues, citizens can vote directly on the issue itself. There is no danger of the legislation being watered down later on in another house or in conference committee. There are no compromises to be made. The issue is before them, to be voted up or down. The people have the final say, not their representatives, who may or may not be responsive.

Allowing citizens to vote directly on laws encourages a public debate that does not normally occur in the representative system. Through this debate, citizens become better educated and, hence, better citizens. Through this process of education, they participate more in public affairs and feel that their participation is effective.

Negative

This country's government never has been established on the premise of direct democracy. It is a representative government, based on the theory that the people should elect their lawmakers, always retaining the power to oust them from office by way of periodic elections if their actions did not please the citizens they represented.

The objections to the use of the initiative can be classified in two categories, theoretical and practical. First of all, the legislative process is the best method for lawmaking in a large society. The members of a legislature represent a diverse group of citizens, whose interests vary from regional, racial, religious, economic, sex, and occupational perspectives, among others. Even the most carefully drawn piece of legislation may have unforeseen consequences for one or more other groups represented in the legislature. Ideally, the legislative process provides a forum for working out a compromise in which the original purpose of the legislation is best preserved and any negative effects on others are eliminated as far as possible. Absolutes are avoided, the interests of all groups are protected. In addition, through the give and take, language is clarified, frivolous proposals are dealt with summarily and constitutional objections are met.

On the other hand, initiatives do not provide the opportunity to correct poorly worded proposals. The voter may approve of the basic idea embodied in the initiative, but may wish to see a more precise or different phrasing. But he cannot change it. He must vote "yes" or "no". There is no improving the phraseology, no working out of a minor problem or two.

The second theoretical argument is related to the first, but addresses the problem of minorities in a much more basic way. One fundamental principle of our system is the protection of minorities from the majority. This is built into the whole system through an elaborate system of checks and balances. The initiative could well circumvent these checks and subject a minority to the emotional

prejudices and self-interests of the majority. It is hoped that representatives, insulated somewhat with a term of office, will put national or larger interests above those of their individual constituents.

There are numerous practical objections to the initiative. There is likely to be a flood of issues on the ballot, many of them frivolous. Many voters will simply not vote on the initiative questions, because of fatigue, apathy or ignorance. Thus, the issue will be decided by only a minority of the people, those who have a special interest in the outcome. In the legislature, all the voters are represented on every issue.

Another problem is that many potential issues in our society are complex and the average voter does not have the time nor the knowledge to responsibly decide these issues. It is an easy matter to cut taxes. It is much more difficult to decide where to cut spending accordingly. Tax reform, insurance regulation, control of the manufacture of dangerous substances, and rejuvenation of urban areas are just a few of the many difficult subjects needing expert consideration and which are not suitable for the simplistic solutions which the initiative process tends to provide.

Furthermore, surveys have repeatedly shown that the people have an abysmal lack of knowledge about the political process. Voters don't know either who their legislators are or their stand on issues, nor do they demonstrate a good grasp of the issues themselves. It would be irresponsible to trust such a poorly informed electorate with the power to act on legislation.

As a result of these characteristics of the electorate, the initiative process could easily fall prey to special interest groups who would use it to enact legislation conferring upon them special privileges which they could not get from the legislature, such as complex tax breaks for businesses or enhancement of union power.

There is a serious question as to whether the outcome of an initiative election truly represents the will of the people, or whether it actually represents the triumph of the side able to raise the most money. In some states, a whole industry has arisen for the purpose of passing initiatives. It ranges from firms which guarantee, for a price, sufficient petition signatures to qualify a question for the ballot to the advertising firms which conduct the actual campaign. Because of the recent Supreme Court decision prohibiting limits on corporate spending on ballot questions, corporations are now free to spend enormous amounts of money on initiative questions of concern to them, and they have done so.

Affirmative Rebuttal

The initiative would not replace the legislature. It would augment it, being brought into the political process only when the legislature failed to fulfill its role of representing the people. The experience of nearly half the states bears out the responsible role initiatives have played. A number of long-lasting reforms were passed by initiatives, among them: abolition of the poll tax, women's suffrage, workmen's compensation, liberalization of liquor laws, creation of state civil service systems, and coastline protection. All of these were passed by initiative only after the legislature had repeatedly turned them down. Because they sometimes become too subjected to the influence of special interests, the legislatures forget whom they represent.

It is certainly true that the legislative process encourages compromise and that legislators strive to accommodate disparate interests. This is precisely the situation that the people need to counter through the use of the initiative. There are times when the legislature compromises too much and accommodates too many people.

Also, experience of other states contradicts the frivolity charge. Research has shown that less than one-fourth of the initiatives formally filed have gotten enough signatures to even qualify for the ballot. A high enough minimum number of signatures would also serve to discourage all but the most serious aspirants for an initiative. Besides, legislatures have been known to pass frivolous laws from time to time.

Neither has there been a flood of issues. In the more than seventy-five years states have used the initiative, only slightly more than 1200 popular initiatives have appeared on the ballots of the twenty-three states now using it. A legislature considers more bills than this in a single session. Furthermore, only thirty-six per cent of the issues on the ballot were approved by the voters. The initiative certainly has not produced a rash of new legislation.

The arguments regarding ignorance and participation do not stand up either. There has not been extensive research on these questions, but that which does exist shows that voters participate in proposition elections at about the same rate as they did in elections for state officials other than governor. In some cases, more people voted on the questions than voted for candidates. Opinion surveys also have shown that voters have a greater awareness of the issues on the ballot than they do of the candidates for state legislatures.

As for the argument citing the inability of the populace to grasp technical and complex issues, this is a patronizing attitude and demonstrates a basic lack of faith in the population at large. In any event, it is hoped that every legislator will not claim that he knew the content of every bill on which he voted, much less that he fully understood each bill. If, indeed, citizens are unaware of the complexities of legislation, initiatives can serve as a means of educating them. Citizens will no longer have the luxury of criticizing the legislature. With an initiative, the responsibility for the outcome would fall on the voters and they would find it necessary to inform themselves.

It has not been demonstrated that special interests have been able to use the initiative to gain privileges for themselves. On the contrary, special interests more often are the target of initiatives which seek to strip from them privileges conferred by the legislature. The special interests seem to prefer to work in the legislative process. An example of such an initiative would be Colorado's 1976 tax reform package which sought to repeal the state sales tax on food and replace it with increased corporate taxes and a mining tax.

It is true that in most initiatives the side with the most money won. But this fact does not necessarily mean the better-funded side won solely because it was better funded. Analyses often show that other factors were present. Those who complain about being outspent never seem to consider the possibility that their position simply was not popular with most of the voters. Also, there have been significant instances in which one side was outspent, but nevertheless won—the California Coastal Conservation initiative, for example.

But, assuming that money is a controlling factor, it is not a problem inherent in the initiative process nor unique to it. Proposition elections can be publicly financed so that each side of an initiative would be guaranteed a minimum amount of funds adequate to communicate its messages to the voters. Furthermore, if superior financing is the controlling factor in initiative elections, the same axiom holds true in candidate elections, making elected representatives the products of well-funded interests.

Negative Rebuttal

Much has been made of the educational value of the public debate created by an initiative. Such a notion sounds attractive and would indisputably be a positive factor, if it occurred. Looking at case studies, however, one must question the quality of the public debate.

For the most part, proponents and opponents in modern initiative campaigns rely on the fact that our society is oriented to television and advertising. Detailed studies of some initiatives have shown that the "public debate" consisted primarily of spot commercials, cleverly produced ads, and sloganeering. In-depth analysis of the substance of the issues by the news media was largely absent. It is not good policy to have an important issue decided on the basis of who has the best ads.

The citizens of this state have a legislature that is responsive to its desires. The legislature has also acted responsibly in considering legislation which is best for the entire state, not just a bare majority. If the legislators are not responsive and responsible, the people have ample opportunity through frequent elections to turn them out of office.

Appendix 4

SENATE JOINT RESOLUTION NO.....

Requesting the Committees on Privileges and Elections of the Senate and House of Delegates to continue its study of the initiative and referendum.

WHEREAS, the nineteen hundred seventy-nine Session of the General Assembly requested a study of the merits of Virginia adopting the initiative and referendum; and

WHEREAS, any recommendation embodying the initiative and referendum on a statewide basis would require a Constitutional amendment, final legislative action on which could not take place until nineteen hundred eighty-two; and

WHEREAS, the issues associated with initiative and referendum are basic to the structure of government and there would be no advantage in submitting recommendations at this time; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Committees on Privileges and Elections of the Senate and House of Delegates are directed to continue their study of the merits of the initiative and referendum. The joint subcommittee previously established shall continue in existence with any vacancy being filled in the manner of the original appointment. The subcommittee shall submit its findings and recommendations to the nineteen hundred eighty-one General Assembly.

