

# Legislature Resists Initiative System Reform

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SACRAMENTO — Changes in California's cherished 77-year-old initiative system have been proposed repeatedly in the state Legislature in recent years — and just as repeatedly rebuffed by lawmakers loathe to tinker with the hallowed right of citizens to play a direct role in making laws.

With contributions to campaigns for and against the 29 statewide propositions on last Tuesday's ballot exceeding \$130 million, according to state disclosure records, critics of the current initiative system say the original intent of the initiative has been destroyed by the influence of special-interest dollars on the process, from signature-gathering to campaign advertising.

But despite the glut of initiatives on the

November ballot — and the enormous expense associated with them — California election law experts say any changes in the system during the coming session are unlikely.

One key legislative staffer who asked not to be identified put the odds of substantive initiative reform at "somewhere between zilch and zilch" during the upcoming 1989 legislative session. Other critics say significant legislative changes in the initiative process are stymied by philosophical concerns as well as partisan differences. "Senate Republicans look at every proposal as some kind of Democratic Trojan Horse," said one top Democratic aide.

The just-concluded 1987-88 legislative session saw a spate of proposals to change the initiative system — ranging from more comprehensive legal review to requirements that both "pro" and "con" ar-

guments be placed on petitions for gathering signatures. Most failed in the Legislature, although the pro-con bill, by Sen. Gary Hart, D-Santa Barbara, was passed by the Legislature but vetoed by Gov. George Deukmejian.

"You can divide the reforms into two groups," said Tim Hodson, principal consultant to the Senate Elections Committee headed by Sen. Milton Marks, D-San Francisco. "One would address abuses in the current system and improve it, such as requiring initiative proponents to disclose the sources of their money on the same basis as candidates must or to give voters more information at an earlier stage [such as] the pro-con arguments on initiative petitions, which parallels existing law on recall petitions.

"The other category of reform proposals would be more of a fundamental change, such as the League of Women

Voters' proposal for an indirect initiative [carried unsuccessfully last year in the Legislature by Hart as Senate Constitutional Amendment 22]," Hodson added. "The goal of those proposals would be to say that the original intention of the initiative was to give the people the power to break the political control of special interests. Now, how many of the 29 initiatives [on the November ballot] could have been called popular, that qualified [for the ballot] without the help of any special interests?"

Created in 1911 by former Gov. Hiram Johnson as a means for citizens to directly impact lawmaking, the California initiative increasingly has become the tool of moneyed special interests who spend vast sums to create and then push an initiative proposal to the electorate. Often such measures are poorly drafted and face

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years of litigation and judicial review before they can be implemented. After judicial review, many never are never implemented.

"Ask almost any California political science specialist what's wrong with the state's governmental system today, and the answer will be that the initiative process is out of control," wrote longtime California political editor Ed Salzman, editor of the statewide political journal, "Golden State Report," in a recent analysis.

Salzman said Johnson would hardly recognize his creation today.

"Johnson, the proud Progressive papa, saw voter control over legislation as a means of curbing the power of the Southern Pacific Railroad, which was then at the throttle of the governmental locomotive in Sacramento," Salzman wrote. "How could Johnson have guessed that, 77 years later, the initiative would be more popular than ever? It is virtually an industry, but one that hardly represents the interests of the masses against the moneyed elite.

"This November's ballot shows clearly who uses the initiative — economic interests against one another, consumer organizations against the moneyed groups and public officials who have failed to get their way through representative government," Salzman wrote.

As originally envisioned by Johnson, said Hodson of the Senate Elections Committee, poorly drafted initiatives wouldn't make it to the ballot. The original framers of the initiative process in California, Hodson said, "all argued that no special interest would ever be able to qualify an initiative — that the real debate would take place during the qualification process, that there would have to be public debate up and down the state, that flawed initiatives would be identified early on and people would refuse to sign.

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— JOE CAVES,  
ASSISTANT TO STATE SEN. GARY HART

"Clearly," Hodson added, "anybody can buy qualification now. Although it would help to have the Hart pro-con [arguments on petitions] — and a pre-qualification legal review might help — as long as you have a system where insurance companies can simply decide they will spend \$60 million to buy themselves a couple of initiatives, they're going to be able to do it."

The number and complexity of initiatives on the November ballot prompted intense criticism of the process — but no unified proposals for change. All but one of the five insurance-related initiatives on the ballot — which accounted for the lion's share of spending on initiatives — failed, placing the matter once again in the unwilling lap of the state Legislature, which consistently has demonstrated its inability to enact viable changes in the state's laws governing insurance companies.

Legislative experts say the failure of the insurance initiatives may mean that voters were generally knowledgeable — and paid little attention to campaign rhetoric.

"These things are always conducted at two levels," said senior assistant attorney general Eugene Hill, whose government section in the attorney general's office must write titles and summaries for all

initiatives. "There are the official ballot materials, and then there is the campaign stuff. You never know to what extent campaign literature overrides the more technical, dry, more complete kind of data in the more official channels.

"In this case it looked like the [official] material did receive their attention — although it's hard to say, with the length of the ballot, what they read and consider," Hill said. "Certainly, the voters reacted in a fairly sophisticated way to the measures that they were faced with."

Hill's boss, Attorney General John Van de Kamp, supported [and helped write] Proposition 100, among the insurance initiatives that did not pass, and was part of an attempt to forge a legislative compromise last year to forestall a campaign over insurance initiatives. Van de Kamp long has favored changes — primarily through improved legal review — in the way initiatives reach voters.

In a 1986 address to the State Bar of California, the attorney general reiterated a theme he began early in his administration — that the initiative system needs improvement.

"Note that I said improve, not abolish," Van de Kamp said, adding that he is "a staunch defender of the initiative process, in theory [and] in practice."

Citing legislative "paralysis" on cer-

tain critical issues, Van de Kamp said the initiative is used, often poorly, to accomplish what should be a legislative chore.

"The initiative is a necessary corrective," he said, "a salutary reminder that in California the people rule." And, he said, it has become "an easy mark for popular prejudice, a frequent victim of sloppy draftsmanship and deceptive arguments, and a very blunt instrument for making law on complicated issues."

Long advocating more precise legal review of initiative petitions before they reach the ballot — thus perhaps preventing protracted litigation — the attorney general suggested in the State Bar speech that petitions be submitted to the legislative analyst for review of possible legal pitfalls.

After normal circulation of petitions, Van de Kamp suggested all initiatives automatically be submitted to the Legislature for action. If adopted "as is" by the Legislature, a campaign would be unnecessary. If not adopted, the measure would proceed to the ballot as an initiative.

"This part of the process would be very similar to the indirect initiative repealed by California voters in 1966," the attorney general said. "However, the indirect initiative was optional and rarely used. As a mandatory procedure, it would guarantee that key issues and drafting problems are thoroughly reviewed before being written into law."

Van de Kamp said such a process "might be marginally slower than at present. But it would dramatically improve the standard of drafting, and would lead to much greater clarity of purpose — which is, or should be, at the heart of the initiative process."

Hill said "it's too early" to say whether the attorney general will sponsor or support legislation in the upcoming

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session to change the initiative process.

Joe Caves, legislative assistant to Sen. Hart, who has sponsored various initiative reform measures in past sessions, said he is unsure whether Hart will sponsor any new measures.

"We've tried twice and failed both times," said Caves. "The Legislature has just not been willing to consider initiative reform. Politicians feel if they mess with the initiative process they will suffer the wrath of the voters."

Hodson said more precise legal review of initiatives might well improve the process, but noted drawbacks to such a proposal.

"Clearly, very few initiatives survive intact without significant judicial review," he said. "Such a [prior legal] review would in theory produce better written initiatives and improve the process. The drawback is that I don't think you could ever force a proponent to submit to legal review. Whoever makes that determination — the attorney general, the secretary of state, the man in the moon — would still be second-guessing the courts."

A key mover in efforts to change the initiative process in California has been the League of Women Voters, which sponsored a 1984 study (now in book form, "A Legacy Lost") which cited lack of voter access to information and ambiguity in the initiatives as two of the areas that need improvement.

League lobbyist Margaret Herman said a Field poll of the League's conclusions found widespread public support for changes in the process. "But that did not translate into votes in the Legislature," she said, on a variety of League-sponsored or recommended bills that did not survive the 1987-88 legislative session.

Herman expressed skepticism that the Legislature "will be any further moved to do something about the process simply because the electorate is concerned."

Legislative analyst Hodson expects new initiative-related measures — or recycled old measures — will be introduced this session. "I would anticipate a number of bills would be introduced to address the procedural questions, and we may be able to enact some of those. But I would not anticipate passage of any fundamental changes."

"As long as there are very wealthy special interests who think they can put on the ballot, from their viewpoint, a 'pure' solution, as long as there are special interests who will spend the money, you will have a proliferation of initiatives and no amount of procedural changes," Hodson added. "If they're willing to spend \$60 million, they will qualify and put something on the ballot. Once they decide that's not a viable solution, then there will be more of an inclination to accept the restrictions [inherent] in a legislative solution."

"The Legislature has many sins and inertia is one of them," he said. "Clearly, there are times when we have not acted as fast as we should have, although legislatures by their very nature are not supposed to act fast. But some of the blame has to lay at the feet of the outside parties. I'm not sure we will see the same rush to the initiative process by the organized economic interests that we saw this year, because they lost."

"I think there are some political managers and consultants who were being called on the carpet Wednesday morning," Hodson said, "to explain to insurance executives why they spent \$60 million."