



**CITIZENS RESEARCH COUNCIL
OF MICHIGAN**



**REFORM OF MICHIGAN'S
BALLOT QUESTION PROCESS**

JANUARY 2014

REPORT 386

**CELEBRATING 98 YEARS OF INDEPENDENT, NONPARTISAN
PUBLIC POLICY RESEARCH IN MICHIGAN**

BOARD OF DIRECTORS

Chair

Jeffrey D. Bergeron

Jeffrey D. Bergeron

Ernst & Young LLP

Michael G. Bickers

PNC Financial Services Group

Beth Chappell

Detroit Economic Club

Terence M. Donnelly

Dickinson Wright PLLC

Randall W. Eberts

W. E. Upjohn Institute

Sherrie L. Farrell

Dykema Gossett PLLC

Eugene A. Gargaro, Jr.

Manoogian Foundation

John J. Gasparovic

BorgWarner Inc.

Ingrid A. Gregg

Earhart Foundation

Vice Chair

Terence M. Donnelly

June Summers Haas

Honigman Miller Schwartz and Cohn LLP

Marybeth S. Howe

Wells Fargo Bank

Nick A. Khouri

DTE Energy Company

Daniel T. Lis

Kelly Services, Inc.

Christine Mason Soneral

ITC Holdings Corp

Kristen McDonald

The Skillman Foundation

Michael P. McGee

Miller, Canfield, Paddock and

Stone PLC

Aleksandra A. Miziolek

Dykema Gossett PLLC

Paul R. Obermeyer

Comerica Bank

Treasurer

Aleksandra A. Miziolek

Brian Peters

Michigan Health & Hospital Association

Kevin Prokop

Rockbridge Growth Equity, LLC

Jay Rising

Detroit Medical Center

Kelly Rossman-McKinney

Truscott Rossman

Jerry E. Rush

Meritor, Inc.

Candee Saferian

PVS Chemicals, Inc.

Terence A. Thomas, Sr.

Thomas Group Consulting, Inc.

Kent J. Vana

Varnum

Theodore J. Vogel

CMS Energy Corporation

ADVISORY DIRECTOR

Louis Betanzos

BOARD OF TRUSTEES

Chair

Eugene A. Gargaro, Jr.

Terence E. Adderley

Kelly Services, Inc.

Jeffrey D. Bergeron

Ernst & Young LLP

Stephanie W. Bergeron

Walsh College

Beth Chappell

Detroit Economic Club

Richard T. Cole

Michigan State University

Mary Sue Coleman

University of Michigan

Brian M. Connolly

Oakwood Healthcare, Inc.

Matthew P. Cullen

Rock Ventures LLC

Tarik Daoud

Long Family Service Center

Stephen R. D'Arcy

Detroit Medical Center

Richard DeVore

PNC Bank

Terence M. Donnelly

Dickinson Wright PLLC

John M. Dunn

Western Michigan University

David O. Egner

Hudson-Webber Foundation

New Economy Initiative

David L. Eisler

Ferris State University

David G. Frey

Frey Foundation

Mark T. Gaffney

Eugene A. Gargaro, Jr.

Manoogian Foundation

Ralph J. Gerson

Guardian Industries Corporation

Eric R. Gilbertson

Saginaw Valley State University

Allan D. Gilmour

Wayne State University

Alfred R. Glancy III

Unico Investment Group LLC

Thomas J. Haas

Grand Valley State University

David S. Haynes

Northern Michigan University

James S. Hilboldt

The Connable Office, Inc.

Paul C. Hillegonds

DTE Energy Company

Daniel J. Kelly

Deloitte. Retired

David B. Kennedy

Earhart Foundation

Mary Kramer

Crain Communications, Inc.

Gordon Krater

Plante & Moran PLLC

David Leitch

Ford Motor Company

Edward C. Levy, Jr.

Edw. C. Levy Co.

Daniel Little

University of Michigan-Dearborn

Alphonse S. Lucarelli

Ernst & Young LLP, Retired

Sarah L. McClelland

JPMorgan Chase & Co.

Aleksandra A. Miziolek

Dykema

Glenn D. Mroz

Michigan Technological University

Mark A. Murray

Meijer Inc.

James M. Nicholson

PVS Chemicals

Don R. Parfet

Apjohn Group LLC

Philip H. Power

The Center for Michigan

Keith A. Pretty

Northwood University

John Rakolta Jr.

Walbridge

Douglas B. Roberts

IPPSR- Michigan State University

Milt Rohwer

George E. Ross

Central Michigan University

Gary D. Russi

Nancy M. Schlichting

Henry Ford Health System

John M. Schreuder

First National Bank of Michigan

Lloyd A. Semple

University of Detroit Mercy

School of Law

Amanda Van Dusen

Miller, Canfield, Paddock

and Stone PLC

Kent J. Vana

Varnum

Theodore J. Vogel

CMS Energy Corporation

Gail L. Warden

Henry Ford Health System,

Emeritus

Jeffrey K. Willemain

Deloitte.



CITIZENS RESEARCH COUNCIL OF MICHIGAN



REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

JANUARY 2014

REPORT 386

CITIZENS RESEARCH COUNCIL OF MICHIGAN

MAIN OFFICE 38777 Six Mile Road, Suite 208 • Livonia, MI 48152-3974 • 734-542-8001 • Fax 734-542-8004
LANSING OFFICE 124 West Allegan, Suite 620 • Lansing, MI 48933-1738 • 517-485-9444 • Fax 517-485-0423

CRCMICH.ORG



REFORM OF MICHIGAN’S BALLOT QUESTION PROCESS

Contents

Summary	v
Introduction	1
First Amendment Issues	2
Constitutional Revision, Amendments, Initiatives, Referendums	3
Number of Ballot Issues	4
Ballot Issues by Year	4
Ballot Issues by Type	5
Approval Rate of Ballot Issues by Types	6
Legislatively Initiated Ballot Questions	7
Legislatively Generated Constitutional Amendments	7
Ease of Proposing Legislatively Generated Constitutional Amendments	7
Legislative Referendum	13
Recap	13
Voter-Initiated Ballot Questions and Voter Referendums	14
Initiated Ballot Questions by Year	14
50 State Comparison	15
Initiated Constitutional Amendments	15
Ease of Initiating Constitutional Amendments	18
Initiated Statutes	22
Ease of Initiating Statutes	24
Voter Referendum	28
Ease of Calling for Voter Referendum	28
Should Michigan’s Provisions for Direct Democracy be Changed?	32
Narrow Differences in Thresholds	32
A Changing World	33
Geographic Diversity	33
Who Benefits from Longer Collection Periods?	34
Laws Affecting Petition Circulators	35
Residency and Registered Voter Requirements	36
Age Requirements for Petition Circulators	36
Disclosing Paid or Volunteer Status	37
Petition Circulator Compensation Laws	38
Witness and Affidavit Requirements	41
Other Petition Circulation Laws	42
Reform Possibilities	43
Informed Petition Signers	44
Misinforming Petition Signers	44
Responsibilities of Self-Government	45

CRC REPORT

Making Citizens Informed Petition Signers	45
Ballot Measure Summary Statements and Fiscal Statements	46
50-State Review of Official Voter Guides	47
Petition Certification Processes	50
The Board of State Canvassers	52
Front-Loaded vs. Back-Loaded Processes	57
Recommendations	60
Campaign and Electioneering Reform	63
Truthfulness in Campaigns	63
Recommendation	63
Disclosure of Funding	64
Recommendation	69
Vote Requirements	70
Does it Matter?	72
Conclusion	75
Appendix A: Proposed Amendments to the Constitution of 1963 —	
Summary of Adoption or Rejection	77
Appendix B: Proposals to Initiate Laws	85
Appendix C: Referenda on Legislation Enacted By the Legislature, 1964-2012	87
Appendix D: State comparison of voter guide components	90

Tables

Table 1	Summary of State Requirements for Constitutional Amendments	9
Table 2	Requirements to Qualify Voter-Initiated Constitutional Amendments for Ballot by State	20
Table 3	State Signature Requirements by Number and Percentage of Registered Voters and Voting Age Population to Qualify Voter-Initiated Constitutional Amendments for the Ballot	21
Table 4	Requirements to Qualify Voter-Initiated Statutes for Ballot by State	26
Table 5	Signature Requirements to Qualify Voter Referendum for Ballot by State	29
Table 6	Voter Guide Features State Findings	48
Table 7	Summary of Pre-Circulation Review Processes by State	59
Table 8	Venue for Challenges to Proposed Initiatives and Referendums	61
Table 9	Summary of State Requirements of Vote Requirements for Constitutional Amendments	71
Table 10	Number of Constitutions, Date Adopted, Number of Amendments by State	74

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Charts

Chart 1	Michigan Ballot Questions by Year, 1964-2012	4
Chart 2	Types of Ballot Questions Submitted to Michigan Electors, 1964-2012	5
Chart 3	Approval Rate of Michigan Ballot Questions, 1964-2012	6
Chart 4	Michigan Ballot Questions Submitted by Petition Process, 1964-2012	14
Chart 5	Number and Success of Initiatives by State	17
Chart 6	Maximum Time Period for Circulating Initiative Petitions by State	27
Chart 7	Maximum Time Period for Circulating Referendum Petitions in Each State	31

Maps

Map 1	The Ease/Difficulty for Each State's Legislature to Place Proposed Constitutional Amendments on the Ballot Compared to the Process in Michigan	7
Map 2	Legislative Majorities Required to Place Constitutional Amendments on the Ballot	8
Map 3	States in Which Consideration in Two Legislative Sessions is Required to Submit or Adopt Constitutional Amendments	11
Map 4	Authority for Citizens in Each State to Initiate Statutes and Constitutional Amendments or Petition for Referendums	15
Map 5	The Ease/Difficulty for Voter-Initiated Constitutional Amendments to Qualify for the Ballot by State Relative to the Requirements in Michigan	18
Map 6	Direct or Indirect Initiative Processes in States that Authorize Voter-Initiated Constitutional Amendments	19
Map 7	State Requirements for Signatures to be Gathered on Statewide or County Petitions	22
Map 8	The Ease/Difficulty for Voter-Initiated Statutes to Qualifying for the Ballot by State Relative to the Requirements in Michigan	24
Map 9	Direct or Indirect Processes in States that Authorize Voter-Initiated Statute	25
Map 10	Statewide Authorization for Voter Referendum	28
Map 11	The Ease/Difficulty for Voter Referendums to Qualifying for the Ballot by State Relative to the Requirements in Michigan	28
Map 12	Statewide Voter Referendum: States with Restricted Subject Matter	30
Map 13	States that Require Petition Circulators to be Residents of that State	36
Map 14	State Restrictions Regarding Petition Circulators' Age	37
Map 15	States that Require Circulators to Disclose Paid or Volunteer Status	37
Map 16	State Provisions Limiting, Prohibiting, and Allowing Payment-Per-Signature of Petition Circulators	38
Map 17	State Requirements for Witnessing Signatures	41

CRC REPORT

Map 18	States with Statutes that Prohibit Unethical Behavior by Petition Circulators	42
Map 19	States' Requirements on the Creation of Pamphlets or Websites for Ballot Information	46
Map 20	Ballotpedia's Rankings of State Official Voter Guides	49
Map 21	States that Require Application to Petition for Law Changes	52
Map 22	Statewide Initiatives: States with Restricted Subject Matter	58
Map 23	State Requirements for Reporting Financial Contributions	64

Figures

Figure 1	Chronological Listing of State Adoption of Initiative and Referendum	16
----------	--	----

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Summary

CRC has examined the laws and processes for placing ballot questions before the voters in Michigan to examine the roots of dissatisfaction some may feel and in search of reforms that may restore the confidence in government. A plethora of ballot questions in recent elections, heavy reliance on constitutional amendments instead of statutory changes, frequent court challenges to the proposals, and issue advertising that leaves voters not quite certain about the implications of their votes all combine to create an uneasiness at election times.

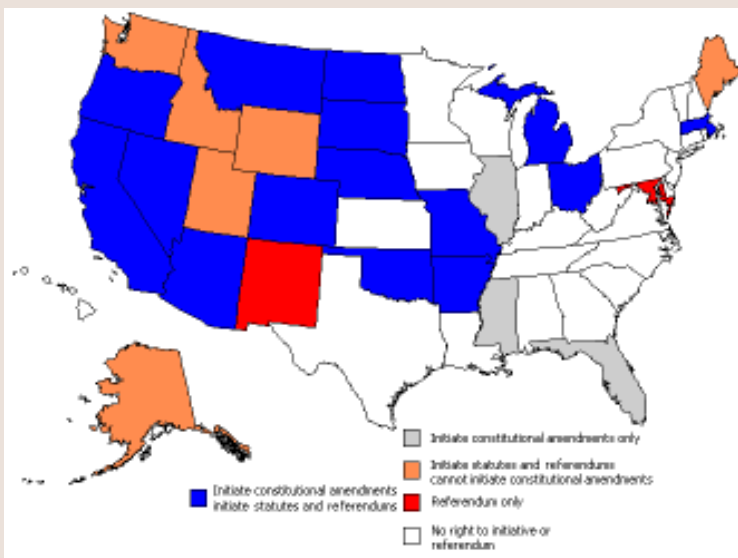
Like almost every other states, votes are asked to approve constitution amendments proposed by the legislature. The legislature occasionally asks voters to approve legislative matters, usually related to the issuance of state debt. Michigan is one of 15 states that authorize electors to use the initiative for constitutional amendments and statutes and to call for referendums on enacted laws (See **Map A**).

While the six ballot questions posed to electors at the November 2012 election seemed like a lot, **Chart A** shows that Michigan electors were asked to vote on 11 ballot questions in 1978. Additionally, Michigan electors were asked to vote on eight questions apiece in 1968 and 1972, and seven questions apiece in 1980 and 1982. Michigan electors also voted on six ballot questions in 1994, 1996, and 2002. Five ballot questions were voted on in 2006. Thus, while some discontent with the ballot question process may arise because of the number of questions on the ballot in 2012, Michigan electors have had years where they were asked to vote on a higher number of questions.

The degree of difficulty for placing ballot questions before the electors in Michigan relative to other states varies by the type of question. Most of the ballot questions that have appeared on the Michigan ballot since the present Michigan Constitution was adopted in 1963 have been constitutional amendments proposed by the legislature. The process the Michigan legislature uses to place these proposed amendments before the voters is not out of line when compared to that used in other states. While the two-thirds majority vote requirements needed in each house of the Michigan legislature are among the most stringent, several states require legislative votes to occur in two legislative sessions before a proposed constitutional amendment can be presented to the voters.

The second highest number of ballot questions has been constitutional amendments that have been placed on the ballot by initiatory petitions. It is relatively easy for petition circulators to qualify proposed constitutional

Map A
Authority for Citizens in Each State to Initiate Statutes and Constitutional Amendments or Petition for Referendums



amendments for the ballot in Michigan. The process for citizen-initiated constitutional amendments to qualify for the ballot in Michigan is a direct initiative, a petition with sufficient signatures is qualified for the ballot: the legislature does not play a role in the process. The circulation period is relatively short, but Michigan law does not require an exceptionally high number of signatures to qualify for the ballot, nor are ballot question proponents required to obtain geographic diversity among the petition signers. Michigan uses statewide (as opposed to county) petitions, which makes the circulation process simpler.

Likewise, it is relatively easy to qualify voter referendums for the ballot in Michigan when compared to the other states that authorize referendums. Michigan does not require a high number of signatures, does not require geographic diversity for the signatures, and collects the signatures on statewide petitions.

It is easier to qualify petition-initiated statutory changes for the ballot in half of the states in which these measures are authorized, but harder in the other half of those states. However, the issue is not how hard or easy it is to qualify for the ballot in Michigan relative to other states, but the degree of difficulty between initiated constitutional amendments and initiated statutory changes in Michigan. The minor differences in signature requirements between initiated constitutional amendments and initiated statutes leaves ballot question proponents little incentive to seek statutory change when a constitutional amendment will provide more permanence.

For all of these petition-initiated measures, state policymakers in Michigan may also wish to consider whether advances in communication, transportation, and political engagement have made it significantly easier to reach the threshold amounts of signatures needed to qualify for the ballot compared to the dif-

ficulty when these tools of direct democracy were authorized a century ago.

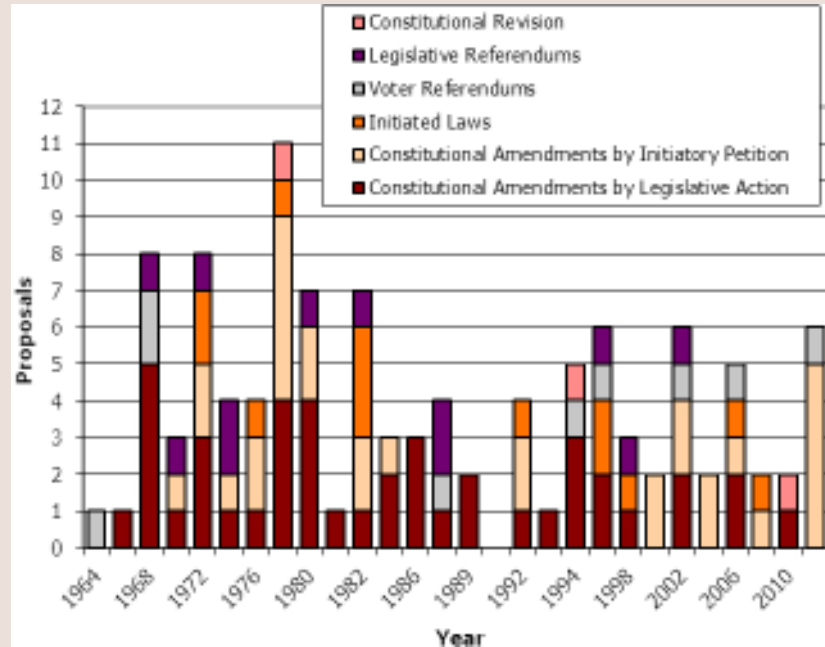
Ballot Question Qualification Process

Each state has established laws relating to the qualifications of people eligible to circulate petitions.

The initiative and referendum are often viewed as legislative powers retained by the people to make laws or undo enacted laws outside of those legislative bodies. The existence of a cottage industry that pays individuals to solicit petition signatures would suggest that the powers of initiative and referendum that were retained from the legislature often is not being used exclusively by the people in “grassroot” efforts, but also by those with the resources to fund a petition circulating effort.

States have made efforts to identify, restrict, and regulate paid petition circulators throughout the years, but those efforts seemed to have increased in recent years. Those state efforts have included provisions that:

Chart A
Michigan Ballot Questions by Year, 1964-2012



Source: Michigan Manual

- require petition circulators to be registered voters of the states in which they are circulating petitions;
- require petition circulators to be of a minimum age;
- require paid petition circulators to be identifiable to differentiate them from voluntary petition circulators; and
- restrict how proponents backing a signature gathering effort compensate the paid petition circulators.

A review of the legal history related to those restrictions and regulations shows that there is room for them in the ballot question process. However, the restrictions and regulations have the best chance of surviving a First Amendment challenge when the states can produce evidence justifying the restrictions and regulations as a necessary remedy for fraud and abuse in the petition process and when the contestants cannot demonstrate that they are significantly burdened in their ability to gather signatures.

Thus, the first question to Michigan policymakers that may seek to impose restrictions and regulations on paid petition circulators is, "What is being remedied?" While signatures on petitions are routinely disqualified when petitions are submitted, Michigan has little history of paid petition circulators acting to fraudulently gather signatures for the sake of enhancing their compensation.

If policymakers can establish that there is a policy problem in need of being addressed, they must then answer whether the impingement on the freedom of speech of the issue proponents and petition circulators is justified by the proposed remedies.

Informed Petition Signers

Before Michigan policymakers add more restrictions and regulations to those people circulating petitions, it is worth asking if blame for the ills of Michigan's petition initiation process may be misplaced. In an effort to save us from ourselves, some may attempt to limit the ability of proponents to pay petition circulators and to better notify potential petition signers of the professional efforts behind the cause. Such actions would seem to be based on the precept that

people would not sign petitions but for the aggressive actions of circulators and misinformation perpetuated about the ballot questions.

Perhaps instead of limiting who can serve as petition circulators and how they are paid, reform efforts may be better directed at informing registered voters about the issues for which petitions are being circulated and/or scheduled to appear on the ballot.

Responsibilities of Self-Government

Even when striving to be an informed voter, citizens can be subjected to deception and fraud. Campaign deception and petition fraud are, unfortunately, issues that encountered by Michigan voters and election administrators. Concern can be had for circulators misinforming the public, campaigns deceiving the voters in advertisements, and the fraudulent collection of signatures.

In litigation related to the Michigan Civil Rights ballot initiative, the Michigan Supreme Court emphasized the civic duty of voters in a democratic government and the popular vote from the electoral process being the ultimate check on the petition process. The majority stated:

In carrying out the responsibilities of self-government, 'we the people' of Michigan are responsible for our own actions. In particular, when the citizen acts in what is essentially a legislative capacity by facilitating the enactment of a constitutional amendment, he cannot blame others when he signs a petition without knowing what it says. It is not to excuse misrepresentations, when they occur, to recognize nonetheless that it is the citizen's duty to inform himself about the substance of a petition before signing it, precisely in order to combat potential misrepresentations.¹

Further, the Court solidified that the responsibility of the signer to self-inform outweighs the oral representations, or alleged misrepresentations, of the circulators in exercising their right to political speech. The majority ruled:

A necessary assumption of the petition process must be that the signer has undertaken to read and understand the petition. Otherwise, this process would be subject to perpetual collateral attack, and the judiciary would be required to

undertake determinations for which there are no practical standards and which essentially concerns matters of political dispute.

Thus, the Court has seemed to identify a major shortcoming in Michigan's petition initiation process. Though checks and balances are in place through regulatory bodies and the electoral process, ultimately, 'we the people' of Michigan have a crucial role to inform ourselves, and others, on the true intents and exact outcomes of a measure for, or on, the ballot.

Making Citizens Informed Petition Signers

Other states have supplemented civic duty by requiring prepared, objective information such as pamphlets or pages on their state websites. At least nine states have set requirements for specific information to be included with petitions. Information can include ballot question summaries, fiscal notes, and statements that explain a 'yes' and 'no' vote. Six states have requirements that a fiscal statement, or fiscal note summary, be published on the petition form itself. These types of informative communications can be included in, or comprised of, official voter guides prepared by a state, which are also referred to as voter pamphlets.

Additionally, once ballot questions are approved for the ballot, 15 states require that the secretary of state or attorney general create pamphlets or disperse information to voters on state websites with ballot language, summaries of each ballot question, fiscal notes, and arguments for and against each ballot question.

The Michigan Secretary of State provides a virtual ballot in the Michigan Voter Information Center; however, this effort still relies on the objective work of others – such as the Citizens Research Council of Michigan and the League of Women Voters – to explain what the ballot questions mean. This information is made available after the ballot questions are certified for the ballot.

Ballotpedia has analyzed state voter guides based on accessibility, content, and publishing method; and then ranked the states based on six desirable features, including:

- Ballot title and summary,
- Neutral explanation or analysis,
- Fiscal impact statement,
- Arguments for and against the measure,
- Legal changes, and
- Multiple languages.

The extent of Michigan's voter guide featuring explanation/analysis is through "news media and counties [and is] not mailed" according to Ballotpedia. Michigan scored poor in this analysis because it only provided the information through third party sources.

It can be difficult for voters to find sources of information that sufficiently, accurately, and objectively analyze a ballot question; which leads one to ponder on the responsibility and role of the government in arming citizens with sufficient information to decide whether each ballot question makes sense. Policy changes should be made to reflect this responsibility and role of the state to require and provide for information on petitions and information disseminated early on during an election season for ballot questions certified for the ballot. Such information should include a fiscal analysis, an impartial explanation of a 'yes' and 'no' vote, subsequent changes to the law, and pro/con arguments.

Petition Certification Processes

Petition certification stands out as one of the aspects of the Michigan ballot petition process most in need of reform. A review of the processes used in other states suggest that many of the problems created in Michigan result from the general lack of scrutiny ballot questions receive before proponents begin circulating petitions for signature collection.

Michigan, like every state that allows for initiative and referendum, has a process for certifying the petitions. What stands out when comparing processes among the states is that Michigan and Illinois are the only states that do not require proponents to apply to circulate petitions.

While Michigan does not require proponents of an initiative to apply or register with the state, Michigan law does set requirements for initiative petition forms. The Bureau of Elections (BOE) and the Board of State Canvassers (BSC) have made themselves

available to fly-spec petitions to check that the form and style of the petitions are in compliance with state requirements, but doing so is not required and is essentially a consultation on form alone. Further, state review of these forms is optional.

The ballot question review process, however, does not evaluate the language of the proposed statute or amendment. At no time may the secretary of state, BOE staff, or members of the BSC offer opinions on the substance of the proposals. This has proven more problematic. Ballot questions have snuck through with simple typos, references to funds or entities that were not in conformance with statutory drafting norms, and other issues that might have been identified with a fresh pair of eyes. Constitutional amendments have been proposed in which the drafters repeated section numbers, veered from established numbering norms, and seemed to nullify or contradict other constitutional provisions.

Front-Loaded vs. Back-Loaded Processes

The front-loaded processes in place in most other initiative and referendum states offer some clear advantages to the back-loaded process used in Michigan.

Other states use the front-loaded process to: weed out “frivolous” initiatives; provide the proponents and opponents greater confidence that the ballot questions pass legal muster; allow for the creation of ballot question summaries, fiscal notes, arguments for and against the ballot question; and concentrate the focus of those certifying the submitted signatures solely on the legitimacy and sufficiency of those signatures.

In most states, prior to circulating a petition and collecting signatures, a proposed initiative must be channeled through the designated public officer(s). That process usually requires the applicants to submit a monetary filing fee or a number of signatures to confirm a general interest in the policy ideas being promoted. The process insures that the petitions do not violate subject matter restrictions in particular states and provides an opportunity for a substantive review of the actual proposal wording.

Recommendations

Michigan would be well-served to move to a front-loaded petition certification process. Much of the controversy and legal wrangling that seems to constantly surround the certification of ballot questions could be alleviated by requiring ballot question proponents to apply to circulate petitions for initiatives and referendums.

This process would have the 100 word description of the ballot question prepared before petitions are circulated. The law should require the description to appear on the petitions themselves. Reform of Michigan's petition certification process would facilitate a move by the state into the business of preparing voter guides to provide some explanation of the ballot questions for which petitions are being circulated. Fiscal notes could be attached to the petitions. All of this information would help potential petition signers to become better informed.

Future arguments over font size and other matters dealing with the form of the petitions could be addressed if Michigan either required proponents to use petitions prepared by the Bureau of Elections or the Board of State Canvassers made petition templates available to the circulators.

A number of states provide examples of how state officials could opine on the form, style, and substance of initiative ballot questions. Many of these states rely heavily on their attorneys general for input on the substance of the ballot questions. Those states' attorneys general are to opine on whether the ballot questions conform to the U.S. Constitution and, if applicable, each state's constitution. They are to opine on whether the ballot questions conform to state statutes. However, it seems that this could further politicize the process in Michigan after recent attorneys general have taken positions on many ballot questions.

In light of this, a couple of alternatives are worth considering. The process used in Florida that pauses the signature gathering process to seek advisory opinions from the state Supreme Court may be the best reform option for Michigan.

An alternative approach would allow opponents of a ballot question a window of time to raise issues that they foresee as problems so that proponents can reconsider drafting and address those issues at the outset. Many states include arguments of limited length from proponents and opponents with the materials attached to the circulated petitions.

A third alternative would emulate the informal process used in Louisiana to have a neutral third party analyze the ballot questions. The non-partisan Public Affairs Research Council of Louisiana, a non-profit organization very similar to the Citizens Research Council of Michigan, analyzes all ballot questions for the ballot and the Louisiana Secretary of State facilitates distribution of those analyses to the electors of the state.

The law should also be changed to create a formal place in the process for Michigan's Legislative Service Bureau to provide input on drafting of the initiated statutes or constitutional amendments to ensure that the style conforms to drafting standards used when legislators propose statutory or constitutional changes. This part of the process already is utilized for proposals headed to the ballot that are initiated by the legislature.

Input from the state budget office and/or the legislative fiscal agencies would facilitate preparation of fiscal notes so potential petition signers and voters can better understand how the ballot questions might affect the finances of the state and local governments.

To require an application to circulate petitions and a cursory review of the form, style, and substance of ballot questions would address many of the problems that have become usual in Michigan's process. Fresh eyes could identify potential problems, allowing drafters to offer remedies before petitions are circulated. Legal opinions could be offered in that same time period, removing the last minute race to the courts and tight timelines that necessitate hastily drafted court orders. All matters except the sufficiency of the number of signatures gathered would be addressed at the beginning of the process, leaving the BSC only to count signatures.

Campaign and Electioneering Reform

Fundamental to the question of reform of campaigns for ballot issues are two questions: 1) Can the proponents and opponents be compelled to be more truthful in their literature, advertisements, and other promotional material? 2) What can be done so the residents and voters at least know who is advocating for a yes or no vote on the questions?

Truthfulness in Campaigns

On the question of restricting the messages of proponents and opponents of ballot questions to what some perceive to be the truth, again it is necessary to look at what the courts have said about the freedom of speech and the government's role in promoting truthfulness:

The very purpose of the First Amendment is to foreclose public authority from assuming guardianship of the public mind . . . In this field, every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us [485 U.S. 420, 323 U.S. 516, 323 U.S. 545].

Recommendation

Given the inability to restrict the speech or messaging of particular parties, it should be the state's role to endeavor to get non-biased information about the ballot questions to the people. This can happen by adopting the 100 word descriptions when proponents apply to circulate petitions and including that description both on the petitions and in other material (website, pamphlets, etc.) that describe the questions. It can happen by promoting analysis of the ballot questions by disinterested parties either inside the government (e.g., the attorney general, the auditor general, the fiscal agencies, etc.) or outside of government (the Citizens Research Council of Michigan has a long history of preparing such analyses). It can happen by replicating the process used in other states wherein the opponents and proponents are empowered to write arguments of limited length making the case for a yes or no vote on the questions.

Disclosure of Funding

On the question of reporting to citizens and electors information about those funding the advocacy of

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

yes or no votes on the question, the possibilities for reform are more direct.

In requesting permission for circulation, or in the circulation process, most states with the initiative process require that all financial contributions to sponsoring the petition be reported. Michigan is one of those states. The issue that arises with Michigan's campaign disclosure laws is the insufficient level of detail regarding funding sources.

It is the Michigan Department of State's position since 2004 that the definitions of contributions and expenditures contained in the Michigan Campaign Finance Act (MCFA – PA 388 of 1976, as amended) are sufficiently vague and overly broad that attempts by the department to determine the degree of control exercised by a candidate over a communication would be mere speculation and would lead to arbitrary applications of the law. In the absence of changes to the MCFA, the department does not believe it has the authority to regulate issue ads.²

As a result of the *Citizens United v. Federal Election Commission (FEC)* ruling, policymakers in states are considering amendments to their campaign finance laws to permit corporate funding and to improve and strengthen their disclosure rules. Twenty-three states plus the District of Colombia had campaign finance laws that prohibited or limited corporations in the past. With corporate funding permitted, a state's disclosure rules "will be one of the only ways left to regulate how corporations and other groups make expenditures in local races." For instance, "states that previously banned corporate expenditures would begin adapting disclosure rules so that the public can get the same information about corporate political advertisements that is currently available for advertisements paid for by individuals or political action committees."³

Recommendation

Addressing the shortcomings of the MCFA identified by the Michigan Department of State and the opportunity for the states to require disclosure of campaign funding for issue ads, it is recommended that

Section 26 of the MCFA be amended to add a Subsection 7 with the following:

(7) A committee that is a nonprofit corporation making electioneering communications or independent expenditures, or contributing directly, or indirectly, to another committee that is making electioneering communications or independent expenditures for the qualification, passage or defeat of a ballot question, is required to report individual contributions that are used to pay for electioneering communications or independent expenditures made by the committee, or any contribution made to another committee that is used to pay for electioneering communications or independent expenditures.

(a) contributions must be fully and completely ascribed to individual persons, committees that report individual contributors of all their receipts or profit making corporations.

(b) disclosure of contributions is required only for those funds that are used directly, or indirectly, to pay for electioneering communications or independent expenditures.

(c) it is impermissible for a committee making electioneering communications or independent expenditures to accept a contribution from a nonprofit corporation unless the contribution is fully and completely ascribed to contributions from individual persons, committees that report individual contributors of all their receipts or profit making corporations.

Vote Requirements

According to the Initiative and Referendum Institute, 49 states call for legislative referendum for constitutional amendments.⁴ Most states with initiatives (including Michigan) require a simple majority vote (50 percent plus one vote) for approval; others include requirements for amendment initiatives to receive a higher percentage of approval votes if a majority of those participating in the election do not weigh in on that ballot question. If policymakers are to consider extraordinary vote requirements for constitutional amendments, the focus should be on questions appearing at elections other than the November general elections.

CRC REPORT

Conclusion

As an early authorizer of the tools of direct democracy, Michigan has a history of citizen involvement in crafting, adopting, and approving the laws of the state. These tools of democracy are valued and would be missed if they were eliminated, but a general sense of unease has created an opportunity to look at the use of these tools and processes required for their use.

This report makes several suggestions for changes that would improve the process to bring more confidence to the electorate when asked to vote on ballot questions. These changes would neither make the petition process easier or harder to qualify ballot questions to appear before the voters, but would improve the dissemination of information to the benefit of those voters.

Endnotes

¹ "MCRI v. Board of State Canvassers." Debate, Cases, Regulations, Statutes & More. Leagle, 2006. Accessed May 21, 2013. www.leagle.com/xmlResult.aspx?xmlDoc=2006793711NW2d82_1628.xml&docbase=CSLWAR2-1986-2006.

² Declaratory Ruling by Secretary of State Terri Lynn Land, April 20, 2004, Accessed November 5, 2013, www.michigan.gov/documents/2004_126239_7.pdf.

³ Urbina, Ian. "24 States' Laws Open to Attack After Campaign Finance Ruling." *Politics*. New York Times, January 22, 2010. www.nytimes.com/2010/01/23/us/politics/23states.html.

⁴ "States with Legislative Referendum for Statutes and Constitutional Amendments." Initiative and Referendum Institute, Accessed May 9, 2013. www.iandrinstitute.org/New%20IRI%20Website%20Info/Drop%20Down%20Boxes/Requirements/Legislative%20Referendum%20States.pdf.

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Introduction

On November 6, 2012, Michigan voters were asked to vote on six ballot questions on the statewide ballot. At the same time that many citizens were investigating the issues related to collective bargaining, casino expansion, renewable energy, and the emergency manager law, others focused on the process by which these issues were placed on the ballot.

A seeming dissatisfaction with Michigan's ballot process has been brewing for many years, but it is not entirely clear where the dissatisfaction is rooted. Some dissatisfaction is based on the number of ballot questions, especially proposed constitutional amendments, placed before the electors. The abundance of ballot questions leads to a supposition that it may be too easy to qualify questions for the ballot in Michigan.

Related to the ease of qualifying for the ballot, some focus on the process of collecting signatures on petitions. While the initiative and referendum tend to be viewed as fundamental tools for grassroots democracy, the cottage industry that has developed, wherein individuals are paid to solicit petition signatures, would seem to run counter to that ideal.

Some dissatisfaction may stem from the types of questions on which electors are being asked to vote. While Michigan has had a constant stream of questions appearing on the ballot over the years, the content of those questions seems to have noticeably changed.

The questions appearing on the Michigan ballot in the 1960s and 1970s centered on the powers and structure of government, particularly issues of judicial selection and tenure and the State Officers Compensation Commission.

The period from the mid-1970s through the mid-1990s was dominated by issues arising from the so-called "Tax Revolt." In that period, 15 proposed

amendments were placed before the voters that would shift, reduce, or limit the growth of taxes. Of these, 13 were defeated, with only the Headlee Amendment (1978) and Proposal A (1994) being adopted, but they framed the debate on government's claim on economic resources for two decades.

Recent years have seen a turn away from questions about the structure and funding of government. Recent ballot questions flow from social agendas, such as prohibition of same-sex marriage; prohibition of certain affirmative action programs; authorization of stem cell research; authorization for the use of medical marijuana; and limitations on the expansion of gambling.

Others may be dissatisfied with the way the process works to certify questions to appear on the ballot. While certainly related to the divisive nature of the issues being decided, the inability or unwillingness of members of the State Board of Canvassers to certify questions for the ballot has many wondering about its role in this process. Additionally, the increasingly well-worn path to the courts to have questions placed on or taken off the ballot feeds the growing perception that the process is not working as intended.

Finally, issue advertisements the proponents and opponents put in electronic and print media in support of their causes may create an uneasiness for voters who are not sure about the implications of a yes or no vote.

The following analysis sorts through these issues to better identify the problems in Michigan's ballot question process and offer possible policy solutions to these problems. It looks at Michigan's history with ballot questions and provides a number of interstate comparisons for context in evaluating the Michigan process.

First Amendment Issues

The First Amendment to the U.S. Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Except for authority otherwise reserved by Michigan citizens, the legislative power of the state is vested in a Senate and House of Representatives. With regard to the initiative and referendum in particular, the courts have said that the circulation of petitions to initiate laws (or call for referenda on enacted laws) “involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’”¹

Therefore, when the Michigan Constitution delegates that power to the citizens, either in the power to decide questions posed to them by the legislature or in the power to initiate statutes or constitutional amendments, they are thus assuming the rights of core political speech that are otherwise entrusted to elected officials.

When the courts have been asked in other states to opine on the constitutionality of elections law re-

forms that have altered the ballot question processes or efforts to restrict paid signature collectors, part of their examination of the issues has been a consideration of the policy problem(s) that were addressed by the reforms. The courts queried as to the nature of the problems created by the earlier ballot question processes or lack of restrictions on petition circulators and how the adopted reforms specifically remedy those problems. The courts also queried whether the impingement of one group or class of people’s freedom of speech rights can be justified by the adopted reforms.

The circulation of petitions to initiate laws “involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’”

The courts seem to have been leery of reforms that are couched in the presumption that they strengthen freedom of speech rights. “The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind. . . . In this field, every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us.”²

Thus, the challenge in efforts to reform the Michigan ballot question process is to focus specifically on the issues determined to not be working as well as would be expected and to craft policy solutions that do not diminish the First Amendment rights of those interested in proposing or opposing ballot questions.

Constitutional Revision, Amendments, Initiatives, Referendums

The Michigan Constitution reserves to the citizens as many types of ballot questions as are found in any other state. Michigan electors may be asked to vote on questions that are placed on the ballot via a number of paths: statutory initiatives, legislatively proposed constitutional amendments, initiated constitutional amendments, voter referenda, legislative referenda, and constitutional revision.³

The **statutory initiative** is defined by Article II, Section 9 of the Michigan Constitution as the power which the people reserve to themselves “to propose laws and to enact and reject laws.” The power of initiative extends to any law the legislature may enact and is invoked by filing petitions containing signatures of registered electors equal in number to at least eight percent of the total votes cast in the last election for governor. The legislature is required to enact, without modification, or reject any proposed initiative within 40 session days. An initiative not enacted by the legislature is placed on the statewide ballot at the next general election. A law that is initiated or adopted by the people is not subject to gubernatorial veto and one adopted by electors cannot subsequently be amended or repealed except by the electors or by a three-fourths vote of the legislature.

Constitutional amendments are authorized by Article XII, Sections 1 and 2 of the Michigan Constitution and may be proposed either by a two-thirds vote of the legislature (hereafter referred to as **legislatively proposed constitutional amendments**) or by filing petitions containing signatures of registered electors equal in number to at least ten percent of the total votes cast for governor in the last general election (hereafter referred to as **initiated constitutional amendments**).

The Michigan Constitution reserves to the citizens as many types of ballot questions as are found in any other state.

Michigan's **voter referendum**, as defined by Article II, Section 9 of the 1963 Constitution, is the power “to approve and reject laws enacted by the legislature.” Referendum must be invoked within 90 days of final adjournment of the legislative session during which the law in question was enacted, by filing petitions containing signatures of registered electors equal in number to at least five percent of the total votes cast for governor in the last general election. The effect of invoking a referendum is to suspend the law in question until electors approve or reject it at the next general election.

The **legislative referendum** is authorized by Article IV, Section 34 of the Michigan Constitution, which provides that “[a]ny bill passed by the legislature and approved by the governor, except a bill appropriating money, may provide that it will not become law unless approved by a majority of the electors voting thereon.”

It should also be noted that the power of the legislature to submit its acts to referendum is broader than the power of the people to initiate a referendum by petition. The legislature may submit tax measures to referendum. The people may not force a referendum on a tax measure through the initiative. Neither may they initiate a referendum on an appropriation bill.

The question of **constitutional revision** is required by Article XII, Section 3 of the Michigan Constitution to appear on the ballot automatically every 16 years after 1978 and at such times provided by law. While a constitutional amendment would add or alter individual sections of an existing constitution, constitutional revision is the process wherein the people can draft a whole new document or rewrite the existing state constitution.

Number of Ballot Questions

If the discontent with the 2012 electoral season was rooted in the number of questions appearing on the ballot, the analysis should begin by asking if six questions was abnormal. How many questions are typically posed to Michigan electors? Are the questions normally placed on the ballot by petition drives or by the legislature? Does it matter how they get there?

Ballot Issues by Year

General elections are held in even-numbered years to choose among candidates for federal, state and local office, including the presidential and congressional elections. **Chart 1** shows the years and origin in which the electors were asked to vote on a number of ballot questions. Michigan electors have been presented with at least one ballot question every even numbered year since 1964 except for 1990. Ballot questions normally appear on the bal-

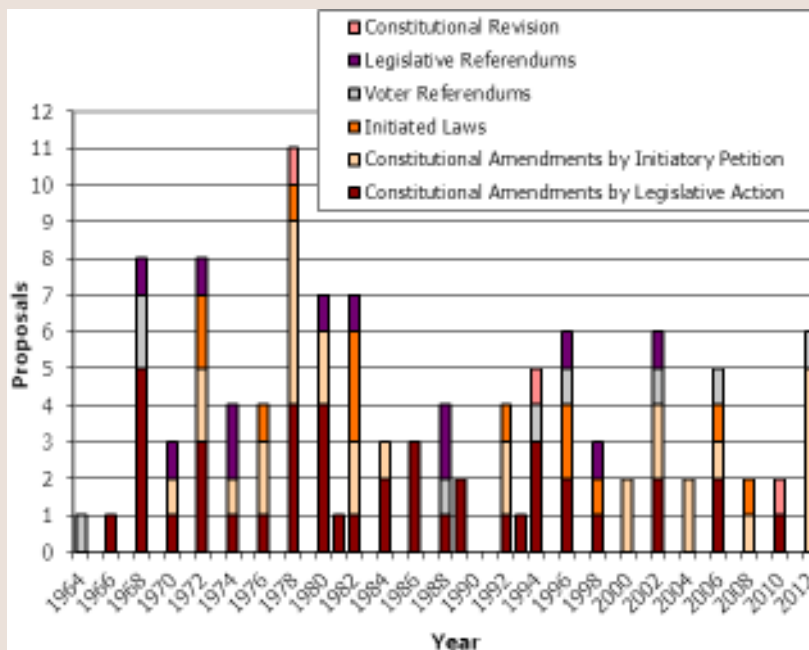
lot at general elections (November of even numbered years), but statewide ballot questions have been presented at May, June, and August elections in even numbered years and at special elections in 1981, 1989 (two questions), and 1993.

Michigan election law (Act 116 of 1954) specifies “general election” or “general November election” to be the election held on the November regular election date in an even numbered year.⁴ And in an odd-year, the law specifies November as the regular election date for an “odd year general election.”

While the six ballot questions posed to electors at the November 2012 election seemed like a lot, in 1978 Michigan electors were asked to vote on 11 ballot questions. Additionally, Michigan electors were asked to vote on eight questions apiece in 1968 and 1972, and seven questions apiece in 1980 and 1982. Michigan electors also voted on six ballot questions in 1994, 1996, and 2002. Five ballot questions were voted on in 2006.

Thus, while some discontent with the ballot question process may arise because of the number of questions on the ballot in 2012, Michigan electors have had years where they were asked to vote on a higher number of questions.

Chart 1
Michigan Ballot Questions by Year, 1964-2012



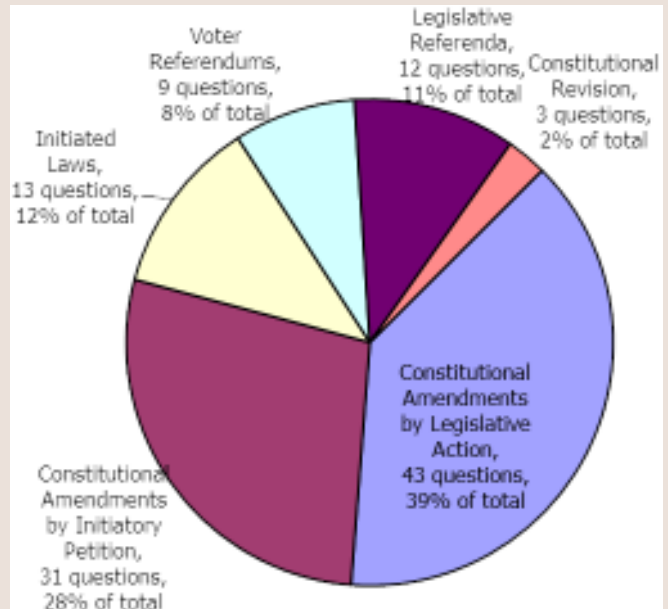
Source: Michigan Manual

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Ballot Issues by Type

Michigan electors have had 114 ballot questions posed to them since adoption of the 1963 Constitution. **Chart 2** shows that two-thirds of the ballot questions have been proposed constitutional amendments submitted by legislative action (40 percent) or by initiatory petitions (27 percent). Proposed statutory changes introduced by citizen initiative constituted 11 percent of the ballot questions. Almost one-fifth of the ballot questions were referenda on legislative actions: 11 percent were placed on the ballot by legislative action (usually seeking authorization to issue bonds as is required by Article IX, Section 15 of the Michigan Constitution for long-term borrowing) and 8 percent were on the ballots because electors circulated petitions seeking to undo enactment of a law. The final 3 percent were questions concerning constitutional revision and appeared on the ballot automatically every 16 years as is required by Article XII, Section 3 of the Michigan Constitution.

Chart 2
Types of Ballot Questions Submitted to Michigan Electors, 1964-2012



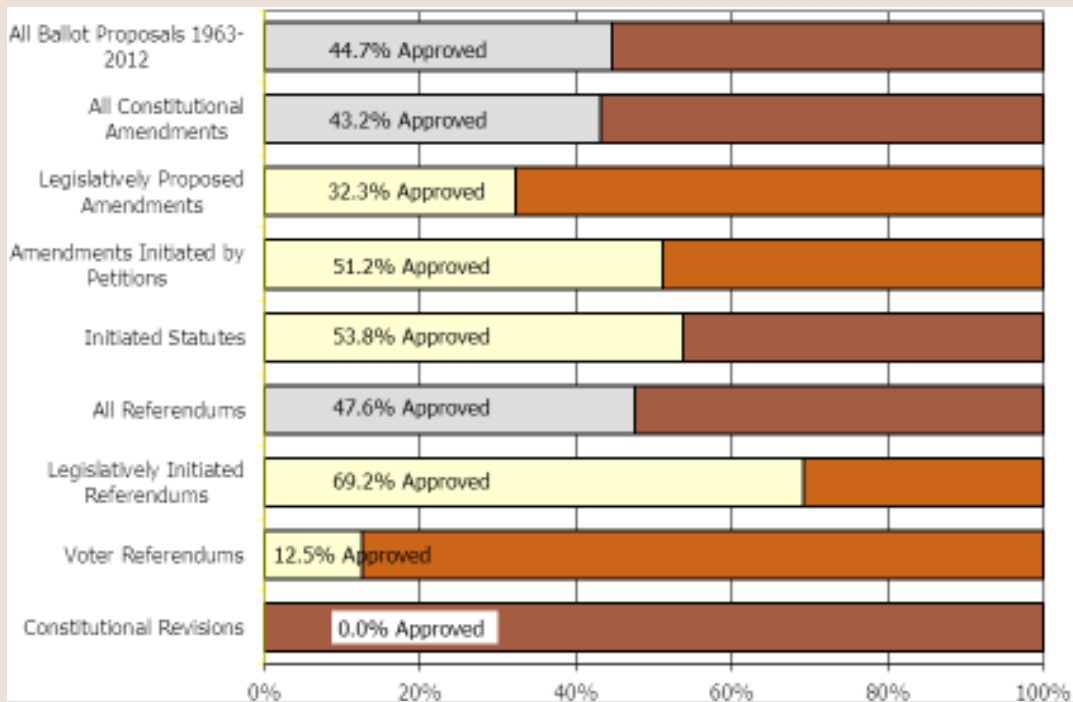
Source: Michigan Manual

Approval Rate for Ballot Questions by Type

Chart 3 shows that Michigan electors have been fairly frugal with their willingness to approve the questions posed to them at the ballot. In total, voters have approved 44.7 percent of the ballot questions, but the success rates have varied by the type of question. Legislatively initiated referenda enjoyed the highest rate of success (69.2 percent), followed by voter-initiated statutes (53.8 percent). As found in **Appendix C**, legislative referenda have usually been placed on the ballot when the legisla-

ture was seeking voter approval for bond issuances. Constitutional amendments have been adopted less than half the time they were proposed (43.2 percent), with those initiated by citizens using the petition process enjoying less success (32.3 percent) than those brought to the ballot by the legislature (51.2 percent). Only one of the eight voter referenda was approved by the electors. Voter referendum asks whether a law approved by the legislature and signed by the governor should be enacted. The lack of voter approval means those opposed to the measures have been successful in undoing the legislative action.

Chart 3
Approval Rate of Michigan Ballot Questions, 1964-2012



Source: Michigan Manual, CRC calculations

Legislatively Initiated Ballot Questions

The data in **Chart 1** (on page 4) show that more than half of Michigan's ballot questions since the present Constitution was adopted in 1963 have appeared because of legislative action: either legislatively proposed constitutional amendments or legislative referenda. How does the process for the legislature to place questions on the ballot in Michigan compare to those in other states?

Legislatively Generated Constitutional Amendments

The notion that changes to the state constitution must be approved by the voters first arose in 1780 when the Massachusetts electorate approved adoption of its new state constitution in a referendum.⁵ Changing the state constitution is a major reason for using a referendum process in many of the states that permit the referendum; in fact, even among states that authorize voter-initiated ballot questions (which constitute a minority of the states), the majority of constitutional amendments are proposed by the legislature and then brought to the electorate for a vote.⁶

Article XII, Section 1 of the 1963 Michigan Constitution provides:

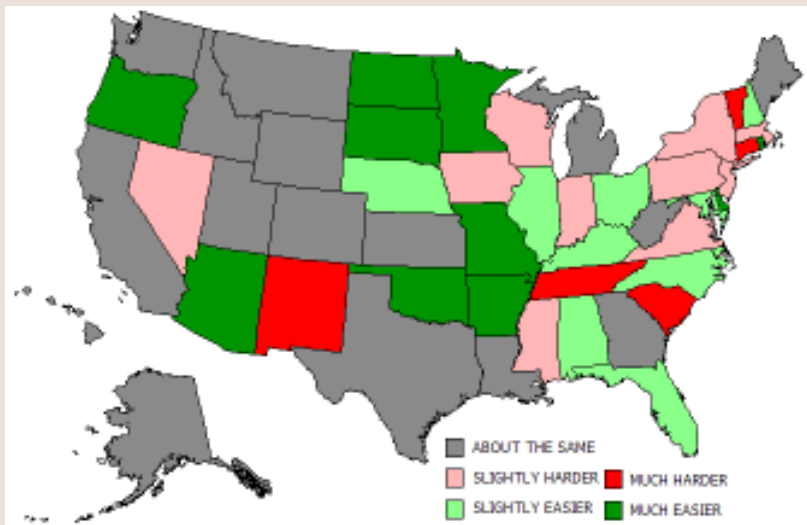
Amendments to this constitution may be proposed in the senate or house of representatives. Proposed amendments agreed to by two-thirds of the members elected to and serving in each house on a vote with the names and vote of those voting entered in the respective journals shall be submitted, not less than 60 days thereafter, to the electors at the next general election or special election as the legislature shall direct. If a majority of electors voting on a proposed amendment approve the same, it shall become part of the constitution and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved.

While ideas are routinely introduced to amend the Michigan Constitution either as house or senate joint resolutions, only 46 have actually made it to the ballot. The voters have approved 22 (48 percent) of those questions.

Ease of Proposing Legislatively Generated Constitutional Amendments

CRC has devised a measure to assess the relative ease of the Michigan legislature in proposing constitutional amendments compared other states. Because there are a number of factors that go into the processes state legislatures must go through to place proposed constitutional amendments on the ballot, CRC has consolidated them into a single measure to assess the process in Michigan against the processes required in the other states. CRC's measure considers the percent of votes required in each legislative chamber to place a ballot question on the ballot, whether action was necessary in multiple legislative sessions, and whether there are limitations on the subject or number of ballot questions that can ap-

Map 1
The Ease/Difficulty for the State Legislature to Place Proposed Constitutional Amendments on the Ballot Compared to the Process in Michigan



Source: CRC 2013

CRC Report

pear on a ballot. **Map 1** graphically illustrates the relative ease or difficulty for the Michigan legislature to place proposed constitutional amendments on the ballot when compared to other states, according to CRC.

Fifteen states (in gray) have processes very comparable to that in Michigan: requiring a two-thirds supermajority in each legislative chamber in a single legislative session.

The process for the legislature to place constitutional amendments on the ballot in 15 other states is more restrictive than it is in Michigan. Five of these states (in red) – Connecticut, Georgia, New Mexico, Tennessee, and Vermont – require greater supermajority votes (such as the $\frac{3}{4}$ majority required if the Connecticut legislature wants to move a proposed constitutional amendment immediately to the ballot) and Connecticut, Tennessee, and Vermont have provisions necessitating action in two successive legislative sessions in some or all cases.

Another ten states (in pink) – Indiana, Iowa, Massachusetts, Mississippi, New Jersey, New York, Nevada, Pennsylvania, Virginia, Wisconsin – have processes for placing constitutional amendments on the ballot that are a little more restrictive than the process in Michigan. While these states may require a lesser majority in each legislative chamber than Michigan, a common denominator among these states is the requirement for action in two legislative sessions.

In contrast, legislatures in 19 states have a less restrictive process to place proposed constitutional amendments on the ballot than that required in Michigan. Ten states (dark green) – Arkansas, Arizona, Delaware, Minnesota, Missouri, North Dakota, Oklahoma, Rhode Island, South Dakota, Oregon – require only a simple majority in each legislative chamber.

Nine other states (light green) – Alabama, Florida, Illinois, Kentucky, Maryland, Nebraska, New Hampshire, North Carolina,

Ohio – require a three-fifths supermajority vote in each legislative chamber (Nebraska has a unicameral legislature) for a proposed constitutional amendment to be placed on the ballot, which is a slightly lower hurdle than in Michigan.

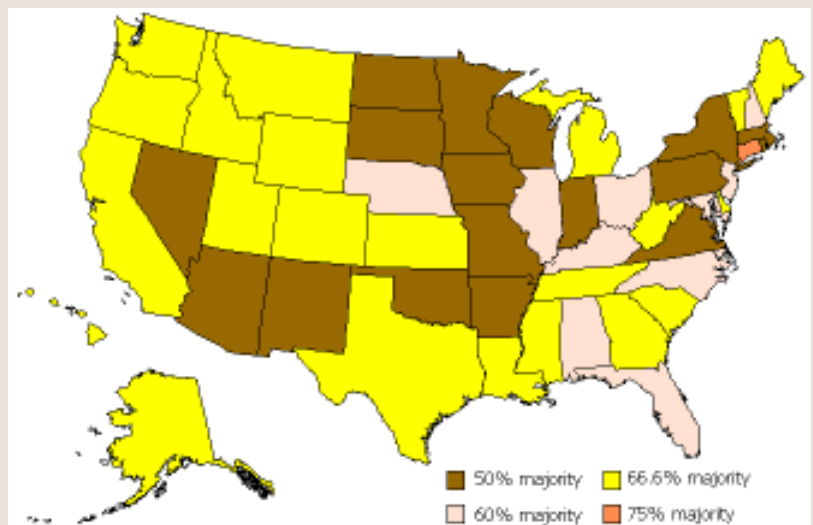
Table 1 shows the hurdles that state legislatures must clear to place constitutional amendments on the ballot and the requirements for adoption of those amendments when submitted to the people.

Legislative Vote Required. Article XII, Section 1 of the 1963 Michigan Constitution provides in relevant part that,

Amendments to this constitution may be proposed in the senate or house of representatives. Proposed amendments agreed to by two-thirds of the members elected to and serving in each house on a vote with the names and vote of those voting entered in the respective journals shall be submitted, not less than 60 days thereafter, to the electors at the next general election or special election as the legislature shall direct....

Map 2 shows that 27 states require lesser majorities than Michigan for their legislatures to submit pro-

Map 2
Legislative Majorities Required to Place Constitutional Amendments on the Ballot



Source: Ballotpedia.org and state constitutions

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Table 1
Summary of State Requirements for Constitutional Amendments

	<u>Legislative Vote Required for Proposal</u>	<u>Consideration by two Sessions Required</u>
Alabama	3/5	
Alaska	2/3	
Arizona	Majority	
Arkansas ¹	Majority	
California	2/3	
Colorado	2/3	
Connecticut	3/4 vote in each house at one session, or majority vote in each house in two sessions between which an election has intervened	
Delaware	2/3	Yes
Florida	3/5	
Georgia	2/3	
Hawaii	2/3 vote in each house at one session, or majority vote in each house in two sessions	
Idaho	2/3	
Illinois	3/5	
Indiana	Majority	Yes
Iowa	Majority	Yes
Kansas	2/3	
Kentucky	3/5	
Louisiana	2/3	
Maine	2/3 of both houses	
Maryland	3/5	
Massachusetts	Majority of members elected sitting in joint session	Yes
Michigan	2/3	
Minnesota	Majority	
Mississippi	2/3 (must include not less than a majority elected to each house)	
Missouri	Majority	
Montana	2/3 of both houses	
Nebraska	3/5	
Nevada	Majority	Yes
New Hampshire	3/5	
New Jersey	3/5 vote in each house at one session, or majority vote in session, or majority vote in each house in two successive sessions	
New Mexico	Majority for most matters, 3/4 vote of members elected needed for certain elective franchise and education matters	
New York	Majority	Yes
North Carolina	3/5	
North Dakota	Majority	
Ohio	3/5	
Oklahoma	Majority	
Oregon	Majority vote to amend, 2/3 to revise (revise includes all or a part of the constitution)	

CRC Report

Table 1 (continued)

	<u>Legislative Vote Required for Proposal</u>	<u>Consideration by two Sessions Required</u>
Pennsylvania	Majority	Yes
Rhode Island	Majority	
South Carolina	2/3 of members of each house, first passage; majority of members of passage; majority of members of each house after popular ratification	
South Dakota	Majority	
Tennessee	Majority of members elected to both houses, first passage; 2/3 of members elected to both houses, second passage	
Texas	2/3	
Utah	2/3	
Vermont	2/3 vote senate, majority vote house, first passage; majority both houses, second passage	Yes
Virginia	Majority	Yes
Washington	2/3	
West Virginia	2/3	
Wisconsin	Majority	Yes
Wyoming	2/3	

¹ Arkansas – The legislature may not proposed more than three amendments at one election.

² Colorado – Legislature may not propose amendments to more than six articles of the constitution in the same legislative session.

³ Idaho – The legislature may not proposed more than three amendments at one election.

⁴ Illinois – The legislature may not proposed amendments that alter more than three articles at one election.

⁵ Kansas – The legislature may not proposed more than five amendments at one election.

⁶ Kentucky – The legislature may not proposed more than four amendments at one election.

⁷ New Jersey – If a proposed amendment is not approved at the election when submitted, neither the same amendment nor one which would make substantially the same change for the constitution may be again submitted to the people before the third general election thereafter.

Source: *The Book of the States*. 2013 ed. Vol. 45. Lexington: The Council of State Governments, 2013, Constitutional Amendment Procedure: By the Legislature, Table 1.2, pp. 14-15.

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

posed constitutional amendments to the electors. Seventeen states require only simple majorities (50 percent) in each chamber. Ten states require three-fifths (60 percent) majorities in each house to submit a proposed amendment to the electors.

The requirement that at least two-thirds (66.6 percent) of the members of each house vote to submit a constitutional amendment to the electors is also found in 21 other states. Connecticut has a tougher path to the ballot for legislatively initiated constitutional amendments, requiring three-quarters (75 percent) of each house to vote to submit a proposed amendment to the electors or majority vote in each house in two sessions between which an election has intervened.

Consideration by Two Sessions. In addition to or in place of the majority requirements shown in **Map 2**, 15 states require legislative action to occur in two successive legislative sessions for a constitutional amendment to be adopted or submitted to

15 states require legislative action to occur in two legislative sessions for a constitutional amendment to be adopted or submitted to the electors.

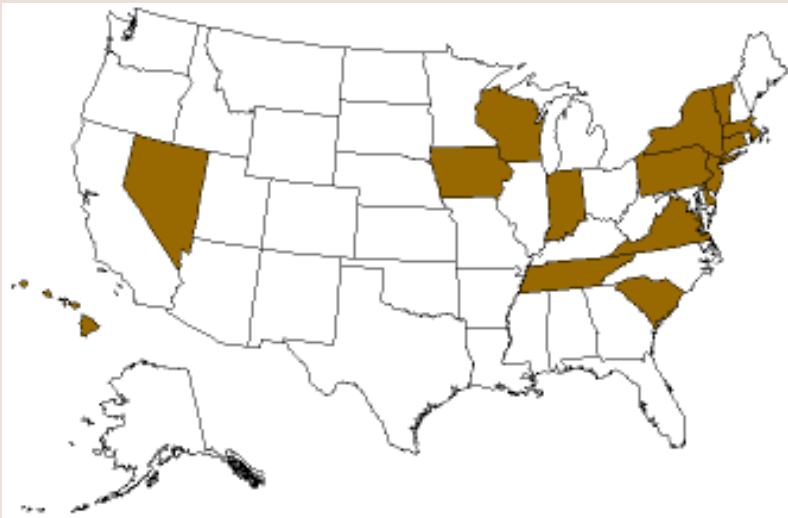
the electors (See **Map 3**). Such requirements are meant to protect against “knee-jerk” reactions to issues.

The requirements for consideration in multiple sessions are noteworthy in several states. The Tennessee Constitution requires the legislature to act on a proposed ballot question in two sessions. A simple majority of the members in each house may vote to adopt a constitutional amendment in the first general assembly session. Having done so, the ballot question is submitted to the next general assembly at which a two-thirds supermajority of members in each house must vote to adopt the amendment.⁷

The constitutions in Connecticut, Hawaii, and New Jersey provide different methods for their legislatures to place proposed constitutional amendments before the electors. The Connecticut Constitution allows a constitutional amendment to be submitted to the electors by a three-quarters vote in each house at one session, or majority votes in each house in two sessions between which an election has intervened.⁸ The Hawaii Constitution allows a constitutional amendment to be placed before the electors by a two-thirds vote in each house at one session, or majority vote in each house in two sessions.⁹ The New Jersey Constitution allows a constitutional amendment to be proposed to the electors by a three-fifths vote in each house at one session, or majority vote in each house in two successive sessions.¹⁰

South Carolina requires two-thirds supermajorities of the members of each house to place a proposed constitutional amendment on the ballot; and then the question is resubmitted to the legislature if the ballot question is approved by the voters, requir-

Map 3
States in Which Consideration in Two Legislative Sessions is Required to Submit or Adopt Constitutional Amendments



Source: Book of the States, 2012 ed. Vol. 44. Lexington: The Council of State Governments.

ing a simple majority of members of each house for final adoption.¹¹

Limits on Number of Proposed Constitutional Amendments.

Five states limit the number of proposed constitutional amendments that may be submitted at each general election. Arkansas and Illinois limit the number to three proposed amendments. Kentucky sets a limit of four proposed constitutional amendments, Kansas limits the number to five, and in Colorado the legislature may not propose amendments to more than six articles of the constitution in the same legislative session.

Recap

Forty percent of the ballot questions that have been submitted to the electors under the 1963 Michigan Constitution have been legislatively proposed constitutional amendments. Michigan requires the legislative chambers to adopt with two thirds vote of the members joint resolutions to place ballot questions on the ballot. This is a higher majority than is required in more than half of the states. However, several other states require legislative action in more than one session to protect against “knee-jerk” reactions to policy issues.

Forty percent of the proposals that have been submitted to the electors under the 1963 Michigan Constitution have been proposed constitutional amendments that have appeared because of legislative action.

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Legislative Referendum

In addition to the process for proposing constitutional amendments, the legislative referendum for statutes is authorized by Article IV, Section 34 of the Michigan Constitution, which provides that,

[A]ny bill passed by the legislature and approved by the governor, except a bill appropriating money, may provide that it will not become law unless approved by a majority of the electors voting thereon.

According to the Initiative and Referendum Institute, 23 states authorize legislative referendum for statutes.¹²

In some states, legislation enacted by the legislature can be placed before voters even if the state's constitution does not contain provisions for a referendum process. For statutes, states are not required to place legislative statutes on the ballot but the majority of states have given the legislature the authority to place statutes on the ballot for a popular vote.

Neither the use of the legislative referendum nor the provisions for doing so in Michigan would indicate that Michigan is out of line with other states.

Recap

Eleven percent of the ballot questions that have been submitted to the electors under the 1963 Michigan Constitution have been legislative referendums, usually seeking voter authorization for the state to issue bonds. Neither the use of this power nor the provisions for doing so in Michigan would indicate that Michigan is out of line with other states.

Legislative Referendum

It was deemed necessary to include authorization for legislative referendum in the Michigan Constitution because the legislative power of the state is vested in a Senate and House of Representatives. Being so vested, the legislature is without power to delegate any part of it, except as authorized to do so by the constitution. The 1908 Michigan Constitution first introduced provisions for legislative referendum.^a It was approved in its final form only after long debate during the 1907-08 convention and complicated parliamentary procedures.^b The initial referendum proposal at the 1907-08 convention, which would have allowed for referendum upon petition by ten percent of the electors, was defeated.^c The provision that became Article V, Section 38 granted authority to the legislature to submit any bill that has been signed by the governor, with the exception of appropriation bills, to a referendum vote. These provisions gave the legislature a power to delegate; a part of the legislative responsibility may be relinquished to the people. Likewise, Section 30 of Article V provided for local referendum when affected by local or special acts of the legislature; and various sections of Article VII provided a range of referendum provisions on additional local matters.

^a State of Michigan Constitutional Convention of 1907-08, Official Record, volume II, pp. 1372-1376.

^b *Ibid.*, p. 1424.

^c CRC Report #208, A Comparative Analysis of the Michigan Constitution, October 1961, www.crcmich.org/PUBLICAT/1960s/1961/rpt208.pdf.

Voter-Initiated Ballot Questions and Voter Referendums

In addition to ballot questions posed to the voters by legislative action, Michigan is one of a minority of states that authorize citizens to petition for changes to the state constitution and state laws, and to ask for referendums on enacted laws.

Initiated Ballot Questions by Year

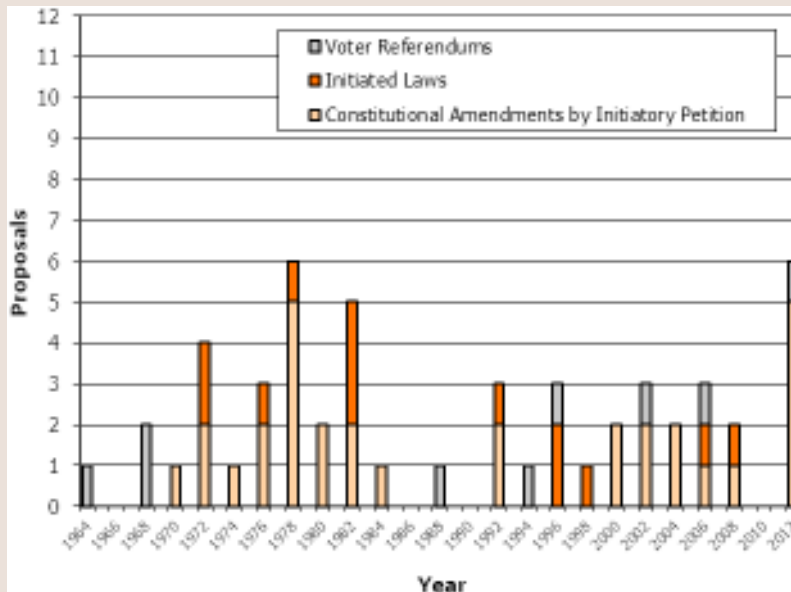
Chart 4 is a subset of **Chart 1** showing only the ballot questions appearing on the ballot as a result of petitions circulated by citizens. In this context, the six questions posed to Michigan electors in 2012 were equaled in number only by the 1978 election. Since 1963, Michigan electors have been asked to vote on an average of two citizen-initiated ballot questions per general election. Voter-initiated constitutional amendments have constituted the majority of these questions (31 ballot questions), followed by voter-initiated statutory

changes (13 ballot questions), and the voter referendum on enacted laws (9 ballot questions).

Voter-initiated ballot questions primarily have come in two phases: 1968 through 1982 and from 1992 through 2012. The proposed constitutional amendments in the early period dealt largely with property tax limitations. The initiated statutes during the first period dealt with issues such as daylight saving time, returnable cans and bottles, and requiring felons to serve their minimum sentences before the possibility of parole. The constitutional amendments initiated in the second period introduced term limits and dealt with some government finance issues, but this era can largely be characterized by the social issues brought to the ballot: to limit the expansion of gaming establishments; to head off the possibility of same-sex marriage; to ban affirmative action programs;

Since 1963, Michigan electors have been asked to vote on an average of two citizen-initiated ballot questions per general election.

Chart 4
Michigan Ballot Questions Submitted by Petition Process, 1964-2012



Source: Michigan Manual

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

and to permit stem cell research. Initiated statutes during the second period dealt with automobile insurance reform, bear hunting, permitting casino gaming in Detroit, assisted suicide, school funding mandates, and medical marijuana (See **Appendices A - C.**)

50 State Comparison

Map 4 shows that 24 states (in white) do not allow their citizens to petition for initiatives of any kind or to call for referenda on enacted laws. Like Michigan, 14 other states (in blue) authorize their electors to use the tools of direct democracy in three ways: to initiate constitutional amendments, to initiate statutes, and to call for voter referenda. Six states (in orange) authorize initiated statutes and voter referenda, but their voters may not initiate constitutional amendments. Three states (in gray) authorize initiated constitutional amendments, but not initiated statutes or voter referenda. Two states (in red) authorize only voter referenda, but not the ability to initiate statutes or constitutional amendments.

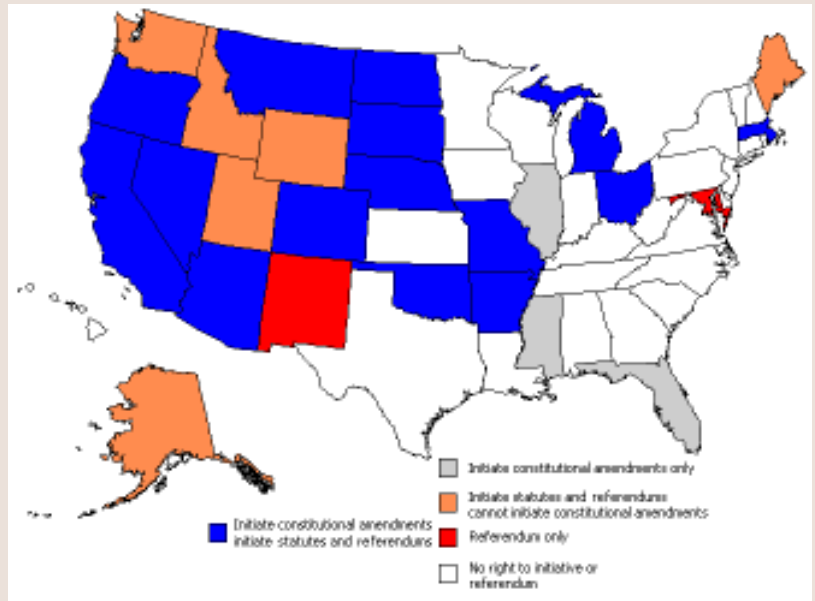
It is important to keep perspective in the following discussions that the ease of getting on the ballot, the laws that govern petition circulators, and so on, apply to only half of the states. Twenty-four states (in white) will not have laws on these subjects because there is no authority for citizens in these states to petition for change.

Initiated Constitutional Amendments

The power to initiate constitutional amendments is provided in Article XII, Section 2 of the 1963 Michigan Constitution:

Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding

Map 4
Authority for Citizens in Each State to Initiate Statutes and Constitutional Amendments or Petition for Referendums



general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.

Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law. Copies of such publication shall be posted in each polling place and furnished to news media as provided by law.

National History with Initiative and Referendum

The initiative and referendum in the United States are rooted in our nation's history as a representative democracy with a series of checks and balances on the government. The Declaration of Independence declares: "Governments are instituted among men deriving their just powers from the consent of the governed." Even before these binding principles were documented, initiative and referendum existed, as early as the 1600s, in the basic form of popular vote in town hall meetings in New England that were used for discussing issues and then enlisting a popular vote for the passage of ordinances related to these issues.^a

Entrusting citizens for establishing laws was a sentiment shared by Founding Fathers Thomas Jefferson and James Madison. Jefferson first advocated for legislative referendum for the 1775 Virginia Constitution; however, at the time he was attending the Continental Congress and was unable to be present for his own state's constitutional process to make this a definite requirement. Jefferson believed that the people are sovereign and have a role in approving changes to the constitution that dictated the laws they had to live by. Jefferson's beliefs were shared by Madison, which he expressed in Federalist 49: "[a]s the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which several branches of government hold their power, is derived, it seems strictly consonant to the republican theory to recur to the same original authority . . . whenever it may be necessary to enlarge, diminish, or new-model the powers of government."

The first exercised legislative referendum was in 1778 "when Massachusetts became the first American entity to ratify its new constitution via popular vote."^b Several states followed their lead and ratified new state constitutions by popular votes, including: New Hampshire (1792); Connecticut (1818); New York (1820); and Rhode Island (1824). A movement for the 1830 Virginia Constitutional Convention fueled the notion of people's power in government via popular vote. A key participant in the movement was the former President James Madison. Within four years following the Virginia Constitution being ratified by popular vote, Alabama, Mississippi, Georgia, and North Carolina similarly ratified their constitutions via popular votes.

The importance of popular vote in constitutional ratification set the foundation for the notion of the initiative and referendum processes, which was catalyzed by and most

notably associated with the Populist and Progressive Movements in the 1880s to the early 1900s. Both movements were based on dissatisfaction with close relationships between legislative bodies and various interests, including railroads, utilities, and the banking industry. The Populist Movements centered on wanting to return a sense of power to the working man from the banking industry and capitalist elite, and maintaining the nation's democratic roots. The Progressive Movement was born out of frustration in achieving legislative support for proposed railroad reforms that led to a number of citizens forming organizations aimed at promoting a means of circumventing those elected bodies to achieve legislative goals. The means chosen was the voter initiative, which, together with the referendum and recall, was expected to give citizens the tools to hold their elected representatives accountable.

Figure 1 Chronological Listing of State Adoption of Initiative and Referendum

1898	South Dakota
1902	Illinois, Oregon
1903	California
1906	Montana
1907	Missouri, Oklahoma
1908	Maine, Michigan
1909	Arkansas
1910	Colorado, New Mexico
1911	Washington
1912	Arizona, Idaho, Nebraska, Nevada, Ohio
1914	Mississippi, North Dakota
1915	Maryland
1916	Utah
1917	Massachusetts
1959	Alaska
1968	Florida, Wyoming

Source: "A Brief The History of the Initiative and Referendum Process in the United States." *I&R Reports*. Initiative & Referendum Institute at the University of Southern California, Accessed February 28, 2013. www.iandrinstute.org/New%20IRI%20Website%20Info/Drop%20Down%20Boxes/Quick%20Facts/History%20of%20I&R.pdf.

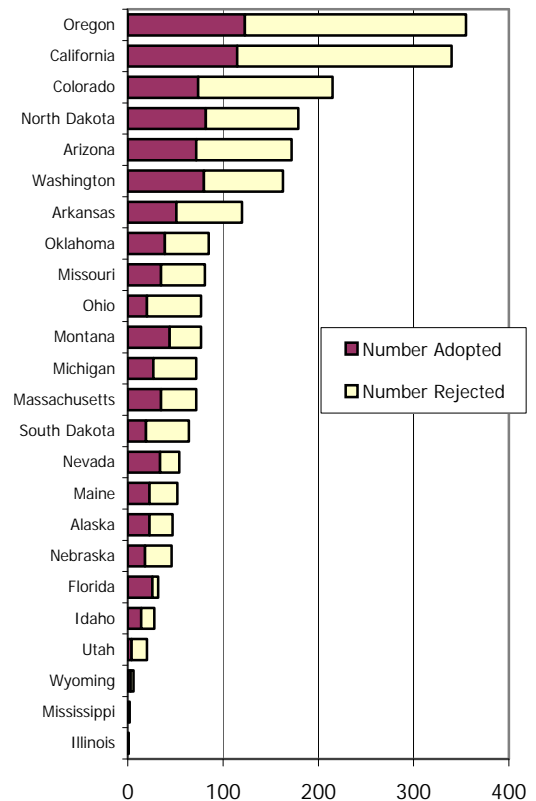
REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

In 1898, South Dakota became the first state to amend its constitution to provide for the initiative and the referendum. Four years later, Oregon did the same thing and, over the following decade, 13 more states, including Michigan, followed suit. All of the states adopting the initiative and referendum in this period were in the Midwest and Far West, with the exception of Mississippi, whose provisions, adopted in 1914, were declared unconstitutional by state courts in 1917. Following the end of the Progressive Era, the wind behind the sails of the direct democracy movement dissipated and the only states to adopt the initiative and referendum since then have been Florida in the late-1960s and Mississippi, which restored its process in 1992 (See **Figure 1**).

The expansion of initiative and voter referendum was received differently across the states and between those in the West, East and South. Western states generally believed in populism: that the people rule the elected and the elected cannot rule the people. This belief and mentality was as prevalent in Eastern and Southern states, but these states had a strong history in slavery and the white people that controlled the laws were concerned that blacks would use the power of initiative and voter referendum to enact reforms contrary to their beliefs. Following the surge in states adopting the initiative process between 1898 and 1918, 40 years passed before another state established the initiative process. This gap in the history of initiative and referendum has been attributed to society's post-World War I sentiment for undiluted Americanism and strong-government patriotism.

Chart 5 shows the number of initiatives and success of those proposals by state since voter-initiated constitutional amendments became authorized in their constitution. The chart shows that Oregon (355 initiatives) and California (340 initiatives) have had far more initiatives than the other states that allow this form of direct democracy. A second grouping with more than 100 initiatives each includes Colorado (215), North Dakota (179), Arizona (172), Washington (163), and Arkansas (120). Although Florida (32), Idaho (28), Utah (20), Wyoming (6), Mississippi (2), and Illinois (1) authorize initiatives, the number of initiatives proposed in these states is less

Chart 5
Number and Success of Initiatives by State



Source: Initiative and Referendum Institute (2010), CRC calculations.

than the other states where initiatives are authorized. In this context, Michigan is the median state in the number of initiatives proposed; slightly below the average of these initiative states. Michigan voters have been less willing to approve proposed initiatives than have voters in the other initiative states.

^a "A Brief The History of the Initiative and Referendum Process in the United States." *I&R Reports*. Initiative & Referendum Institute at the University of Southern California, Accessed February 28, 2013. www.iandrinstitute.org/New%20IRI%20Website%20Info/Drop%20Down%20Boxes/Quick%20Facts/History%20of%20I&R.pdf.

^b Polhill, Dennis. "IRI Report: Initiative and Referendum in Colorado." *University of Southern California*. Initiative and Referendum Institute, April 2006. Accessed February 5, 2013. www.iandrinstitute.org/REPORT%202006-4%20Colorado.pdf.

CRC Report

The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.

If the proposed amendment is approved by a majority of the electors voting on the question, it shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved. If two or more amendments approved by the electors at the same election conflict, that amendment receiving the highest affirmative vote shall prevail.

Only Oregon and Colorado have requirements that are markedly easier than Michigan for voters to initiate constitutional amendments.

that voted in a previous election); 3) whether the signature gatherers use county or statewide petitions; and 4) whether the states require the signatures to be “dispersed geographically” by requiring that a portion of the signatures be gathered in regions across those states. For instance, Massachusetts’ rule on geographic dispersion “requires that no more than a quarter of petition signatures can come from any one county.”¹⁴

Map 5 shows CRC’s assessment of the relative difficulty to gain access to the ballot for voter-initiated constitutional amendments across the United States. Grading each state relative to Michigan, CRC’s evaluation finds that only Oregon and Colorado have requirements that make it markedly less

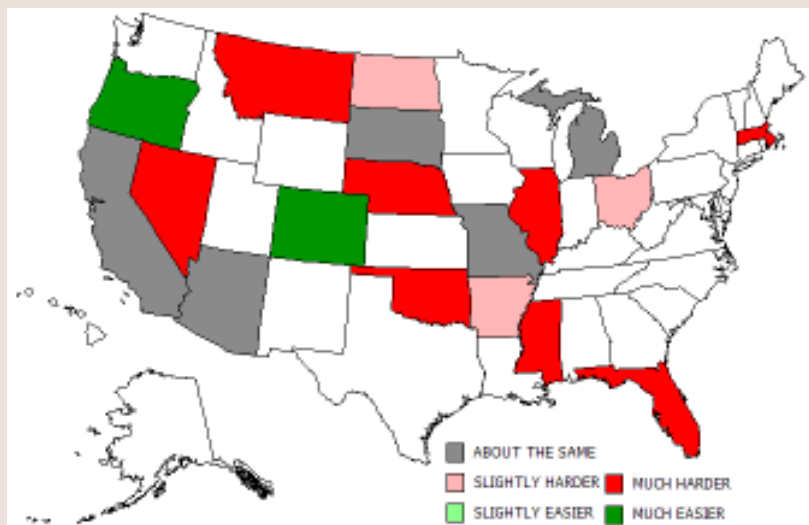
restrictive than Michigan’s process for voters to initiate constitutional amendments (dark green on the map). Arizona, California, Missouri, and South Dakota (gray) have requirements roughly on par with Michigan’s requirements. The requirements in Arkansas, Ohio, and North Dakota (light red) are slightly

The last election for the Michigan Office of Governor was in 2010, during which there were 3,226,088 votes cast; thus, based on the ten percent threshold, 322,609 valid signatures are required for a voter referendum to make it on the ballot.¹³

Ease of Initiating Constitutional Amendments

As was done for legislatively-initiated ballot questions above, CRC has consolidated the factors each state uses for voter-initiated constitutional amendments into a single measure to assess the process in Michigan against the processes required in the other states. The 18 states that allow voters to proposed amendments to their constitutions have requirements that add varying degrees of difficulty to gain access to the ballot. Important factors include: 1) whether the state has direct or indirect initiatives for constitutional amendments; 2) the number of signatures that are required on a petition (which is typically a percentage of the population

Map 5
The Ease/Difficulty for Voter-Initiated Constitutional Amendments to Qualify for the Ballot by State Relative to the Requirements in Michigan



Source: CRC 2013

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

more restrictive than Michigan's requirements, and the requirements in Florida, Illinois, Massachusetts, Mississippi, Montana, Nebraska, Nevada, and Oklahoma (dark red) make it significantly more restrictive to initiate a constitutional amendment than Michigan's requirements. Mississippi has the most restrictive requirements for proposing a constitutional amendment by initiated petition.

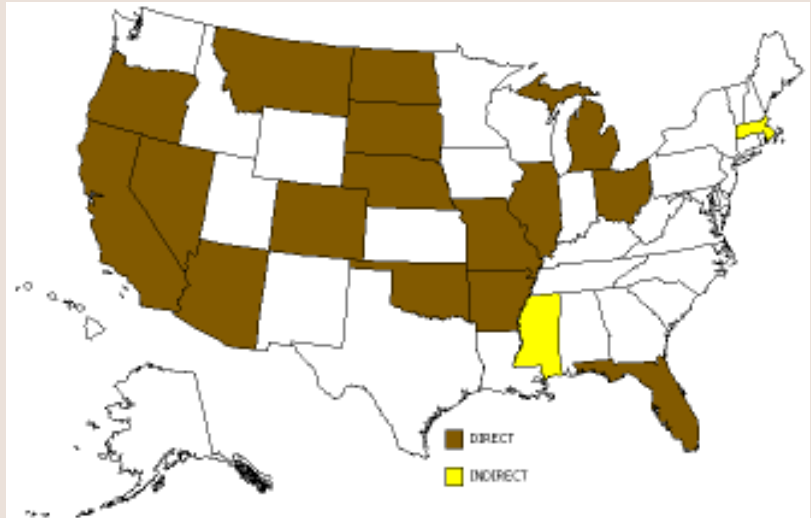
Direct or Indirect Initiatives. The Michigan Constitution provides for direct initiative for constitutional amendments: thus, once a sufficient number of valid signatures have been collected and certified, the proposed amendment is submitted to the electors at the next general election.

Michigan is one of 16 states that provide for direct initiatives for constitutional amendment (See **Map 6**). Only Massachusetts and Mississippi have indirect initiatives for constitutional amendments, meaning that once a sufficient number of signatures have been collected, a proposed amendment is submitted to the legislature to decide if it should be placed on the ballot.

Ballotpedia identifies Illinois, Massachusetts, and Mississippi as three states where the process for voter-initiated constitutional amendments has rarely, if ever, been used because the requirements for placing ballot questions before the voters through an initiative process are so prohibitively difficult. The difficulty in Massachusetts and Mississippi relates to the indirect initiative. Additionally, the Mississippi Constitution places strict restrictions on the types of amendments that can be proposed.¹⁵

An initiated constitutional amendment can be proposed in Illinois, but only if it applies to "structural

Map 6
Direct or Indirect Initiative Processes in States that Authorize Voter-Initiated Constitutional Amendments



* in Alaska and Wyoming an initiative cannot be placed on the ballot until after a legislative session has convened and adjourned.

Source: National Conference of State Legislatures (September 2012): www.ncsl.org/legislatures-elections/elections

and procedural subjects" contained in Article IV (The Legislature) of the Illinois Constitution.¹⁶

Required Number of Signatures. The fundamental test of general support for any citizen-initiated measure is whether a number of citizens agree that the ballot question is worthy of being placed before the state electorate. This is universally done by requiring a threshold number of signatures, usually expressed as a percent of the general population or a percent of the people engaged in the political process. This threshold is not an absolute amount, but it is adjusted on a regular basis by setting it as a percent of the general population or a percent of the people engaged in the political process.

**Table 2
Requirements to Qualify Voter-Initiated Constitutional Amendments for Ballot by State**

<u>State</u>	<u>Number of Signatures Required on Initiative Petition</u>	<u>Distribution of Signatures</u>
Oklahoma	15% of legal voters for state office receiving highest number of voters at last general state election	
Arizona	15% of total votes cast for all candidates for governor at last election	
Mississippi ¹	12% of total votes for all candidates for governor in last election	No more than 20% from any one congressional district
Nebraska	10% of registered voters	Must include 5% in each of 2/5 of the counties
Nevada ²	10% of voters who voted in entire state in last general election	
Arkansas	10% of voters for governor at last election	Must include 5% of voters for governor in each of 15 counties
Michigan	10% of total voters for all candidates at last gubernatorial election	
Montana	10% of qualified electors, the number of qualified voters to be determined by number of votes cast for governor in preceding election in each county and in the state	Must include at least 10% of qualified voters in ½ of the counties
Ohio	10% of total number of electors who voted for governor in last election	At least 5% of qualified electors in each of 1/2 of counties in the state
South Dakota	10% of total votes for governor in last election	
California	8% of total voters for all candidates for governor at last election	
Florida	8% of total votes cast in the state in the last election for presidential electors	8% of total votes cast in each of 1/2 of the congressional districts
Illinois	8% of total votes cast for candidates for governor at last election	
Missouri	8% of legal votes for all candidates for governor at last election	Must be in each of 2/3 of the congressional districts
Oregon	8% of total votes for all candidates for governor at last election at which governor was elected for four-year term	
Colorado	5% of total legal votes for all candidates for secretary of state at last general election	
North Dakota	4% of population of the state	
Massachusetts ³	3% of total votes cast for governor at preceding biennial state election (not less than 25,000 qualified voters)	No more than 1/4 from any one county

¹ Mississippi – Before being submitted to the electorate, initiated measures are sent to the legislature, which has the option of submitting an amended or alternative measure alongside the original measure.

² Nevada – Requirements for geographic diversity among petition signers was invalidated by a U.S. District Court in 2004 but reestablished in 2007

³ Massachusetts – Before being submitted to the electorate for ratification, initiative measures must be approved at two sessions of a successively elected legislature by not less than one-fourth of all members elected, sitting in joint session.

Source: John Dinan and the Council of State Governments, February 2012

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Table 2 shows the number of signatures required in each state to qualify citizen-initiated constitutional amendments for the ballot. Of the 18 states that authorize initiative petitions for proposing constitutional amendments, Michigan is fairly average with its requirement for signatures to equal at least 10 percent of the votes cast for governor. Oklahoma has the highest signature threshold, requiring 15 percent of the legal voters for the state office receiving the highest number of voters at the last general state election. Arizona requires 15 percent of the total votes cast for all candidates for governor at the last election. Six other states have 10 percent thresholds: Nebraska as a percent of the registered voters; Nevada as a percent of all voters in the last general election; and Arkansas, Montana,

Ohio, and South Dakota as a percent of votes for governor.

Because states use different these different bases against which the percentages are applied, it is difficult to assess how the thresholds restrict access to the ballots. **Table 3** shows the number and percentages of registered voters and voting age populations by state that is required in signatures to qualify a citizen-initiated constitutional amendment for the ballot. States vary from needing 10.2 percent of all registered voters required qualify for the ballot in Nevada to only 2.1 percent in Massachusetts. Likewise, Nebraska requires 9.4 percent of all citizens of voting age to sign petitions to qualify for the ballot, but only 1.5 percent of the voting population must

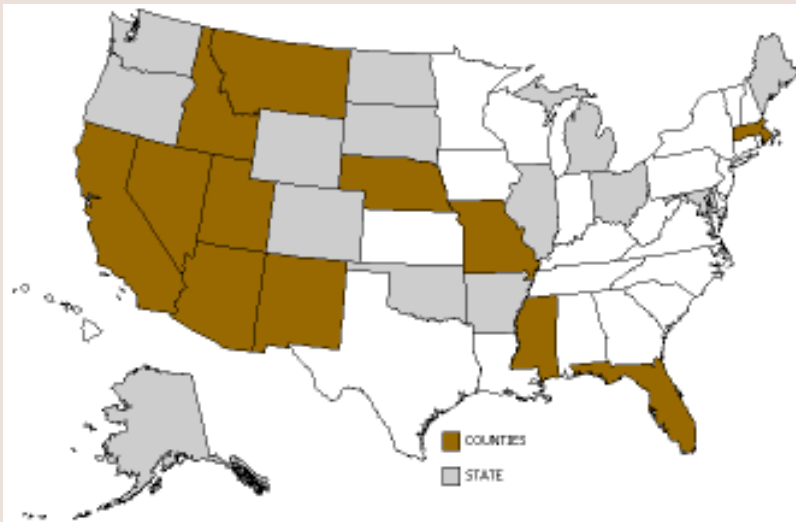
Table 3
State Signature Requirements by Number and Percentage of Registered Voters and Voting Age Population to Qualify Voter-Initiated Constitutional Amendments for the Ballot

<u>State</u>	<u>Number of Signatures Required</u>	<u>Percent of Registered Voters</u>	<u>Percent of Registered Voters</u>	<u>Voting Age Population</u>	<u>Percent of Voting Age Population</u>
Nebraska*	116,417	1,164,166	10.0%	1,240,000	9.4%
Montana	48,349	491,000	9.9%	744,000	6.5%
Nevada	101,666	996,000	10.2%	1,725,000	5.9%
Oklahoma	155,216	1,603,000	9.7%	2,628,000	5.9%
Arizona	259,213	2,934,000	8.8%	4,443,000	5.8%
North Dakota	26,904	361,000	7.5%	477,000	5.6%
South Dakota	31,708	406,000	7.8%	587,000	5.4%
Florida	677,934	7,994,000	8.5%	12,697,000	5.3%
Mississippi	107,216	1,532,000	7.0%	2,087,000	5.1%
Ohio	385,247	5,601,000	6.9%	8,468,000	4.6%
Michigan	322,609	5,127,000	6.3%	7,176,000	4.5%
Oregon	116,284	2,005,000	5.8%	2,830,000	4.1%
Arkansas	78,133	1,256,000	6.2%	2,068,000	3.8%
California	807,615	13,864,000	5.8%	22,767,000	3.6%
Illinois	298,399	5,823,000	5.1%	8,780,000	3.4%
Missouri	146,907	3,013,000	4.9%	4,387,000	3.4%
Colorado	86,105	2,299,000	3.8%	3,473,000	2.5%
Massachusetts	68,911	3,230,000	2.1%	4,695,000	1.5%

*NE - Used 2012 election data from the NE Secretary of State, www.sos.ne.gov/elec/2012/pdf/VR%20Figures.pdf

Source: Ballotpedia, 2010 United States Census Data, and Voting and Registration in the Election of November 2010, CRC calculations.

Map 7
State Requirements for Signatures to be Gathered on Statewide or County Petitions



Source: Ballotpedia.org, state pages

sign petitions for a question to qualify for the ballot in Massachusetts. Michigan ranks 11th in both measures of the signature thresholds. While several with lower thresholds than Michigan – like Oregon, California, and Colorado – have notoriously easy access to the ballot, other states with lower thresholds signature amounts – like Illinois and Massachusetts – have offset the low thresholds with other restrictions.

Geographic Diversity of Signatures. Nine of the 18 states that authorize voter-initiated constitutional amendments have a geographic dispersion rule, including: Arkansas, Florida, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, and Ohio. Nevada's geographic dispersion rule was invalidated by a U.S. District Court ruling in 2004; however, the distribution requirement was recreated in 2007 and, resulted in a requirement similar to the previous one that was nullified.¹⁷ These states require some percentage of the signatures to come from different counties or different congressional districts as a way to show that support for the ballot question is widespread. Michigan does not require geographic diversity among the signatures gathered on petitions for proposed constitutional amendments.

County or Statewide Petitions.

The states also differ in the orientation of the petitions used to qualify ballot questions for the ballot. As demonstrated in **Map 7**, of all the states that require petition circulation for constitutional amendments, to initiate statutes, and/or for voter referendum, 12 of the states require signatures to be collected on county petitions. The other 14 states, including Michigan, submit petitions to state officials to be canvassed.

This is significant because it influences how and where petition circulators collect signatures. If a single circulator can accommodate potential petition signers from any county in the state, then that circulator is less restricted on methods and locations for circulation. For example, a petition circulator can have access to many people from any number of counties on a hot summer

day at the rest stop on I-75 in Clare County. However, if a measure is circulated on a county petition then county residency plays a role in collection methods and the pools of people circulators target. That same petition circulator would have to have as many as 83 versions of the same petition (one for each of Michigan's 83 counties) if Michigan required signatures to be gathered on county petitions.

Initiated Statutes

The power of voters to initiate statutes and call for voter referendum on enacted laws is provided in Article II, Section 9 of the 1963 Michigan Constitution:

The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law

Authorization for Michigan Electors to Use Initiative and Referendum

In Michigan, public interest for initiative and referendum began around 1895 following the creation of the state's Direct Legislative Club.¹ The Club, formed by two Detroit physicians, George F. Sherman and David Inglis, sought unsuccessfully for over a decade the statewide adoption of initiative and referendum. While prior efforts to allow initiative and referendum were unsuccessful, persons interested in "Progressive Era" reforms were able to insert a number of policy changes into the Michigan Constitution that was drafted in 1907 and ratified in 1908. The inclusion of initiative and referendum provisions in the 1908 Constitution turned out to be a hollow victory because the provisions were so restrictive that citizens were unable to place a single initiative on the ballot.

In the constitutional convention of 1907-08, referendum upon petition by ten percent of the electors was proposed but defeated.² However, authority was granted to the legislature to submit any bill signed by the governor, except appropriation bills, to a referendum vote (Article V, Section 38). Local referendum in the area affected by local or special acts of the legislature was provided for in Section 30 of Article V, and referendum on numerous local matters was required in various sections of Article VIII.

Initiative and referendum advocates lobbied the Michigan legislature for better provisions that were adopted in 1913. By legislative concurrent resolution, a proposal of an amendment providing for the initiative and referendum on legislation was submitted to the electorate and adopted at the April 1913, election. The authority to initiate legislation provided for in the 1913 amendment (and continued in the 1941 amendment) is indirect to the extent that the petition is submitted to the legislature. The authority to initiate constitutional amendments also was altered by the same amendment in order that it would not conflict.

In 1941, the provisions for initiative and referendum were further amended by a legislative proposal adopted at the April election. The section (as amended in 1913) was not changed substantially, but changes were made in the section which were intended to enable concerned officials to check on various phases of the initiatory petition and referendum processes for accuracy and validity. Again, the 1941 initiative and referendum amendment was accompanied by an amendment related to the ability to initiate constitutional amendments.

Only one statute was initiated by petition under the constitutional provisions as amended in 1941. Public Act 1 of 1949, which addressed the manufacture and sale of oleomargarine, was adopted at the November 1950, election. Petition for referendum was used for seven legislative measures, six of which were defeated at the polls. In 1940, a referendum on Public Act 122 of 1939, regulating the practice of dentistry, was approved by the voters. The legislature submitted two measures to a referendum, one of which was adopted, and the other defeated.

CRC research published at the time of the 1961 Constitutional Convention noted the fact that initiated statutes and statutory referendum were not used frequently, and is not fully indicative of their influence or impact on legislation. The possibility that these legislative powers retained by the people might be used tends to have some influence upon the normal lawmaking process. Even then it was noted that one reason for the lack of use of the initiative for statutes was that with little extra effort those who initiate measures can write them into the constitution by amendment.

¹ "A Brief The History of the Initiative and Referendum Process in the United States." *I&R Reports*. Initiative & Referendum Institute at the University of Southern California, Accessed February 28, 2013. www.iandrinstitute.org/New%20IRI%20Website%20Info/Drop%20Down%20Boxes/Quick%20Facts/History%20of%20I&R.pdf.

² State of Michigan Constitutional Convention of 1907-08, Official Record. Volume I. pp. 1372-1375.

CRC Report

was enacted. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

No law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election.

Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.

If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a ye and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next general election.

Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the leg-

islature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.

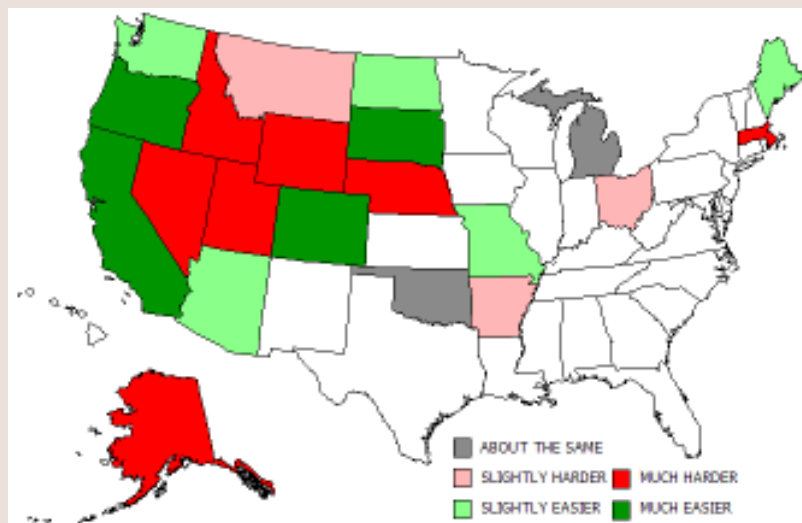
The legislature shall implement the provisions of this section.

The last Michigan gubernatorial elections was in 2010, during which there were 3,226,088 votes cast; thus, based on the eight percent threshold, 258,087 signatures are required for a citizen initiative to make it on the ballot.¹⁸

Ease of Initiating Statutes

Again, CRC has consolidated the factors each state uses for a voter-initiated statutory change into a single measure to assess the process in Michigan against the processes required in the other states. The process restrictions states have in place for constitutional amendments also apply when petitioning for statutory changes, thus adding varying degrees of difficulty to the processes. These restrictions include: 1) direct or indirect initiative processes; 2) signature threshold requirements; 3) the use of county or statewide petitions; and 4) requirements for the signatures to be “dispersed geographically”.

Map 8
The Ease/Difficulty for Voter-Initiated Statutes to Qualifying for the Ballot by State Relative to the Requirements in Michigan



Source: CRC 2013

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Map 8 shows the results of this assessment. Four states (dark green) – California, Colorado, Oregon, and South Dakota – have requirements that are markedly less restrictive than Michigan's for qualifying a statutory initiative for the ballot. Five states (light green) – Arizona, Missouri, Maine, North Dakota, and Washington – have requirements that are a little bit less restrictive than Michigan's. The requirements in Oklahoma (light gray) are on par with Michigan's. The processes in place in Arkansas, Montana, and Ohio (light red) are slightly more restrictive than Michigan's, making it slightly harder to qualify a statutory initiative for the ballot. The processes in place in Alaska, Idaho, Massachusetts, Nebraska, Nevada, Utah, and Wyoming (dark red) are more restrictive than those in Michigan.

Direct or Indirect Initiatives. States use two general methods for voter-initiated statutes to be submitted to the voters: direct and indirect. The key difference between these two methods lies in the role played by the legislative bodies. Michigan's Constitution provides an indirect path for an initiated statute: once a sufficient number of valid signatures have been collected, the proposed law goes to the legislature, and if approved by the legislature within 40 days, the proposal becomes law without a vote of the people or the necessity for approval by the governor. If the legislature does not approve the law, the ballot question is submitted to the people. Michigan is one of five states where the legislature may place an alternative proposition on the ballot in addition to the initiative.

Four other states provide for indirect citizen-initiated statutes, including Maine, Massachusetts, Nevada, and Ohio. In Maine, citizens may initiate legislation indirectly by pre-

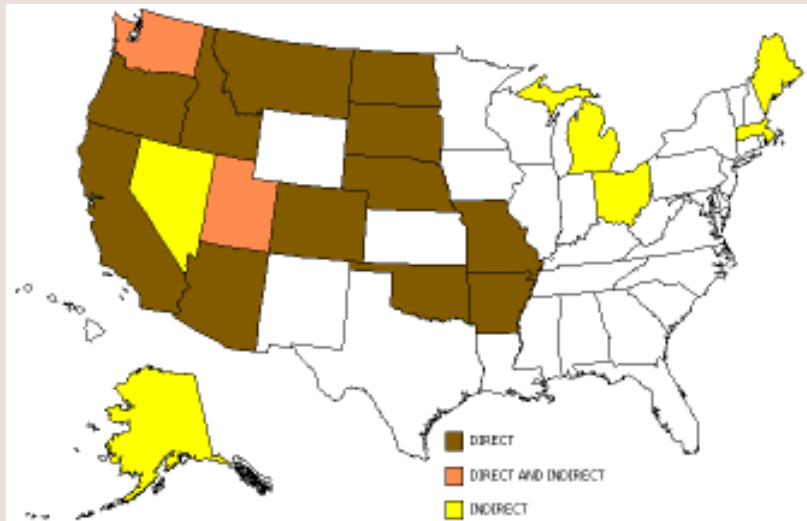
senting petitions to the state legislature, which the legislature may either adopt without change or submit to the electors together with any amended form, substitute, or recommendation of the legislature. Voters can then choose between the competing measures or reject both.

Similarly, Massachusetts citizens can present successful petitions to the Massachusetts General Court. Statutes in the General Court must be approved by one-fourth of the legislators in joint session before being placed on the ballot. Statutes may also be adopted by the legislature with a majority vote; or, if not adopted, then proponents must collect another round of signatures, with smaller requirements in numbers, to place the statute on the ballot.

The Nevada indirect initiative process for statutes is similar, in that once a sufficient number of signatures are collected on a petition they are presented

Four other states provide for indirect citizen-initiated statutes.

Map 9
Direct or Indirect Processes in States that Authorize Voter-Initiated Statute



* in Alaska and Wyoming an initiative cannot be placed on the ballot until after a legislative session has convened and adjourned.

Source: National Conference of State Legislatures (September 2012): www.ncsl.org/legislatures-elections/elections

to the state legislature. If approved, the proposed statute must be signed into law by the governor. If not approved, it is placed on the ballot for a popular vote in the next general election. The governor may also recommend an alternative statute to be proposed by the legislature for the ballot.

In Ohio, successful petitions for statutes that are initiated through an indirect process are presented to the Ohio General Assembly with sufficient signatures. If the proposal is approved without amendment then it becomes law. If not, then an additional round of signatures must be collected in ninety days to place the proposed statute on the ballot for popular vote.

The initiative processes in Alaska and Wyoming are usually considered indirect, however, instead of requiring that an initiative be submitted to the legislature for action, they only require that an initiative cannot be placed on the ballot until after a legislative session has convened and adjourned. Utah and Washington allow for both direct and indirect statutory initiatives.¹⁹

Most states have a direct process for initiating statutes (See **Map 9**). In the direct initiative process, once a sufficient number of valid signatures has been collected, the issue is placed directly on the ballot for determination by the electors.

Required Number of Signatures. The number of signatures required to place a voter-initiated statute on the ballot ranges from 15 percent of the total number of ballots cast in the last general election in Wyoming to 2 percent of the population in North Dakota. Michigan is one of four states that requires 8 percent of the ballots cast for the office of governor. (See **Table 4**.)

Table 4
Requirements to Qualify Voter-Initiated Statutes for Ballot by State

<u>State</u>	<u>Number of Signatures Required on Initiative Petition</u>
Alaska	10% of votes cast in last general election
Arizona	10% of votes cast for governor
Arkansas	8% of votes cast for governor
California	5% of votes cast for governor
Colorado	5% of total votes cast for Secretary of State
Idaho	6% of registered voters
Maine	10% of votes cast for governor
Massachusetts	Two stage: 3% of votes cast for governor; if legislature declines to enact, 2nd round 0.5% of votes cast for governor
Michigan	8% of votes cast for governor
Missouri	5% of votes cast for governor
Montana	5% of votes cast for governor
Nebraska	7% of registered voters
Nevada	10% of votes cast in last general election
North Dakota	2% of population
Ohio	3% of votes cast for governor, if legislature fails to enact, an additional 3% must be collected to place the measure on the ballot
Oklahoma	8% of votes cast for governor
Oregon	6% of votes cast for governor
South Dakota	5% of votes cast for governor
Utah	direct initiative: 10% of votes cast for President indirect initiative: 5% of votes cast for President to submit to legislature and another 5% if the legislature fails to enact and want to take it to the electors
Washington	8% of votes cast for governor
Wyoming	15% of total ballots cast in the previous general election

Source: Ballotpedia.org

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Geographic Diversity of Signatures. States that require geographic diversity of signatures for constitutional amendments also require diversity for voter-initiated statutes. (See discussion above.)

County or Statewide Petitions. Provisions for county versus statewide petitions discussed for initiated constitutional amendments hold true for voter-initiated statutes as well. (See discussion above.)

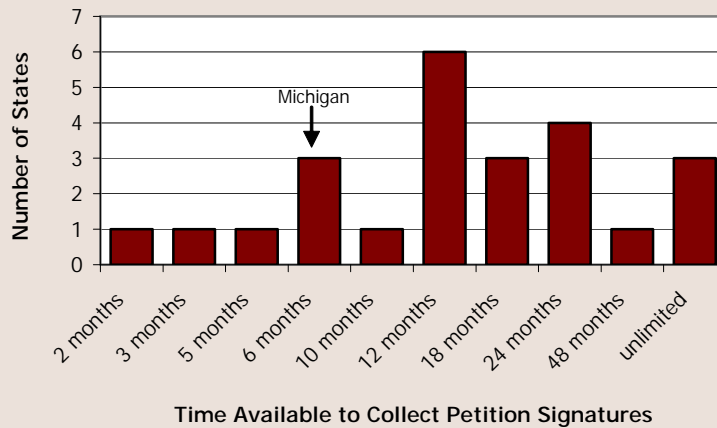
Petition Circulation Period. The petition circulation process has requirements established by the state for the maximum time period a petition is allowed to be circulated for collecting signatures. In Michigan, petition circulators must collect the requisite number of signatures in a 180 day period that can fall at any time within the four years between gubernatorial elections; the signature collection must

be completed 120 days prior to the election for constitutional amendment initiatives and 160 days prior to the election for statutory initiatives.

The other states that authorize initiatives – for constitutional amendments, statutory change, or both – permit petitions to circulate for varying amounts of time ranging from two months in Massachusetts to four years in Florida. State laws provide unlimited amounts of time for petition circulation in Arkansas, Ohio, and Utah. Like Michigan, Colorado and Washington provide six-month windows for those advocating policy changes to make their petitions available for circulation. Not counting the three states that allow unlimited periods for petition circulation, the states average 15 months of time for petition circulation. The most frequent maximum time period is around 12 months, as found in **Chart 6**.

The most frequent maximum time period for circulating initiative petitions is around 12 months.

Chart 6
Maximum Time Period for Circulating Initiative Petitions by State



Source: Petition Circulation Periods, National Conference of State Legislatures website, www.ncsl.org/research/elections-and-campaigns/petition-circulation-periods.aspx (accessed October 22, 2013).

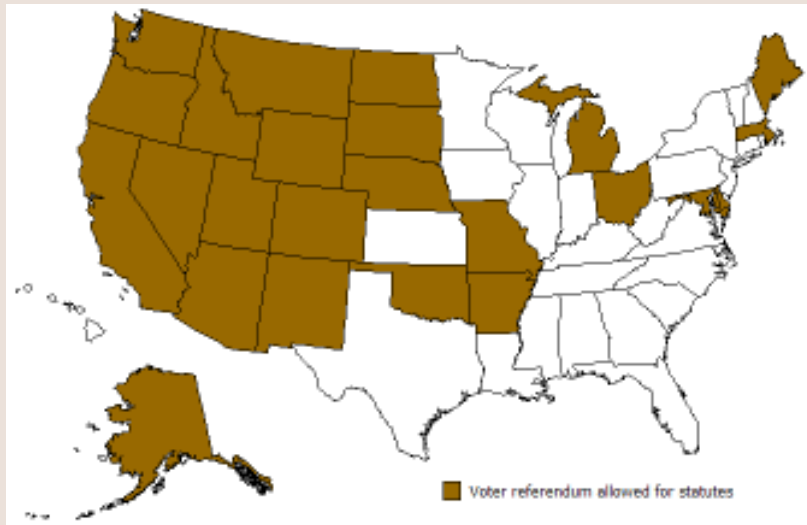
Voter Referendum

The process by which citizens can petition for and vote to approve or disapprove of laws enacted by the legislature is referred to as voter referendum. The power to call for voter referendum on enacted laws is provided in Article II, Section 9 of the 1963 Michigan Constitution (see page 22). For instance, if the legislature passes a law that some voters disapprove of, then those voters may circulate a petition for a popular vote to repeal the law. If the petitions are certified, the law in question is suspended until the election occurs and the people's voice is heard.

In Michigan, to gather signatures on a citizen petition for voter referendum, the sponsor of the measure is permitted 90 days after a legislative session to gather the number of signatures that equates to 5 percent of the total votes cast in the last gubernatorial election. The last election for the Office of Governor was in 2010, during which there were 3,226,088 votes cast; thus, 161,304 signatures are required for a voter referendum to make it on the ballot.²⁰

The authority for voters to initiate statutes and to call for a referendum on enacted statutes tends to go hand in hand. Almost all of the 21 states with voter referendum on statutes also have an initiative process: Maryland and New Mexico laws provide for referendums but not the initiative for constitutional amendments or statutes (See Map 10).

Map 10
Statewide Authorization for Voter Referendum

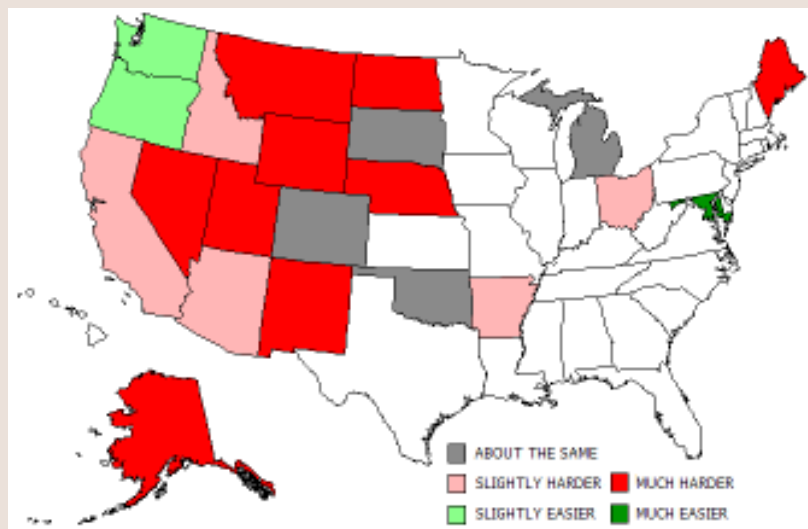


Source: National Conference of State Legislatures

Ease of Calling for Voter Referendum

CRC evaluated the process for qualifying voter referendums for the ballot in Michigan relative to the other states in which referendums are authorized. Map 11 shows the results of this assessment.

Map 11
The Ease/Difficulty for Voter Referendums to Qualifying for the Ballot by State Relative to the Requirements in Michigan



Source: CRC 2013

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Maryland's requirements are much easier to meet than those in Michigan, and Oregon and Washington have requirements that are a little less restrictive than Michigan's. Colorado, Oklahoma, and South Dakota have requirements that are on par with Michigan's. The rest of the states have requirements that are more restrictive than Michigan's: Arizona, Arkansas, California, Idaho, and Ohio a little bit harder, and Alaska, Maine, Montana, Nebraska, Nevada, New Mexico, North Dakota, Utah, and Wyoming, much harder.

Required Number of Signatures. States generally require the number of signatures to qualify for a voter referendum to be a few percentage points less than that needed to qualify for an initiated constitutional amendment or to initiate a statute. The number of signatures required to place a voter referendum on the ballot ranges from 15 percent of the total number of ballots cast in the last general election in Wyoming to 3 percent of the votes cast for governor in Maryland. Michigan is one of six states that requires 5 percent of the ballots cast for the office of governor (See **Table 5**).

Geographic Diversity of Signatures. States that require geographic diversity of signatures for constitutional amendments tend to also require diversity for voter referendums. Michigan petitions are circulated on a countywide petitions without any geographic diversity requirements. In Massachusetts, no more than one-fourth of the signatures may come from any one county. In Ohio, signatures must be

Table 5
Requirements to Qualify Voter Referendum for Ballot by State

<u>State</u>	<u>Number of Signatures Required on Referendum Petition</u>
Alaska	10% of votes cast in last general election
Arizona	5% of votes cast for governor
Arkansas	6% of votes cast for governor
California	5% of votes cast for governor
Colorado	5% of votes cast for Secretary of State
Idaho	6% of registered voters
Maine	10% of votes cast for governor
Maryland	3% of votes cast for governor
Massachusetts	Veto Referendum – 1.5% of the total votes cast for governor Suspension of the Law – 2% of the total votes cast for governor
Michigan	5% of votes cast for governor
Missouri	5% of votes cast for governor
Montana	10% of votes cast for governor
Nebraska	5% of registered voters – law is referred to the ballot but remains in effect until the vote 10% of registered voters – law is referred to the ballot and suspended until vote occurs
Nevada	10% of votes cast in last general election
New Mexico	10% of voters in the previous general election
North Dakota	2% of population
Ohio	6% of votes cast for governor
Oklahoma	5% of votes cast for governor
Oregon	4% of votes cast for governor
South Dakota	5% of votes cast for governor
Utah	10% of votes cast for President
Washington	4% of votes cast for governor
Wyoming	15% of total ballots cast in the previous general election

Source: Ballotpedia.org

Making Statutes Referendum Proof and Veto Proof

The Michigan legislature has on occasion used a constitutional provision to shield valued policy changes from voter referendum. A sentence in the first paragraph of Article II, Section 9 of the 1963 Michigan Constitution states, in part, “The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds...” This provision was included to protect appropriations bills and prevent a referendum-caused shutdown of whole departments or the entire state government. However, the provision has been used instead to referendum proof particular bills. Over the years, with each party in control of the legislature at different times, the majority party has used this provision to its advantage by attaching token funding amounts to make the law an appropriation and thus protect it from being changed or undone by voter referendum.

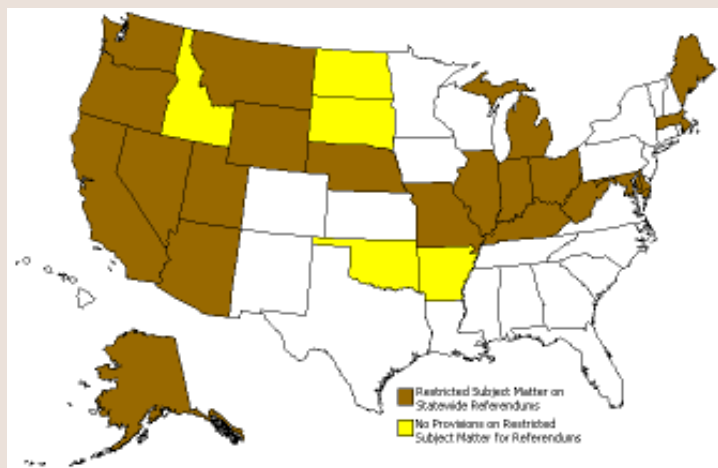
The Michigan legislature, aligned with certain special interests, also has used constitution provisions for initiated statutes to protect measures against gubernatorial veto. The second sentence in the fifth paragraph of Article II, Section 9 of the 1963 Michigan Constitution states, in part, “No law initiated or adopted by the people shall be subject to the veto power of the governor...” This provision was carried over from the 1908 Constitution as it was amended in 1913 and 1941. It has been used at times when majorities in each house of legislature were in agreement on a policy change championed by a special interest group, but the governor did not sign off on these changes. The special interest groups have circulate petitions and garnered the adequate numbers of signatures to place a statutory change before the legislature. By enacting the law in this method, rather than as a bill introduced by a member of either house, the parliamentary moves made possible by these provisions have been used to enact changes without the threat of veto.

The ability to make law changes referendum proof has proven to be a controversial policy tool. One example of this occurred when a concealed weapons permit statute was enacted during the “lame duck” session in December 2000. The law made it easier to access Carry a Concealed Weapon (CCW) permits by establishing a “shall issue” policy if an applicant meets certain minimum conditions. Opponents initiated a petition drive to put the law up for referendum and collected more than the necessary number of signatures to call a referendum. Supporters of the bill challenged the referendum in the courts. On May 16, 2001, the Court of Appeals ruled that the bill is subject to referendum. The court found that the appropriation contained in the law was not for a “core state function” and therefore could not block a vote. On June 29, 2001, the Supreme Court ruled to block the referendum because of the bill’s \$1 million appropriation.^a

Several states regulate the subject matter of referendums and have designated restricted subject matters in the process for requesting permission to circulate a citizen petition for statewide referendums (See **Map 12**). The majority of the states denoted with brown in Map 12 have restrictions pertaining to the dedication of state revenues and appropriations, and laws that maintain the preservation of public peace, safety, and health. In Utah, referendums may not challenge laws passed by two-thirds of each house of the legislature (laws prohibiting/limiting wildlife hunting/management require two-thirds votes to enact).

^a *Michigan United Conservation Clubs v. Secretary of State*, 630 N.W. 2d 297 (2001), http://publicdocs.courts.mi.gov:81/opinions/final/sct/20010629_s119274%2861%29_mucc.jun1.01.pdf.

Map 12
Statewide Voter Referendum: States with Restricted Subject Matter



Source: *The Book of the States*. 2013 ed. Vol. 45.
Lexington: The Council of State Governments.

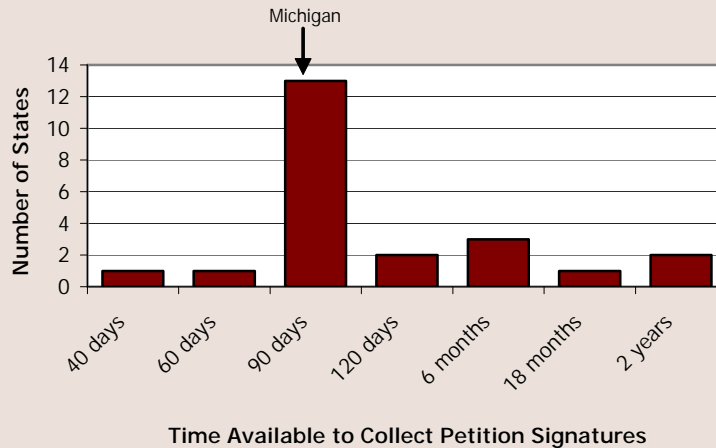
REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

gathered from at least half of the state's 88 counties. In Montana, the signatures must be equal to five percent of the qualified electors in each of one-third of the state's legislative districts. In Alaska, signatures must be from at least 30 of the 40 house districts.²¹

County or Statewide Petitions. Provisions for county vs. statewide petitions discussed for initiated constitutional amendments hold true for voter referendums as well. Petitions for voter referendums in Michigan are circulated on a statewide basis.

Petition Circulation Period. The petition circulation periods for voter referendums in most states are usually shorter than what are allowed for an initiated constitutional amendment or to initiate statutory change. As can be seen in **Chart 7**, Michigan is in the norm by allowing 90 days for petitioners to collect signatures for a voter referendum. Twelve other states provide a 90 day window for signature gathering. Utah allows only 40 days. Idaho allows 60 days. On the other end of the spectrum, Arizona and South Dakota allow as much as two years for petitioners to gather sufficient signatures for a referendum.

Chart 7
Maximum Time Period for Circulating Referendum Petitions in Each State



Source: State Referendums: Circulating the Citizen Petition, Table 6.15, *Book of the States*, The Council of State Governments. Also direct research in a number of state constitutions.

Should Michigan's Provisions for Direct Democracy be Changed?

The laws for signature thresholds in Michigan are on par with the other states that allow for initiative and referendum. Michigan uses a common measure calculating the minimum number of signatures required to place a measure on the ballot as a percent of total votes for governor in the last gubernatorial election. Other states require the threshold number of signatures to be a percentage based on the population, the number of registered voters, voters in the last general election, total votes cast for President in the last presidential election, or votes cast for secretary of state in the last general election.

When these percentages are converted into absolute numbers and then compared to each state's total population or the total number of registered voters in each state, the basis for establishing the percentage threshold does not seem to make a big difference. (See **Table 4** on page 21.) Regardless of how Michigan compares to other states, Michigan policymakers may wish to reconsider the threshold number of signatures for two reasons.

Narrow Difference in Thresholds

First, the two percentage point difference between the thresholds for initiated statutes and constitutional amendments seems to provide little reason not to seek a constitutional amendment. With a difference of only two percentage points in the requirements, the higher requirement for a constitutional amendment generally translates to only 60,000 to 75,000 signatures (depending on the number of votes cast in the last gubernatorial election). Because the difference in signature gathering require-

ments for these purposes is negligible in modern times, it appears advocates of change often select the route that will provide the most permanence for their policy preferences, i.e., to enshrine these preferences where change can only be made via a constitutional amendment approved by the voters.

The questions of what specifically should be dealt with in a state constitution and the purposes to which a state constitution should be directed depend for their answer on the choice of a basic approach to constitution making. Most students of the subject agree that detailed constitutional provisions run contrary to the role of a constitution as an enduring, understandable basic governing document. They feel that the constitution should serve the purpose of a fundamental organic document establishing, defining, and limiting the basic organs of power, stating general principles and declaring the rights of the people. These guiding principles suggest that the constitution should not be an elaborate document; that it should be relatively compact and economical in its general

Regardless of how Michigan compares to other states, policymakers may wish to reconsider the threshold number of signatures because: a) the two percentage point difference between the thresholds for initiated statutes and constitutional amendments seems to provide no reason not to aim for a constitutional amendment when policy advocates are aiming to establish law; and b) advances in communication, transportation, and political engagement have made it significantly easier to reach the threshold amounts.

arrangement and draftsmanship; that details should be avoided; and that matters appropriate for legislation should not be incorporated into the organic document.

And yet, the relative ease of amending the Michigan Constitution, when compared to the requirements for initiating statute, seemingly has led to a preference for embedding policy in the state Constitution. Recent amendments to the Constitution could have been accomplished by statute but instead have added significant length and complexity to the document. (To be fair, many of the most wordy and complex amendments have been offered by the state legislature.)

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

A Changing World

The second impetus to reexamine the threshold number of signatures on is the question of whether advances in communication, transportation, and political engagement have made it significantly easier to reach the threshold amounts. When the initiative and referendum were introduced in Michigan, and most other states where it is authorized, at the turn of the last century, the modern methods of communication and transportation had yet to be developed. Advances in communication and transportation have made it easier for policy advocates to share ideas that result in signature gathering efforts and for petition circulators to get to where people gather. Likewise, with transportation advances people have more opportunities to go to shopping malls, fairs, and other places where petition circulators can strategically locate to optimize the signature gathering efforts.

Changing times also have altered the political landscape with regard to the number of registered voters in Michigan and other states. When the initiative and referendum were introduced with the same signature thresholds as today, it could be expected that less than half of the state residents of voting age were registered voters.²² Not only did petition circulators face the challenge of finding strategic locations to be around as many people as possible, but they had to weed through more than half of the people they came across to find registered voters qualified to sign the petitions. It is certainly a good thing that Michigan and the nation as a whole have a greater percentage of registered voters, but it must be recognized that those gains have made signature gathering easier. Today it can be expected that at least nine of every ten people of voting age that a petition circulator comes across will be registered voters.²³

CRC recommends a reexamination of the signature thresholds. Even if the thresholds for statutory initiatives and referendums are left unchanged, creating more separation between the threshold for statutes and constitutional amendments would help to alleviate the trend of placing statutory material in the constitution. Changing the percentage of voter

signatures needed to qualify for the ballot a constitutional amendment, statutory initiative, and/or voter referendum would require a constitutional amendment voted on by the people.

Geographic Diversity

The Michigan Election Law was amended by Public Act 327 of 1975 to change from city/township to countywide petition forms. Prior to the change, each petition sheet could contain only signatures of voters from the city or township listed in the heading. A circulator would have had to possess copies of the petition with headings for each city and township if they hoped to collect signatures at places people congregate, such as fairs, malls, business districts, etc. The change to countywide forms has eased the administrative burden on circulators and facilitated signature gathering in these places where people come together.

Additionally, Michigan does not require percentages of the signatures on petitions to be from various geographically diverse areas of the state. Petition circulators conceivably can gather all of their signatures from Southeast Michigan, the Grand Rapids area, or other areas where there are high concentrations of registered voters. Those states that do require geographic diversity require a certain number of signatures to come from a subset of the counties, congressional districts, or legislative districts in their states.

It has been very rare for Michigan to have ballot questions where regional differences on an issue appeared to play a dominant role. Detroit residents and other areas with significant populations of color may have felt as if the Michigan Civil Rights Initiative (the 2006 amendment that banned the use of affirmative action for public employment, education, and contracting) was being forced upon them, but this was not entirely an issue of geographic differences. A ballot question that better illustrates the potential significance of geographic differences on ballot questions is the voter referendum sought for the ban on wolf hunting in the Upper Peninsula on the 2014 ballot. In this case, proponents of wolf hunting have as-

Michigan policymakers could explore the jurisdiction of petitions, being statewide or county petitions.

serted that populations in the Lower Peninsula that do not have to deal with the damage inflicted by wolves are creating state policy against their interests. If a requirement to obtain geographic diversity in the signature gathering process is something that resonates as a way to ensure widespread support for a ballot question without altering the signature thresholds, the changes can be made statutorily.

Changing the jurisdiction of petitions, from statewide to county petitions, also would address issues of geographic diversity. As previously discussed, 12 states require petitions to be circulated and certified at the county level and 13 other states collect signatures on statewide petitions beside Michigan. Changing the basis of petition circulation in Michigan could be done with statutory action, but a change that required certification by county clerks would require funding to accompany it because of the Headlee Amendment restrictions on unfunded mandates (see Article IX, Section 29 of the 1963 Michigan Constitution).

Who Benefits from Longer Collection Periods?

The relatively short periods for petition circulation for initiatives in Michigan might suggest that it is a little more difficult to initiate constitutional amendments and statutory changes or to call for voter referendum in Michigan than in the other states. However, the National Conference of State Legislatures (NCSL) points out that empirical evidence does not show a relationship between the lengths of time for petition circulation and the number of ballot questions sub-

mitted to the citizens. Some of the states with the longest circulation periods – such as Utah, Florida and Illinois – have had very few ballot questions submitted to their voters. On the other hand, some of the states with the shortest circulation periods – such as California, Colorado, and Washington – have among the highest number of initiatives submitted to the voters. Observations about these relationships suggest that the number of ballot questions offered on the ballot has more to do with the culture of the state than with the petition circulation periods.²⁴

Michigan's Bureau of Elections found that a shorter circulation period results in greater reliability when sampling the petition signatures. The Bureau found that a four-year circulation period associated with Proposal D of 1982 resulted in an inordinate number of duplicate signatures.

The NCSL points out that length of the circulation period has the greatest effect on volunteer efforts. Policy advocacy groups with sufficient organization and resources are able to pay circulators and can commit as many resources as necessary to collecting the requisite number of signatures within a given time period. Volunteer efforts, on the other hand, tend to be less well-organized and depend on volunteers juggling their everyday lives with the additional task of circulating petitions. For these reasons, longer circulation periods clearly benefit volunteer petition drives but provide additional opportunities to the more organized efforts to circulate petitions.²⁵

Laws Affecting Petition Circulators

The initiative and referendum are often viewed as legislative powers retained by the people to make laws or undo enacted laws outside of those legislative bodies. The existence of a cottage industry that pays individuals to solicit petition signatures would suggest, however, that these powers that were retained from the legislature often are not being used exclusively by the people in "grassroot" efforts, but are more often being utilized by those with the resources to fund petition circulating efforts.

The realities of this cottage industry may make some Michigan electors uneasy. In fact, most ballot questions that have been introduced to the Michigan ballot via the initiative process have engaged paid circulators to collect most or all of the petition signatures. Some of those employed in this cottage industry bounce between states, traveling to those states where petitions are being circulated and where those advocating policy changes are able or willing to pay the most for signatures to be collected.

The finances of these initiative processes may make the Michigan electors feel like pawns in a larger game of political chess. Some questions that have made it to the ballot in Michigan have been introduced and the efforts to collect sufficient signatures funded by out-of-state interests and sometimes national interests that shop their policy issues in initiative states as a way to circumvent the legislative process. Monied special interests have proven to pay large amounts to put ballot questions on the ballot: reportedly paying as much as \$5 and \$6 per signature for signatures to get issues such as the 2012 effort to slow down or stop the construction of a new international bridge across the Detroit River.²⁶

The Initiative and Referendum Institute reports that paid petition circulation has been a part of the initiative process since states began authorizing the initiative and referendum at the turn of the last century.²⁷ States have made efforts to identify, restrict, and regulate paid petition circulators throughout the

years, but those efforts seemed to have increased in recent years. Those state efforts have included provisions that:

- require petition circulators to be registered voters of the states in which they are circulating petitions;
- require petition circulators to be of a minimum age;
- require paid petition circulators to be identifiable to differentiate them from voluntary petition circulators; and
- restrict how proponents backing a signature gathering effort compensate the paid petition circulators.

Paid petition circulation has been a part of the initiative process since states began authorizing the initiative and referendum at the turn of the last century.

States have offered up these restrictions and regulations on the premise that they act to preserve the integrity of the initiative process. They ensure that those engaging in this form of political speech have a vested interest in the laws of the states and they help the citizens to know with whom they are dealing when approached

to add signatures to the circulated petitions. The states with provisions argue that these provisions prevent fraudulent activity in the petition circulating process, and they allow the states to identify and take actions against those that do engage in fraudulent activity.

Opponents to state restrictions argue that they infringe on citizens' First Amendment rights to free speech and the ability to engage in political expression. In inhibiting the legislative powers reserved to the people in the initiative process, the legislative enactment of these restrictions and regulations act to preserve the power to make laws solely in the legislative bodies comprising elected representatives. Opponents argue that accounts of fraudulent activity are anecdotal and that wholesale restrictions on free speech goes too far in halting bad behavior.

It also is worth noting that states adopting these tool of direct democracy over a concern that power

was being concentrated in the hands of too few. The concern was that state legislatures were not being fully representative. However, over time the pendulum may have swung the opposite direction. In states such as Oregon, California, Colorado, and Michigan, a small number of people can use this process in an attempt to go around the popularly elected legislature.

Residency and Registered Voter Requirements

In order to minimize the number of people coming to their states only to work as paid petition circulators, most states with initiatives and referendums require those circulating petitions to be residents of that state. The philosophy behind these requirements is that those engaging in political speech, and advocating the change of state laws, should have a vested interest in the issue. **Map 13** shows that Michigan, like Colorado, Idaho, Mississippi, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming, requires that, at a minimum, petition circulators be residents of those states. Section 544c of the Michigan Election Law requires petition circulators to be “qualified to be a registered elector of this state at the time of circulation and at the time of executing the certificate of circulator.” California takes it a little further, requiring the petition circulators to be “qualified to register to vote.”²⁸

Arizona’s requirement of residency are considered *de facto* requirements because in order to be a registered voter, the states require one to be a resident of that state. The laws in Illinois, Maine, and Ohio continue to require the petition circulators to be registered voters.

The laws in Arkansas, Florida, Massachusetts, Missouri, Nevada, Oregon, and Washington do not place residency or

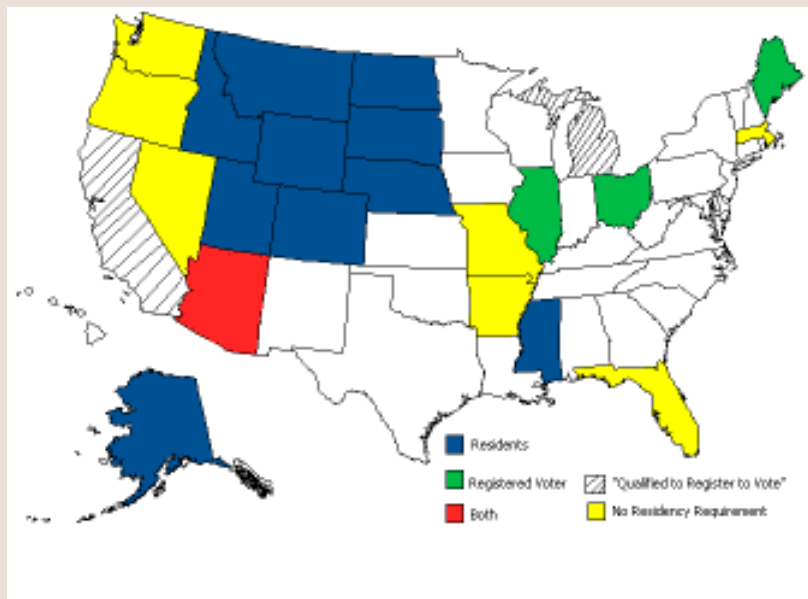
registered voter requirements on petition circulators.

This requirement in many of these states is rooted in a 1999 U.S. Supreme Court decision: *Buckley v. American Constitutional Law Foundation, Inc.* (525 U.S. 182). In this case, the State of Colorado was sued on the grounds that provisions in state law regarding the initiative petition process violated the free speech guarantee of the First Amendment of the U.S. Constitution.²⁹ These provisions included requirements on the circulator’s age, voter registration, the petition circulation period, disclosure of the amount paid to circulators, and an affidavit with their name and address. The Court ruled that the registration requirement reduces the number of petition circulators to carry the message of the plaintiffs and hinders their ability to engage in political discussion for the purpose of getting a measure on the ballot. As a result, some states adopted laws requiring that circulators be qualified to register to vote rather than registered voters.

Age Requirements for Petition Circulators

Like residency, requiring petition circulators to be of a minimum age ensures that those engaged in this

Map 13
States that Require Petition Circulators to be Residents of that State



Source: Ballotpedia

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

form of political speech have a vested interest in the issue. In *Buckley v. ACLF*, the Supreme Court upheld the ability of states to require petition circulators to be at least 18 years old. Justice Ginsberg wrote that the Supreme Court upheld the age requirement for petition circulators because "age commonly is used as a proxy for maturity," and that "maturity is reasonably related to Colorado's interest in preserving the integrity of ballot issue elections."³⁰

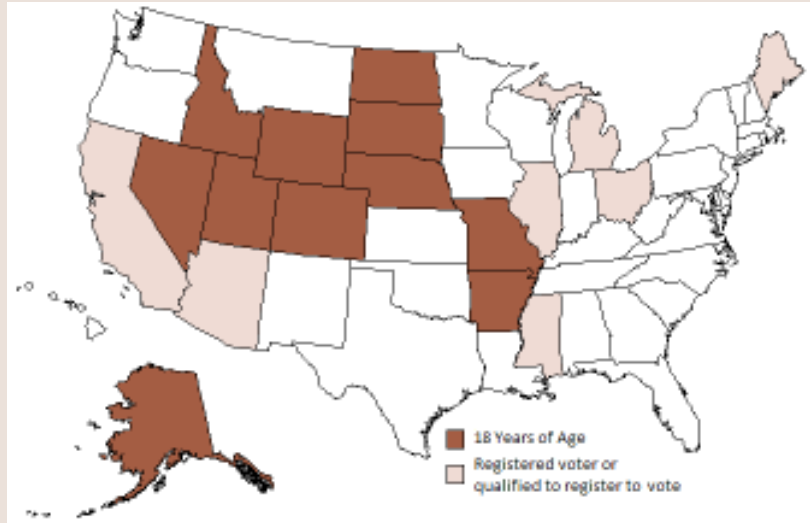
Many states impose an age restriction on petition circulators by requiring circulators to be registered voters (or qualified to register to vote), which would require that they are over the age of 18. Eleven states, however, have an 18-or-older requirement without a registered voter requirement (see **Map 14**).

Disclosing Paid or Volunteer Status

Some states have taken action to provide more information about the people soliciting petition signatures. It is reasoned that people have the right to know whether petition gatherers are volunteers working for a cause near to their hearts, or are being paid for the task of circulating petitions. Further, knowing that the petition gatherers are paid, may cause people to hold those individuals to higher standards and report instances of fraud or people acting unprofessionally.

In many states with provisions on the payment of circulators, the circulators are required to disclose whether they are being paid or volunteering to gather signatures. This can be disclosed by means of badges worn by the circulators, the

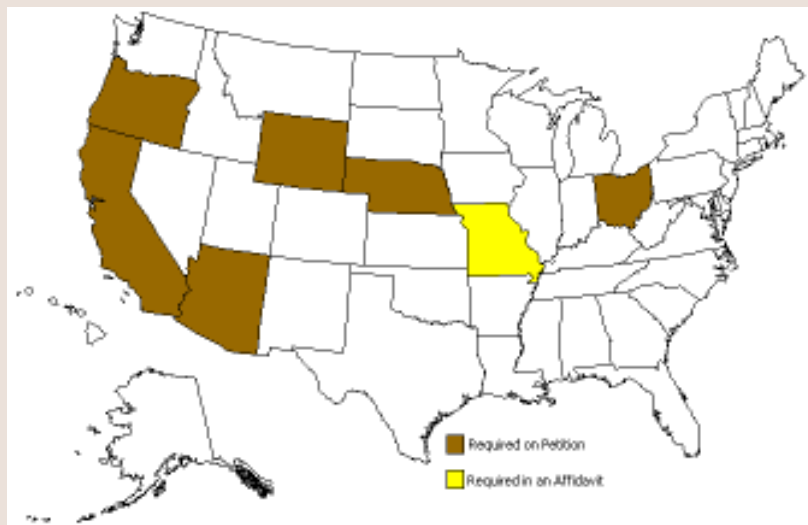
Map 14
State Restrictions Regarding Petition Circulators' Age



Source: National Conference of State Legislatures

color of the petition, in written words on the petition, and on affidavits filed with the state. Arizona, California, Nebraska, Ohio, Oregon, and Wyoming require this to be disclosed on the petition. **Map 15** illustrates the seven states that require circula-

Map 15
States that Require Circulators to Disclose Paid or Volunteer Status



Source: National Conference of State Legislatures

tors to disclose to petition signers whether they are paid or volunteer.

Petition Circulator Compensation Laws

Some states have attempted to remove some of the unsavory nature of the petition circulation process by restricting compensation for circulators. These states may believe that the propensity for fraud could be reduced if circulators are not paid on a per-signature basis. Such a change could modify the behavior of petition circulators, causing them to be less aggressive in seeking signatures. It is hoped that changing the method of financing petition circulation processes could take the initiative from well-funded special interests and give it back to the people.

According to the National Conference of State Legislatures (NCSL), most gatherers are paid between \$1 and \$3 per signature, and occasionally as high as \$10 per signature.³¹ This method has proven to be extremely successful in getting questions qualified for the ballot. NCSL (2010) stated that “a campaign that has adequate funds to pay circulators has a nearly 100 percent chance of qualifying for the ballot in many states.”

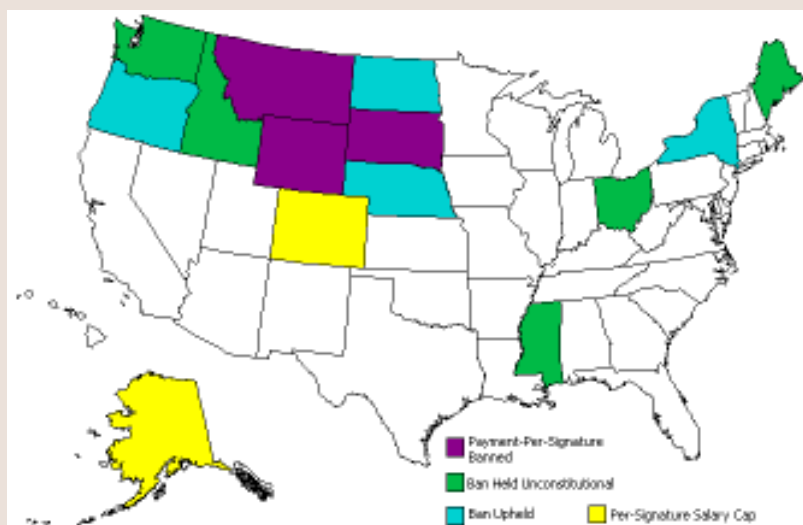
In the 2012 election, Proposal 6, an effort by Detroit Ambassador Bridge interests to require voter approval for a second bridge to Canada, spent more than \$2.3 million gathering petition signatures.³² Campaign finance records filed with the Secretary of State’s office also showed that more than \$1.9 million was spent on the collection of signatures for Proposal 5, a constitutional amendment that would have required a supermajority legislative vote in order to raise taxes. For Proposal 3, the renewable energy constitutional amendment, and Proposal 4, a constitutional amendment to enshrine collective bargaining rights for home health care workers, \$1.6 million was spent on each campaign for peti-

tion signatures. Thus, a total of \$7.3 million was spent on signature gathering in Michigan for four of the five proposed constitutional amendments that appeared on the 2012 general election ballot.

Laws regarding paid petition circulators exist in a number of forms and have changed over time. Currently there are nine states with laws restricting the ability to pay circulators; however, payment can no longer be banned by a state because of a 1988 U.S. Supreme Court ruling in *Meyer v. Grant* (486 U.S. 414). **Map 16** illustrates the varying directives states have received from the courts regarding bans on the payment-per-signature model.

Meyer v. Grant was a major 1988 Court decision in which the U.S. Supreme Court unanimously upheld a court of appeals ruling to confirm the right of ballot measure proponents to pay petition circulators for collecting signatures.³³ The plaintiffs in the case, Paul Grant et al., challenged the Colorado statute that made it a felony to pay petition circulators.³⁴ The courts were charged with determining the extent to which the Colorado statute burdened political speech rights of the First and Fourteenth Amendments. The court of appeals ruling *en banc* (with all of the judges

Map 16
State Provisions Limiting, Prohibiting, and Allowing Payment-Per-Signature of Petition Circulators



Source: National Conference of State Legislatures and Nebraska Attorney General Opinion 07006

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

present and participating) held that the statute violates these rights by limiting the number of circulators able to voice the message of the appellees and the hours they dedicate to spreading the message, which, as a result, limits the number of people that the message can reach. It also reduces the ability for the appellees to collect the number of necessary signatures, thus inhibiting their chance at making the measure a focus of statewide discussion. Further, the U.S. Court of Appeals recognized that although there are other methods of expression available to the appellees, paid circulators are the most effective method of achieving direct, one-on-one public outreach and communication.

There must be an adequate reason and purpose for the ban, or a problem being addressed by the statute.

The U.S. Court of Appeals also rejected the state's suggestion and justification that the ban on paying circulators was to prevent fraud and to shield the public from persuasive circulators. The court cited several earlier Supreme Court decisions, including:

The very purpose of the First Amendment is to foreclose public authority from assuming guardianship of the public mind . . . In this field, every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us.³⁵

Therefore, the U.S. Supreme Court ruling affirmed that it is not the role of the government to protect the public from fraudulent claims by limiting or abusing political speech rights of the First Amendment. The First Amendment allows freedom of speech regardless of truth in what is being said, as stated in the decision in *NAACP v. Button*: "The First Amendment is a value-free provision whose protection is not dependent on 'the truth, popularity, or social utility of the ideas and beliefs which are offered.'"³⁶

The court largely focused on the motivation and justification for the ban. Applying exacting scrutiny in its analysis of the state's motivations, the court ruled that there must be an adequate reason and purpose for the ban, or a problem being addressed by the statute. Further, with the court striking down the state's provided reasons for the ban, it focused its ruling on why the ban impedes freedom of speech rights in the First Amendment.

Since the *Meyer v. Grant* decision that ruled that banning the payment of petition circulators was not an option, Colorado enacted a unique law in which sponsors are banned from paying a petition circulator more than 20 percent of his or her total compensation by method of payment-per-signature method. This too was found unconstitutional in Colorado district court in *Independent Institute v. Colorado Secretary of State*.³⁷ Several other states – including Montana, Nebraska, North Dakota, Oregon, South Dakota and Wyoming – have banned the method of payment-per-signature while allowing for payment on a salary or an hourly basis.

Alaska does not prohibit payment of petition circulators on a per-signature basis, but allows payment of circulators only up to \$1 per signature; thus, capping the payment allowed.³⁸

In 2002, Oregon voters adopted Ballot Measure 26, a voter initiative, which reads in relevant part:

To protect the integrity of initiative and referendum petitions, the People of Oregon add the following provisions to the Constitution of the State of Oregon: It shall be unlawful to pay or receive money or other thing of value based on the number of signatures obtained on an initiative or referendum petition. Nothing herein prohibits payment for signature gathering which is not based, either directly or indirectly, on the number of signatures obtained.³⁹

Following the voters' approval, the Oregon Secretary of State issued an administrative rule as an interpretation of Measure 26. Further, any violation of Measure 26, or the rule, would result in civil penalties at a minimum of \$100 per individual signature sheet containing signatures that were collected in violation of Measure 26. The administrative rule states:

[Measure 26] bans the practice of paying circulators or others involved in an initiative or referendum effort if the basis for payment is the number of signatures obtained. This means that payment cannot be made on a per signature basis. Employment relationships that do not base payment on the number of signatures collected are allowed. Allowable practices include: paying

an hourly wage or salary, establishing either express or implied minimum signature requirements for circulators, terminating circulators who do not meet the productivity requirements, adjusting salaries prospectively relative to a circulator's productivity, and paying discretionary bonuses based on reliability, longevity and productivity, providing no payments are made on a per signature basis.

In *Prete v. Bradbury*, a lawsuit was filed against Oregon's Secretary of State for banning the payment-per-signature method.⁴⁰ The plaintiffs in the case, Barbara and Eugene Prete, had coordinated petition circulators to gather signatures to place various initiative measures on the February and November 2004 ballots. When the Oregon Elections Division acted to enforce Ballot Measure 26, the plaintiffs responded by filing an action in federal district court against the defendant, Bill Bradbury, the Secretary of State of Oregon. The plaintiffs claimed that Measure 26 violated the First Amendment of the U.S. Constitution.

The district court opinion and order found that "Measure 26 was targeted at the electoral processes rather than at the communicative aspect of petition circulation." Thus, the district court found that the ban in Measure 26 did not impose any substantial burdens on circulating initiative or referendum petitions. Further, the court ruled that the defendant had provided adequate justification for the lesser burdens imposed by the measure in the interest of protecting the integrity of the initiative process. The district court opinion was upheld on appeal to the U.S. Court of Appeals for the Ninth Circuit. The court of

appeals stated that, "The First Amendment does not, however, prohibit all restrictions upon election processes." This was supported by *Timmons v. Twin Cities Area New Party* (520 U.S. 351, 358) in which the U.S. Supreme Court ruled in 1997 that states may restrict First Amendment rights for elections for reasons such as to reduce election- and campaign-disorder. The court also cited *Buckley v. American Constitutional Law Foundation, Inc.*, stating "States allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally."

Oregon contented that the regulatory interests for Measure 26 was to stop actual occurrences of fraud and forgery by petition circulators that were paid on a per signature basis. The intent of Measure 26 was affirmed by a pamphlet disseminated to voters prior to the 2002 general election. The pamphlet clearly stated that Measure 26 aimed to prevent fraud, forgery, and identity theft counts by removing the incentive from a payment-per-signature model by mandating paid circulators are paid hourly rather than per signature. The state presented the court with additional evidence of actual fraud and forgery that had occurred in the initiative process because circulators would forge signatures in order to be paid more and circulators would also falsely certify their signature sheets.

To summarize, the current case law suggests that states are prohibited from banning the pay of petition circulators, but states have some latitude in restricting the form that the proponents may use to compensate the circulators.

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Witness and Affidavit Requirements

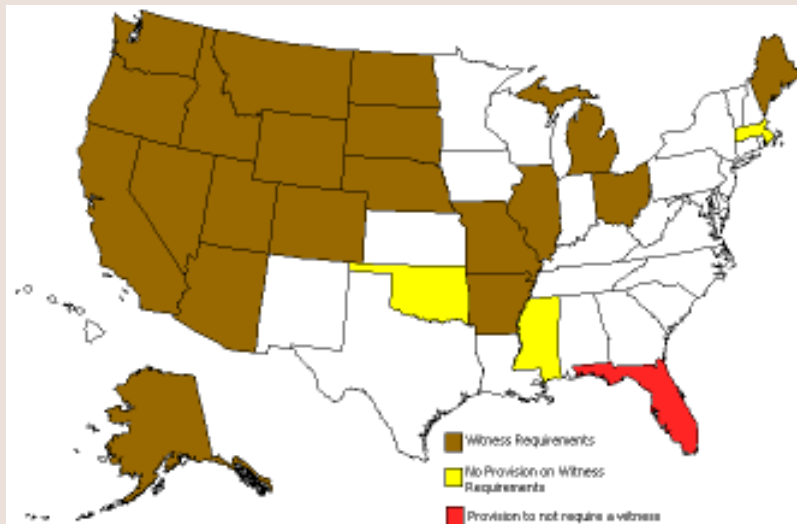
Several states require an affidavit in which initiative petition circulators attest to various facts, such as: that the circulator witnessed each act of signing the petition; and that the circulators believes (or in some states, “knows”) that each signature represents an actual individual that is eligible to sign the petition and willingly did so. Further, an affidavit is considered a type of oath; and, therefore, some states require that the affidavit be signed in the presence of a notary public.

A sweeping majority of initiative states (20 of the 24) require petition circulators to witness petition signatures and to verify being a witness by signing an oath or an affidavit (See **Map 17**). Out of the 20 states, 12 states require a notary and eight do not. Michigan does not have a notary requirement as part of the witness requirement. The Massachusetts, Mississippi, and Oklahoma constitutions and statutes are silent on signing requirements and affi-

davits. On the other hand, Florida law specifically states that the signing of petitions outside of the presence of a circulator is permissible. According to an administrative rule (1S-2.009) from the Florida Secretary of State Election Division, “petition forms may be reproduced in newspapers, magazines, and other forms of printed mass media, provided that such forms are reproduced in the same format approved by the Division. The petition forms may be included within a larger advertisement, provided the forms are clearly defined by a solid or broken line border.”⁴¹

The Supreme Court case *Buckley v. American Constitutional Law Foundation, Inc.* affirmed the constitutionality of laws requiring circulator affidavits on petition forms because, as in *Meyer v. Grant*, the Court found that states have substantiated interest for regulations in the ballot-initiative process, including provisions to protect the integrity of the initiative process and deter fraud.⁴²

Map 17
State Requirements for Witnessing Signatures



Source: National Conference of State Legislatures

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

week. In 2003, the former Initiative and Referendum Institute president estimated that “5,000 people earn their living as signature gatherers, and perhaps 1,000 cross state lines for gigs. Employed as independent contractors, they ply precincts from California to Maine and from Oregon to Florida.” In a *Los Angeles Times* article, one circulator describes this lifestyle as “It’s all about whether you can hustle or not;” another said in order to do so “I was registered in five states but voted in none.”⁴⁴

The existence of traveling petition circulators and individuals circulating several petitions at once has spurred discussion across the United States about whether restrictions on circulators impinges on their freedom of speech, as asserted by the courts.

When individuals are allowed, and even paid, to circulate several petitions at once it is less clear how the actions of appealing for registered voters to lend their signatures to the petitions relate to their freedom of speech. Many of the paid circulators are hired by independent contracting firms that contract to work for several campaigns. For the circulators, the more petitions, more signatures, and, often, more money in a payment-per-signature model. In a year like 2012, when a petition circulator in Michigan could be circulating petitions to strengthen and embolden collective bargaining and also for tax limitations and requiring supermajority legislative votes to increase taxes, the speech related to these causes would seem to be contradictory. However, some of the campaigns hiring independent contractors forbid hired petitioners from circulating any other petitions during that election cycle.

Reform Possibilities

Other states have a number of restrictions and regulations that Michigan policymakers could consider imposing paid petition circulators in this state. A review of the legal history of court challenges to restrictions

and regulations shows that there can be legal grounds for them in the ballot question process. However, the restrictions and regulations have the best chance of surviving a First Amendment challenge when the states can produce evidence justifying the restrictions and regulations as a necessary remedy for fraud and abuse in the petition process and when the contestants cannot demonstrate that they are significantly burdened in their ability to gather signatures.⁴⁵

There can be legal grounds for them in the ballot question process. However, the restrictions and regulations have the best chance of surviving a First Amendment challenge when the states can produce evidence justifying the restrictions and regulations as a necessary remedy for fraud and abuse in the petition process and when the contestants cannot demonstrate that they are significantly burdened in their ability to gather signatures.

Thus, the first question to Michigan policymakers that may seek to impose restrictions and regulations on paid petition circulators is, “What is being remedied?” While signatures on petitions are routinely disqualified when petitions are submitted, Michigan has little history of paid petition circulators being charged with acting to fraudulently to gather signatures for the sake of enhancing their compensation. The most recent case of fraud in gathering petition signatures was related not to paid circulators for an initiative petition, but to the staff of Congressman Thaddeus McCotter and their efforts to qualify the Congressman for the 2012 ballot.

The petition circulators that helped put the Michigan Civil Rights Initiative on the ballot in 2006 faced

charges of fraudulent activity, but as will be discussed below, that activity was related more to the information relayed about the implications of adopting the proposed constitutional amendment than any efforts to garner signatures from unregistered voters.

If policymakers can establish that there is a policy problem in need of being addressed, they must then answer whether impinging the freedom of speech of the issue proponents and petition circulators is justified by the proposed remedies.

Because Michigan does not address the subject of petition circulators in its Constitution, all newly enacted restrictions and regulations could be created legislatively.

Informed Petition Signers

As Michigan policymakers examine issues related to the petition circulation process, they also may wish to explore perceived problems emanating from the subject matter of the ballot questions for which electors are signing petitions. While some of the angst is related to the voter referendums and initiated statutes – with ballot questions on bear baiting, dove hunting, and the use of bingo games as political fund raisers – this concern is more closely tied to voter-initiated constitutional amendments.⁴⁶ In an effort to save us from ourselves, some may attempt to limit the ability of proponents to pay petition circulators and to better notify potential petition signers of the professional efforts behind the cause. Such actions would seem to be based on the precept that people would not sign petitions but for the aggressive actions of circulators and misinformation perpetuated about the ballot questions.

Perhaps instead of limiting who can serve as petition circulators and how they are paid, reform efforts may be better directed at informing registered voters about the issues for which petitions are being circulated and/or scheduled to appear on the ballot.

Misinforming Petition Signers

Even when striving to be an informed voter, citizens can be subjected to deception and fraud. Campaign deception and petition fraud are, unfortunately, issues that have been encountered by Michigan voters and election administrators. Some are concerned about circulators misinforming the public, campaigns deceiving the voters in advertisements, and the fraudulent collection of signatures.

These concerns became real in the 2006 Michigan Civil Rights Initiative (MCRI) ballot question. The MCRI ballot measure was an initiative to nullify the 2003 United States Supreme Court decision to uphold the University of Michigan's use of affirmative action policies (*Grutter v. Bollinger* (539 U.S. 306)).

The measure sought to amend the Michigan Constitution to prohibit the use of affirmative action on the basis of race, sex, color, ethnicity and national origin in the public sector, including public employment, public education, and public contracting.

Proponents of MCRI were alleged to have deliberately misrepresented and deceived citizens through their paid circulators.⁴⁷ It was alleged that circulators were targeting African American voters and misleading signers to believe the amendment proposed for popular vote was in favor of affirmative action. Further, the petition circulators purposefully chose locations with anticipated, large numbers of affirmative action supporters, such as churches and community hubs in African American neighborhoods.

These allegations were investigated by the Michigan Civil Rights

Commission (MCRC) over a five month period. The MCRI had begun circulating petitions in 2003 following approval from the Board of State Canvassers (BSC) on the ballot language and form. However, contention on the language of the ballot question was apparent early on, and this approval from the BSC was undone by the circuit court, which held that the form did not comply with state elections law. The circuit court decision was then reversed by the Michigan Court of Appeals in 2004.

Instead of recirculating the same petitions from the 2004 election, MCRI circulated new petitions with the identical language for the 2006 ballot. The language for the 2006 ballot failed to receive BSC approval because the Board was divided on whether or not fraud was involved in the gathering of the 508,159 petition signatures that were submitted in January 2005. The MCRI subsequently filed a lawsuit against the Board alleging that the BSC lacked the authority to investigate fraudulent petition signature gathering. The Court agreed and the Board was ordered to approve the petition to be placed on the November 2006 ballot.

Perhaps instead of limiting who can serve as petition circulators, reform efforts may be better directed at informing registered voters about the issues for which petitions are being circulated and/or scheduled to appear on the ballot.

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Starting in January of 2006, the MCRC held hearings all across the state to gather testimony of fraud by the proponents of the MCRI ballot measure. Citizens from the Detroit, Lansing, Grand Rapids, and Flint areas provided evidence of organized fraud committed by circulators of the MCRI petitions. As a result of the findings from these hearings, the BSC motioned the Court for reconsideration of the previous Court's order to approve the petition for the November 2006 ballot.⁴⁸ The motion for reconsideration asked that the Court consider the report prepared by MCRC which contended that a significant number of petition signatures were obtained by the circulators misrepresenting the measure as being "in favor of" affirmative action. This motion was denied by the Court.

Responsibilities of Self-Government

The Court denied this motion for reconsideration, and cited a number of reasons that largely focused on the responsibility of the petition signers to know what it is they are signing, as the Court's majority stated: "The signers of these petitions did not sign the oral representations made to them by circulators; rather, they signed written petitions that contained the actual language of the MCRI."⁴⁹ Specifically, the Court emphasized the civic duty of voters in a democratic government and the popular vote from the electoral process being the ultimate check on the petition process. The majority stated:

In carrying out the responsibilities of self-government, 'we the people' of Michigan are responsible for our own actions. In particular, when the citizen acts in what is essentially a legislative capacity by facilitating the enactment of a constitutional amendment, he cannot blame others when he signs a petition without knowing what it says. It is not to excuse misrepresentations, when they occur, to recognize nonetheless that it is the citizen's duty to inform himself about the substance of a petition before signing it, precisely in order to combat potential misrepresentations.⁵⁰

Further, the Court solidified that the responsibility of the signer to self-inform outweighs the oral representations, or alleged misrepresentations, of the circulators in exercising their right to political speech. The majority ruled:

A necessary assumption of the petition process must be that the signer has undertaken to read and understand the petition. Otherwise, this process would be subject to perpetual collateral attack, and the judiciary would be required to undertake determinations for which there are no practical standards and which essentially concerns matters of political dispute.⁵¹

Thus, the Court has seemed to identify a potential shortcoming in Michigan's petition initiation process. Though checks and balances are in place through regulatory bodies and the electoral process, ultimately, 'we the people' of Michigan have a crucial role to inform ourselves, and others, on the true intents and exact outcomes of a measure for, or on, the ballot.

Making Citizens Informed Petition Signers

Other states have supplemented civic duty by requiring prepared, objective information such as pamphlets or pages on their state websites. At least nine states have set requirements for specific information to be included with petitions: including Arizona, Florida, Maine, Massachusetts, Mississippi, Missouri, Montana, Nebraska, and Washington. Information can include ballot question summaries, fiscal notes, and statements that explain a 'yes' and 'no' vote. Six states have requirements that a fiscal statement, or fiscal note summary, be published on the petition form itself: including Alaska, California, Maine, Missouri, Montana, and Utah.⁵² These types of informative communications can be included in, or comprised of, official voter guides prepared by a state, which are also referred to as voter pamphlets.

Additionally, once ballot questions are approved for the ballot, 15 states require that the secretary of state or attorney general create pamphlets or disperse information to voters on state websites with ballot language, summaries of each ballot question, fiscal notes, and arguments for and against each ballot question. States with such requirements can be found in **Map 19**. The pamphlet states include California, Colorado, Massachusetts, Mississippi, Nevada, Ohio, Oregon, and Utah.

The Michigan Secretary of State provides a virtual ballot in the Michigan Voter Information Center; however, this effort still relies on the objective work of others – such as the Citizens Research Council of Michigan and the League of Women Voters – to explain what the ballot questions mean. This information is made available after the ballot questions are certified for the ballot.

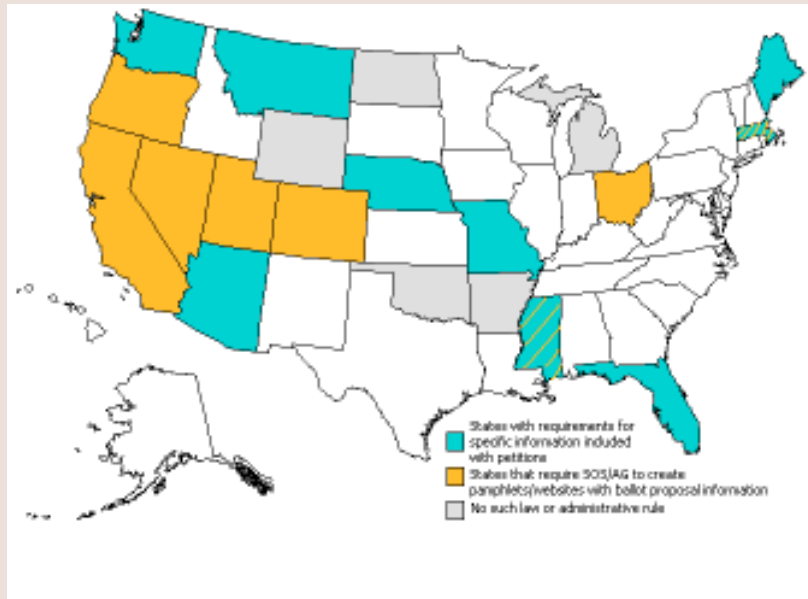
Ballot Measure Summary Statements and Fiscal Statements

Create Summary Before Petition Circulation. It is recommended that Michigan adopt the practices of those states that require information be contained on the petitions, and that the state disseminate information early in the petition process to educate registered voters about the ballot questions in the field and following their certification for the ballot. Best practices include ballot measure summary statements and fiscal impact statements, as exemplified in the section below and demonstrated by a 50-state review of state practices of official voter guides.

Ballot measure summary statements vary from state-to-state and may be included in, or may be composed of, an official voter guide or voter pamphlet. The analysis is generally intended to be impartial and give voters an understanding of the ballot questions in order to cast an informed vote.

One best practice is for a summary of the issue to be prepared before petitions are circulated and included for potential signers to review. Mississippi law provides that this analysis or summary is produced after the attorney general has reviewed the measure and the secretary of state has verified a “certificate of review.” According to *Mississippi Code, Title 23, Chapter 17, Sections 5 & 9*, the attorney general reviews the ballot question within 10 working days from receiving the measure from the Secretary of State for

Map 19
States’ Requirements on the Creation of Pamphlets or Websites for Ballot Information



matters of form and style.⁵³ The attorney general is to produce a true and impartial statement that summarizes the purpose of the measure. Once this summary is approved by the secretary of state, which must occur within 10 days of filing, the summary is published in newspapers for general circulation throughout the state of Mississippi.

According to *Missouri Revised Statutes, Title IX, Chapter 116*, the Missouri attorney general reviews the petition form and submits comments and recommendations to the secretary of state. The secretary then approves or rejects the petition with consideration of the attorney general's comments. When a measure is approved, the secretary of state drafts a summary of the measure in 100 words or less, subject to the approval of the attorney general based on the fairness and accuracy of this statement.⁵⁴

Prepare Fiscal Notes. Another best practice is preparation of fiscal notes when applicable. A fiscal impact statement on a ballot question utilizes a fiscal review process to analyze the extent to which a proposed law may impact, positively or negatively, a state's finances. Mississippi's practice of conduct-

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

ing a fiscal review of ballot questions only occurs when a legislative alternative is submitted by the legislature as a result of their indirect initiative process. Thus, a fiscal review for the measure and its legislative alternative is conducted by the chief legislative budget officer, who then creates fiscal impact statements to be included on both the ballot and voter pamphlets for comparison purposes.

In Missouri, the state auditor prepares a fiscal note and fiscal note summary as part of a fiscal review of a proposed measure. The fiscal note summary is less than 50 words and included as part of the petition. Thus, the "ballot title" in Missouri consists of both the measure summary and the fiscal note summary, which is attached to the petition. The fiscal note is first reviewed and either approved or rejected by the attorney general before the fiscal note summary is included on petitions.

The Maine fiscal review is prepared by its Office of Fiscal and Program Review and, as mandated by *Maine Revised Statutes, Title 1, Chapter 11 Section 353*, the fiscal statements must be completed within a certain timeline dependent on the type of ballot measure. The statement must summarize the state funds that would be impacted, such as the highway fund or general fund, and any amount of funding that would need to be transferred from the state to local government units.⁵⁵ This summary must then be printed on every signature page of the petition.

In Utah, the governor's Office of Planning and Budget must prepare an "unbiased, good faith estimate of the fiscal impact of the law proposed by initiative" that includes:

- A dollar amount representing the total estimated fiscal impact of the proposed law;
- If the proposed law would increase or decrease taxes, a dollar amount representing the total estimated increase or decrease for each type of tax affected under the proposed law, and a dollar amount representing the total estimated increase or decrease in taxes under the proposed law;

- If the proposed law would result in the issuance or a change in the status of bonds, notes, or other debt instruments, a dollar amount representing the total estimated increase or decrease in public debt under the proposed law;
- A listing of all sources of funding for the estimated costs associated with the proposed law showing each source of funding and the percentage of total funding provided from each source;

Official voter guides, also referred to as voter pamphlets, can include information on ballot question summaries, fiscal notes, and statements explaining a 'yes' and 'no' vote.

- A dollar amount representing the estimated costs or savings, if any, to state and local government entities under the proposed law; and
- A concise explanation, not exceeding 100 words, of the above information and of the estimated fiscal impact, if any, under the proposed law.⁵⁶

As mandated by *Utah Code, Title 20A, Chapter 7, Section 202.5*, the statement must have a disclosure related to the difficulty in predicting the full, precise impact of a ballot question and must emphasize that the statement is an estimate. Additionally, this estimate must be printed on the petition, voter information pamphlet, and the ballot.

50-State Review of Official Voter Guides

Official voter guides, also referred to as voter pamphlets, can include information on ballot question summaries, fiscal notes, and statements explaining a 'yes' and 'no' vote. Not all 50 states are required to provide a voter guide with a petition by statute or administrative rule; however, a large majority of states do make voter guide information available in some fashion either in print, by mail, or online.

According to Ballotpedia, voter guides across the United States may vary on means of distribution, timing of distribution, recipients, responsible parties for preparation, type of information included and language(s) in which they are published.⁵⁷ However, voter guides tend to contain some of the same features, including: the official ballot title and summary language; an impartial analysis or explana-

CRC Report

tion; a fiscal impact statement; objective arguments for and against the measure; and a statement of legal changes if the measure is approved. An official voter guide is most always produced by a state agency or authority and specifically written as a guide for voters during an election.

Ballotpedia has analyzed state voter guides based on accessibility, content, and publishing method; and then ranked the states based on six desirable features, including:

- Ballot title and summary,
- Neutral explanation or analysis,
- Fiscal impact statement,
- Arguments for and against the measure,
- Legal changes, and
- Multiple languages.

States were graded as:

- “Excellent” if the guides contained all six features;
- “Very good” for five features;
- “Good” for four features;
- “Fair” for two to three features; and
- “Poor” for fewer than 2 features.

During the period from 2009 to 2011, close to 250 measures appeared on state ballots across 41 states.

Michigan scored poor in the Ballotpedia analysis because it only provided the information through third party sources.

Out of the 41 states, 20 states mailed voter guides to registered voters, 20 states distributed information electronically and via local newspapers, post offices and libraries, and approximately 32 states made voter guide information available on their websites. Out of the 41 states, only two did not

have a ballot title featured in the form of an official voter guide – Michigan and New York. The Voter Information Center on the Michigan Secretary of State website provides the 100 word summary and links to the Citizens Research Council of Michigan analyses of ballot questions. Michigan scored poor in this analysis because it only provided the information through third party sources. Explanation/analysis was found in 25 of the 40 other states aside from Michigan.

Table 6 demonstrates the findings on the six features. Nine states – Alaska, Arizona, California, Colorado, Maine, New Mexico, Oregon, Utah and Washington – ranked “excellent” (see **Map 20**). A complete comparison of state voter guide components can be found in **Appendix D**.

Mailing voter guides costs states between \$33,000 and \$2 million. The most spending for voter guides was found in Illinois at \$2 million, which included a budget for translating the publication into many dif-

Table 6
Voter Guide Features State Findings

Feature	How many of 41 states' guides . . .	
	Had this feature?	Did not have this feature?
Ballot Title	39	2
Explanation/Analysis	26*	15
Text of the New Law	26	15
Pro/Con Arguments	18	23
Multiple Languages	13	28
Fiscal Note	11	30

* Michigan only scored in the explanation/analysis category

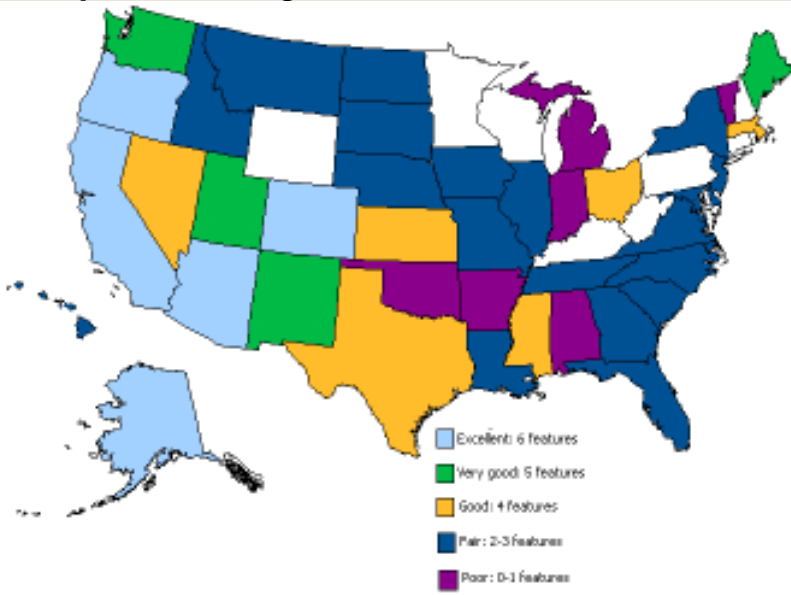
Source: Ballotpedia

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

ferent languages. North Dakota used to mail voter guides until the 1970s when the legislature stopped this practice based on the perceived high costs to taxpayers. In Louisiana, rather than spend state funds, a private, non-profit Public Affairs Research Council provides the ballot information for constitutional amendments by initiative on behalf of the state for distribution via media and news publications. Arizona holds public hearings on the measure and fiscal analysis, as organized by the secretary of state, in addition to the state producing an informational pamphlet.⁵⁸

During election periods similar to the November 2012 general election, when Michigan citizens are seemingly inundated with television commercials, telephone calls, mailings, and e-mails with advertisements for the ballot questions at hand, prepared, objective information can be invaluable to voters. Further, citizens find some of this communication to be distasteful, and arguably misleading. As such, it can be difficult for voters to find sources of information that sufficiently, accurately, and objectively analyze a ballot question; which raises questions regarding the responsibility and the role of state government in arming citi-

Map 20
Ballotpedia's Rankings of State Official Voter Guides



Source: Ballotpedia

zens with sufficient information to decide whether each ballot question makes sense and is in their best interest. Policy changes should be made to enhance this responsibility in providing information on ballot questions, with information disseminated early in the election season. Such information should include a fiscal analysis, an impartial explanation of a 'yes' and 'no' vote, subsequent changes to the law, and pro/con arguments.

Petition Certification Processes

Petition certification stands out as one of the aspects of the Michigan ballot petition process most in need of reform. As noted in the box on page 52, recent Michigan election history is filled with tales of dysfunction in the seemingly straightforward, ministerial task of the Board of State Canvassers certifying that the number of signatures collected on ballot question petitions meets or exceeds the requisite number needed to be certified for the ballot. Members of the board have refused to sign off on politically volatile questions. Challengers have asked board members, the secretary of state, and the attorney general to keep ballot questions off the ballot because of questionable constitutional provisions upon which those officials had no authority to act. A review of the processes used in other states suggest that many of the problems created in Michigan result from the general lack of scrutiny that ballot questions receive before proponents begin circulating petitions for signature collection.

Michigan, like every state that allows for initiative and referendum, has a process for certifying the petitions. What stands out when comparing processes among the states is that Michigan and Illinois are the only states that do not require proponents to apply to circulate petitions.

While Michigan does not require proponents of an initiative to apply or register with the state before circulating petitions, Michigan law sets requirements for initiative petition forms. As of January 1, 2013, proponents of initiatives or constitutional amendments are required to submit a copy of their petitions to the Secretary of State prior to circulation of the petition. Additionally, the Bureau of Elections (BOE) within the Department of State and the Board of State Canvassers (BSC) will review petitions to check that the form and style of the petitions are in compliance with state requirements, but doing so is not required and is essentially a consultation on form alone. However, state review of these forms is optional. The state claims that “such approval greatly

reduces the risk that signatures collected on the form will be ruled invalid due to formatting defects.”⁵⁹ After the BOE evaluation is completed, the form of the petition is then submitted to the BSC for approval, which can take place before or after collecting signatures. Thus, proponents of an initiative or referendum in Michigan are not required to contact the BOE or the BSC prior to beginning their signature gathering efforts.

The ballot question review process, however, does not evaluate the language of the proposed statute or amendment. Therefore, the

state encourages ballot question sponsors “to seek legal counsel to arrange this aspect of the petition form.”⁶⁰ Further, at no time may the secretary of state, BOE staff, or members of the BSC offer opinions on the substance of the proposals. This has proven more problematic. Previous ballot questions have snuck through with simple typos, references to funds or entities that were not in conformance with statutory drafting norms, language different than the state’s drafting norms, and other issues that might have been identified if qualified staff and outsiders had opportunities to provide feedback. Constitutional amendments have been proposed in which the drafters repeated section numbers, veered from established numbering norms, and seemed to nullify or contradict other constitutional provisions.

The substance of four of the five proposed constitutional amendments that appeared on the November 2012 ballot was challenged unsuccessfully. An effort to amend the Michigan Constitution to expand the number of non-Indian casinos was kept off the ballot because of a flaw in the substance of the proposed constitutional language. In 2008, the Reform Michigan Government Now ballot question was kept off of the ballot because the courts judged the effort to be a constitutional revision instead of a constitutional amendment. Even after parties advocating change have backed their efforts with millions of dollars to bring petitions to the BSC, it seems that trips to the courts are becoming routine.

state encourages ballot question sponsors “to seek legal counsel to arrange this aspect of the petition form.”⁶⁰ Further, at no time may the secretary of state, BOE staff, or members of the BSC offer opinions on the substance of the proposals. This has proven more problematic. Previous ballot questions have snuck through with simple typos, references to funds or entities that were not in conformance with statutory drafting norms, language different than the state’s drafting norms, and other issues that might have been identified if qualified staff and outsiders had opportunities to provide feedback. Constitutional amendments have been proposed in which the drafters repeated section numbers, veered from established numbering norms, and seemed to nullify or contradict other constitutional provisions.

Petition certification stands out as one of the aspects of the Michigan ballot petition process most in need of reform.

Michigan's Back-Loaded Certification Process

Proponents of an initiative are not required under Michigan law to seek approval or to register with the state prior to petition circulation. However, for campaign finance purposes, proponents must register should they receive or spend over \$500 in a calendar year.¹

Review of petition forms is not mandated by the state, but proponents may submit a draft to the Bureau of Elections for a staff consultation on formatting requirements. Petitions evaluated by the Bureau are submitted to the Board of State Canvassers to be reviewed for form and provide final approval or dismissal. Ballot form requirements can be found in *Michigan Election Law, Chapter 168, Section 544c* and *Section 482*.²

It is entirely legal for groups circulating petitions to draft an initiated law or initiated constitutional amendment, create a petition, and circulate the petition to collect signatures before their first interaction with the Bureau of Elections or the Board of State Canvassers. This means that those groups can spend a lot of time and resources drafting and circulating petitions only to find out when petitions are submitted that there are potential errors in the legal drafting, technical problems in the petition form or style, or other problems that would preclude it from being placed on the ballot.

Additionally, by allowing petitions to be drafted and circulated before the state gets involved, hundreds of thousands of people are asked to endorse placing the question on the ballot, only to potentially find out their signatures were for naught because of technical problems.

By Michigan law, petitions are filed with the Department of State. The Bureau of Elections provides administrative support in this process, including verifying the validity of a random sample of signatures. The Bureau of Elections and the Board of State Canvassers have authority to review the petitions for form and style, but no elected, appointed, or employed state officials have the authority to review the petitions for compliance with Michigan's Constitution or statutes. Verification of signatures is determined by the Board of State Canvassers through a random sample method.³

Following signature verification, the ballot measure receives a ballot title and summary. The summary must impartially describe the purpose of the measure in 100 words or less and is drafted by the Director of the Bureau of Elections with approval by the Board of State Canvassers (and give and take with the proponents and opponents of the proposal).

¹ "Proposal review/approval." *Laws governing the initiative process in Michigan*. Ballotpedia, December 7, 2012. Accessed May 30, 2013. http://ballotpedia.org/wiki/index.php/Laws_governing_the_initiative_process_in_Michigan.

² 168.544c. *Michigan Election Law (excerpt): Act 116 of 1954*. <http://legislature.mi.gov/doc.aspx?mcl-168-544c>. 168.482. *Michigan Election Law (excerpt): Act 116 of 1954*. <http://legislature.mi.gov/doc.aspx?mcl-168-482>.

³ "Initiative and Referendum Petitions." *Ruth Johnson, Secretary of State*. Department of State, State of Michigan, January 2011. Accessed May 30, 2013. www.michigan.gov/documents/sos/Ini_Ref_Pet_Website_339487_7.pdf.

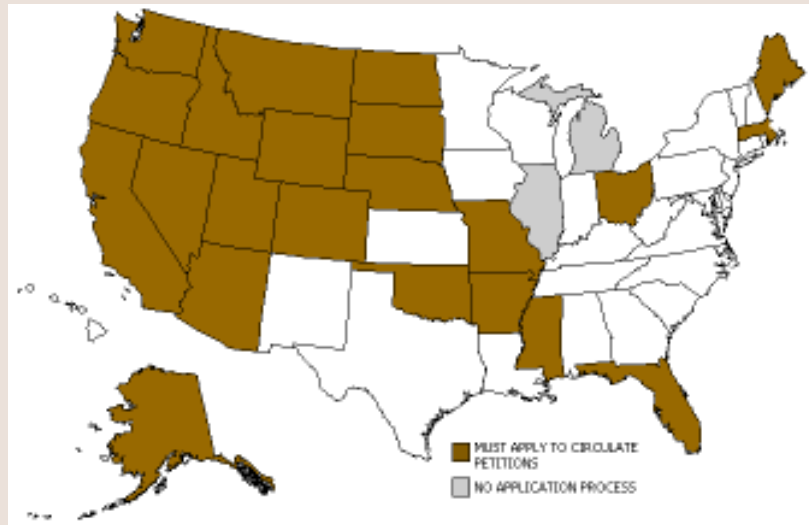
One consequence of Michigan's back-loaded process is that increasing scrutiny is being placed on the roles of the secretary of state, the BOE, and the BSC. Because none of these parties is granted constitutional or statutory authority to consider the substance of the questions submitted for the ballot, none offers opinions. The Board of State Canvassers was statutorily given only ministerial duties and the law does not vest these powers with the secretary of state or the elections staff. On several occasions in recent history, members of the BSC have refused to vote to certify questions for the ballot even though work by the BOE showed the number of valid signatures to be sufficient to qualify. These actions were based on the apparent political nature of the ballot questions being offered. Without an officer or party responsible for opining on the substance of the ballot questions, the only recourse for opponents and proponents of the ballot questions is to take their arguments to court. In doing so, it creates the danger of casting the courts in a political light and forces arguments to be made and rulings handed down in a hurried fashion because of the approaching election date.

As found in **Map 21**, every other state besides Michigan and Illinois that allows for initiative and referendum has a front-loaded system. Some of those states look only at the form and style of the petitions without offering opinions on the substance, and like Michigan, the feedback offered in several states is non-binding. Proponents are not compelled to alter the form, style, or substance of their petitions, but to not do so is to risk having it challenged in court.

The Board of State Canvassers

The Board of State Canvassers (BSC) was established by the 1850 Michigan State Constitution, though the structure of the BSC today is different from the structure at that time. The current struc-

Map 21
States that Require Application to Petition for Law Changes



Source: Ballotpedia.com

ture of the BSC comprises four members who are appointed by the governor with the advice and consent of the senate.

Of the four members, two are selections from each of the two political parties with the greatest number of voters in the last secretary of state election. Members of the BSC serve four-year staggered terms. The terms are staggered so that the term of a Republican seat and the term of a Democratic seat expire in February of each odd-numbered year.

The duties of the BSC, per Article II, Section 7 of the 1963 Michigan Constitution, are the following:

- Canvassing and certifying statewide elections, elections for legislative districts that cross county lines and all judicial offices except judge of the Probate Court;
- Conducting recounts for state-level offices;
- Canvassing nominating petitions filed with the secretary of state;
- Canvassing state-level ballot question petitions;
- Assigning ballot designations and adopting ballot language for statewide ballot questions; and
- Approving electronic voting systems for use in the state.⁶¹

Controversy with the Board of State Canvassers

The duties of the Board of State Canvassers (BSC) are clerical and ministerial, self-executing and without ambiguity. However, political disagreements have plagued the performance of these duties. On several occasions BSC members have attempted to broadly define their role in a larger way than the statutory definition. At other times, BSC members have refused to vote in favor of putting politically charged proposals on the ballot, even though the petitions clearly were in order and sufficient signatures were gathered to qualify the question for the ballot. The state Attorney General has opined that the BSC is without authority to address questions concerning the merits or constitutionality of an initiated proposal. There also have been problems in agreeing on the authenticity of the signatures on a petition, problems in performing the BSC's duties in a timely fashion, and problems in getting the BSC's agreement on a 100-word description of proposals. While statutory in nature, these problems seem to stem in part from the fact that it is a four-member board, composed of an even number of members from both parties who, while appointed by the governor, are nominated by the two major political parties. Appointments to this presumably impartial board are made in a very political manner.

The following are some of the more contentious matters that have put the BSC in the public spotlight:

C.C.W. Petition

A concealed weapons permit statute was introduced April 21, 1999, to allow easier access to Carry a Concealed Weapon (CCW) permits by establishing a "shall issue" policy if an applicant meets certain minimum conditions (i.e., if the applicant is not a convicted felon, or if the applicant has not been convicted of a misdemeanor within the last three years). After much debate in the House and Senate, the bill passed on December 13, 2000, with an included appropriation (\$1 million to the Department of State Police to implement the new shall-issue CCW permit system), which opponents of the bill argued was only there to prevent a possible referendum (the Michigan Constitution prohibits referenda on "acts making appropriations for state institutions"). Opponents initiated a petition drive to put the bill up for referendum, and collected more than the necessary 151,356 signatures to call a referendum in March 2001. Supporters of the bill challenged the referendum in the court of appeals. On May 15, 2001, the BSC split along party lines on a vote to certify the signatures on the referendum petitions. On May 16, 2001, the court of appeals ruled that the bill was subject to referendum. The court found that the appropriation contained in the bill was not for a "core state function" and therefore could not block a vote. On May 21, the BSC certified the petitions. On June 29, 2001, the Supreme Court ruled to block a referendum based on the strict interpretation of the constitutional provision protecting legislation containing an appropriation from referendum.

Drug Sentencing Proposal

On September 2, 2002, the BSC ruled against a petition seeking to place on the ballot a proposed constitutional amendment to require treatment, rather than imprisonment, for nonviolent drug crimes. The proposal's supporters (Michigan Campaign for New Drug Policies) purported that the proposal would add two new sections to the constitution, but the BSC found that the proposal would amend or abrogate other sections of the constitution as well. On September 6, 2002, the court of appeals ruled unanimously that the BSC was right in its decision to keep the drug proposal off the ballot, stating that the language of the petition did not include the existing section of the Constitution that would be affected by the proposal. The Supreme Court upheld the appellate court's decision.

Tobacco Settlement Funding Proposal

Also on September 3, 2002, the BSC deadlocked on a petition to place on the ballot a proposal that would require 90 percent of the Michigan share of the national tobacco settlement to be appropriated to various health-related facilities and individuals. Members of the BSC stated that the petition was insufficiently explicit in how the proposal would affect the Michigan Constitution (similar to the BSC's rejection of the above drug sentencing proposal). The court of appeals found that the BSC was wrong not to put the proposal on the ballot, because "the proponents of the petition are not required to list every provision of the constitution that might indirectly or

contingently be affected by the proposed amendment”, adding that “the Board of Canvassers’ authority does not extend to conducting a complex legal analysis of constitutional issues.” The Supreme Court upheld the appellate court’s decision.

Affirmative Action Proposal

In February 2004, a petition drive began for a proposed constitutional amendment banning affirmative action policies by any state or local government entity. The BSC approved the style and form of the petitions from the Michigan Civil Rights Initiative, arguing that they met basic legal requirements. Three lawsuits were then filed against the petition drive, from various national groups seeking to overturn the BSC’s decision. On March 30, 2004, the Ingham Circuit Court ruled that the BSC should not have approved the petitions because the language did not note all the sections of the Constitution that would be affected. The court ordered that the BSC rescind its approval, which it did on April 12. Attorney General Mike Cox then appealed the decision to the court of appeals, arguing that the ruling jeopardized the rights of citizens to initiate petition drives. On June 14, 2004, the court of appeals ruled unanimously that the petition proposal was valid, stating that “petitions need only substantially conform to the statutory requirements” with regard to petition form.

In July 2005, the BSC deadlocked on a vote concerning the sufficiency of the proposed constitutional amendment. The BSC members’ action were not predicated on a violation of the form of the proposal (the BSC had approved the petition’s form in 2003) or the sufficiency of valid signatures, but rather on allegations of misrepresentation of the content in the process of obtaining signatures. Members stated that they feared that the petition circulators had misrepresented the proposal in order to collect signatures. Petition circulators allegedly stated that the proposal would protect affirmative action and ensure that black students could get into college which was clearly contrary to the intent of the proposal. In June 2006, after five months of hearings, the Michigan Civil Rights Commission charged that the Michigan Civil Rights Initiative engaged in “strategic fraud” in their collection of petition signatures. The Michigan Civil Rights Initiative then filed an appeal with the court of appeals, and the court ruled that the BSC “breached its clear legal duty” to certify the petitions. The Court ordered that the petitions be certified, which the BSC did in November 2005. The BSC then pulled the proposal from its agenda instead of approving it for a spot on the ballot, and asked the court of appeals to reconsider its ruling. The court demanded that the BSC promptly put the proposal on the 2006 ballot.

Under intense pressure from the audience (a third party interest group, By Any Means Necessary, bused in many vocal supporters), one BSC member refused to vote, and the other abruptly switched his vote to a ‘no’ which meant the motion failed. With the BSC split (two-to-two) on certifying the petition, the Michigan Civil Rights Initiative filed contempt sanctions with the court of appeals against members of the BSC. Republicans demanded that Governor Granholm remove the two Democratic BSC members who either voted against certification or abstained, but the Governor found no legal precedent to do so, saying that only the courts can enforce court orders (the Governor cited the 2002 tobacco funds case as evidence that it would be inappropriate for a Governor to remove any BSC members). Governor Granholm later stated that the BSC members should resign if they were found in contempt of court. In April 2006, the court of appeals held the two Democratic BSC members in contempt for failing to certify the Michigan Civil Rights Initiative proposal. Both BSC members resigned. Eventually both charges were dropped, but not after some controversy with one canvasser refusing to pay a fine as part of the agreement, because of allegations over: 1) confusion about the kind of vote being considered at the time; and 2) whether the BSC failed to properly post minutes in violation of the Open Meetings Act.

The court of appeals granted the proposal ballot status in December 2005, and after the proposal’s proponents filed a motion asking the court of appeals to quickly adopt ballot wording for the proposal, the court ordered a January 20, 2006, deadline to complete the wording process. The controversial wording of the proposal then went to the BSC of State Canvassers. The BSC approved the official ballot language, although some members protested that they were prevented from amending the language (particularly the hot button phrase “preferential treatment”).

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Republican Petition for Ralph Nader as Independent Presidential Candidate

On August 23, 2004, the BSC deadlocked on a challenge to the validity of signatures on petitions to place Ralph Nader on the ballot in Michigan. Nader originally attempted to gain ballot access as the Reform Party nominee, but the competing Reform Party of Michigan complicated this process. Republicans responded by collecting signatures to place Nader on the ballot as an independent candidate (30,000 signatures required). Democrats alleged that Republicans fraudulently collected many of the signatures on the petition, but the BSC refused to hear challenges from the Michigan Democratic Party. The chair of the Reform Party of Michigan then called for the removal of the two Democratic BSC members. Republicans filed a lawsuit with the court of appeals, claiming that the circulators and signatories of the petition were denied their constitutional rights by the BSC. The court of appeals ruled that the BSC was wrong not to certify the petition, stating that the BSC had no authority to "look behind the signatures to determine the motives of the individual signatories or the motives or desires of the candidate." Nader was placed on the ballot as an independent candidate.

Same-Sex Marriage Amendment

On August 23, 2004, the BSC deadlocked on a motion to certify a proposed constitutional ban on same-sex marriage for the ballot, saying the amendment as worded would violate the U.S. Constitution and other state constitutional provisions. Supporters of the amendment argued that the BSC overstepped its legal duty in voting on the content of the proposal rather than the legality of its form and signatures. BSC members claimed they had a legal duty to keep items off the ballot that courts would obviously overturn. The BSC then split on a vote to approve provisional ballot language for the proposal, which was developed by the Bureau of Elections and quoted most of the actual language of the proposed amendment (BSC members wanted an explanation of the phrase "or other similar unions"). The court of appeals ruled against the BSC, stating that the proposal should be on the ballot with the language developed by the Bureau of Elections, and ordered that the Department of State put the proposal on the ballot.

Emergency Manager Referendum

On April 26, 2012, the BSC split along party lines on a vote to put on the ballot a referendum on the Michigan emergency manager law. The split was mainly due to issues concerning type size on the petition. The court agreed that the petition failed to meet the legal requirement that the heading be in 14-point type size, but ultimately decided that the referendum should appear on the ballot because of a prior court ruling which stipulated that petitions are only required to be in "substantial compliance" (the court stayed its decision until the decision of the special panel's review). The court of appeals then requested a special seven-judge panel to determine whether the referendum should appear on the ballot. A vote of the whole court of appeals decided against empaneling a special panel. Although stating that "actual compliance" is the standard for all future discrepancies in deciding compliance with petition requirements, the Michigan Supreme Court ultimately ruled that the BSC must certify the petitions.

Collective Bargaining Proposal

On August 15, 2012, the BSC deadlocked on a petition to put on the ballot a proposal to create a constitutional right to collective bargaining. The petition had the sufficient number of signatures, but the BSC split on a vote to dissolve a challenge to the proposal's legality, and then split again on a motion to reject the proposal because it was too broad. Advocates for Citizens Protecting the Michigan Constitution argued the petition should not be certified because a recent court of appeals decision on a proposal regarding casinos applied in this case, as well. The issue could not be summarized in 100 words for the ballot due to the amount of germane statutes in the constitution. Protect Our Jobs responded that it was not in the BSC's authority to decide whether the proposal was too broad. Supporters of the proposal filed with the Supreme Court, seeking to bypass the court of appeals, but the Supreme Court ordered the court of appeals to rule on the matter first. The court of appeals ruled that the proposal was constitutional, and ordered it to be certified and put on the ballot. The Supreme Court also approved the proposal's placement on the ballot.

Casino Expansion

The causes of the controversy for the BSCs' role in the 2012 proposal to add eight non-Indian casinos in Michigan reflect the absence of legal clarity for proposals that affect other constitutional provisions and statutes. It is a prime example for the need to have legal questions settled before the BSC is asked to certify the sufficiency of the petition signatures. In addition to legal challenges to the effort to expand the number of non-Indian casinos, the courts were dealing with challenges to the proposals for the right to collective bargaining, a requirement for a two-thirds legislative majority or statewide vote to raise taxes, and a mandate for statewide voter approval to authorize new international border crossings. With each move by the courts related to these ballot questions, the BSC was left to obey court orders or interpret judicial rulings in cases involving this or the other initiative proposal cases. Citizens for More Michigan Jobs, proponents of the proposal, circulated petitions and gathered more than sufficient signatures to qualify for the ballot. A group opposing the proposal, Protect MI Vote, sued and the court of appeals denied the proposal ballot access on the basis that the proposal violated Article IV, Section 25, which states that a law may not be altered, revised or amended without republication of the affected statutes. The Michigan Supreme Court reversed and vacated the court of appeals' decision, concluding that the argued provision did not apply to constitutional amendments, and directed the BSC to proceed with consideration of the proposal.

Defying the Court's directive, the BSC failed to certify the proposal on a 2-1 vote that lacked approval from one Republican member and one Democratic member as BSC rules provide. That caused further legal action sending proponents back to the Supreme Court to get the proposal on the ballot. This time the Supreme Court ruled that the backers of the proposal failed to state in the proposal's language, as the Constitution requires of proposed constitutional amendments, that it would alter or abrogate the section of the Constitution vesting sole power to regulate alcohol in the Liquor Control Commission.

Source: various MIRS News Service articles, <http://mirsnews.com/> and various Board of State Canvassers transcripts.

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Controversies and criticism of the BSC in the past have occurred because the Board failed to reach decisions in deadlock votes, as seen with the referendum for Public Act 4, the Emergency Manager law, or have meddled in areas outside of their authority, such as with *MCRI v. Board of State Canvassers*.

Criticism surrounding the nature of the BSC is that though the BSC is designed to be bi-partisan with two Republicans and two Democrats, it actually has become hyper-partisan because the members are chosen to represent their respective parties. Although the BSC is in place to perform a ministerial function, that function pertains to political issues. It was intended to take the politics out of the process by balancing the membership among the two primary parties. Rather than performing that ministerial role, members of the BSC have remained beholden to the political parties that placed them on the Board.

Front-Loaded vs. Back-Loaded Processes

The front-loaded processes in place in most other initiative and referendum states offer some clear advantages to the back-loaded process used in Michigan.

Other states use the front-loaded process to: weed out "frivolous" initiatives; provide the proponents and opponents greater confidence that the ballot questions pass legal muster; allow for the creation of ballot question summaries, fiscal notes, as well as arguments for and against the ballot question; and concentrate the focus of those certifying the submitted signatures solely on the legitimacy and sufficiency of those signatures.

The front-loaded processes in place in most other initiative and referendum states offer some clear advantages to the back-loaded process used in Michigan.

Application to Circulate Petitions. In most states, prior to circulating a petition and collecting signatures, a proposed initiative must be channeled through the designated public officer(s). The pre-circulation filing requirements and process varies by state; however, most states require proposal proponents to apply with the Secretary of State to circulate petitions. California and Massachusetts require that application to be filed with the Attorney General. Alaska and Utah require the application to be submitted to the Lieutenant Governor.

Signatures and Fees. To help weed out what some might consider "frivolous" petitions for initiatives and referenda, several states require the proponents to collect a number of signatures and/

or to submit a filing fee when the ballot questions are submitted to the state officer. Fifteen states require a specified number of signatures when filing an initiative for a statute, ranging from Montana, which requires five signatures, to Ohio, which requires 1,000 signatures. Nine states require signatures for requesting a petition for a constitutional amendment.

Additionally, there can be fees associated with this front-loaded application process or deposits that are refunded when the petition is completed. These fees range from \$5 in Washington to \$500 in Wyoming.

Subject Matter Restrictions. Further, many states restrict the subject matter of initiatives and filter for those restricted subject matters in the pre-circulating filing process. A slim majority of states do have restrictions on the subject matter, as found

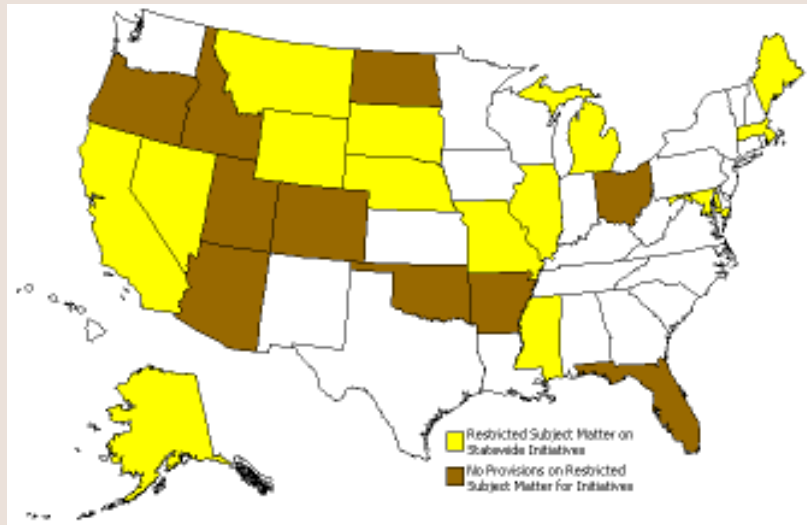
below in **Map 22**. In Mississippi, initiated amendments cannot be about altering the constitutional bill of rights, modifying the initiative process for proposing amendments to the Constitution, altering the public employees' retirement system, or amending or repealing the right to work laws.

In Massachusetts, initiated amendments cannot be drafted to affect religion or religious institutions; the judicial system; laws that apply to particular cities/towns; laws that make specific appropriations; or restricting rights in the Declaration of Rights.

Review of Substance. Overall, the pre-circulating filing and request process provides an opportunity for assistance but proponents are not required to heed the assistance provided in every state.⁶² Some states, such as Maine and Missouri, require a review to ensure proper form of the petition. Other states require this process for the purpose of screening for language, content and/or constitutionality. The results of the review in some states may be advisory, as in Mississippi, or the public officer may reject a ballot question, such as in Arkansas where the Attorney General can reject a ballot question for misleading terminology. **Table 7** provides a brief summary of the pre-circulation review process across the states and what assistance is provided in that review.

Michigan has had a number of recent controversial ballot questions that have been brought to (see box on page 52) where opponents (and sometimes proponents) have asked the BSC, the Bureau of Elections, the secretary of state, the attorney general, or other state officials to keep the questions off the ballot (or sometimes keep them on) for substantive reasons. However, none of these entities has the constitutional or statutory authority to undertake a substantive review of the proposed language. The statutory authority for review is limited to the form and style of the petitions.

Map 22
Statewide Initiatives: States with Restricted Subject Matter



Source: The Book of the States, Volume 44

The processes used in other states suggest that it is possible to build in a substantive review of the proposed constitutional amendment, initiated statute, or referendum as part of the application to circulate petitions. This is done in several states by authorizing the secretary of state, the attorney general, and budget officials to comment on: the application to existing constitutional and/or statutory provisions; consistency with the state's practice in writing constitutional provisions or statutory code; and the financial consequences of the ballot question if applicable. Proponents typically are not obliged to alter their proposals based on the feedback received, but the process can be valuable in heading off potential future legal issues.

The process in Florida stands out as one worth replicating. Once proponents have begun the petition circulation process and have collected ten percent of the total signatures required, the Florida Attorney General is required to petition the Florida Supreme Court for an advisory opinion on the measure's compliance with the single-subject rule and appropriateness of the title and summary. The process allows potential problems to be identified early in the process to avoid the prospect of spending millions of dollars collecting signatures voting for a ballot question that could later be disqualified.

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Table 7
Summary of Pre-Circulation Review Processes by State

<u>State</u>	<u>Assistance Provided</u>
Alaska	Lieutenant Governor reviews for form and legal restrictions on content.
Arizona	Secretary of State reviews for form only.
Arkansas	Attorney General may reject confusing title and summary and instruct petitioners to redesign proposal.
California	<i>Optional</i> assistance from Legislative Council.
Colorado	<i>Mandatory</i> content review by Legislative Council.
Florida	Supreme Court reviews for constitutionality and compliance to single subject after petitioners gather 10% of the signature requirements.
Idaho	<i>Mandatory</i> review of content by Attorney General.
Illinois	None
Maine	Secretary of State reviews for form only.
Massachusetts	Mandatory review of subject by Attorney General
Michigan	<i>Optional</i> public hearing on draft before the Board of State Canvassers.
Mississippi	The state makes <i>advisory</i> recommendations regarding the initiative language. The sponsor may accept or reject any of these recommendations.
Missouri	Attorney General reviews form only.
Montana	<i>Mandatory</i> review of content by Legislative Council. The sponsor may accept or reject any of these recommendations.
Nebraska	The state makes <i>advisory</i> recommendations regarding the initiative language. The sponsor may accept or reject any of these recommendations.
Nevada	Secretary of State reviews for form only.
North Dakota	Secretary of State reviews for form only.
Ohio	Petitioners may revise draft after the indirect initiative legislative hearing.
Oklahoma	Secretary of State reviews for form only.
Oregon	<i>Mandatory</i> review for single subject. The Attorney General can stop an initiative from circulating if he believes it violates the single amendment provision for initiatives.
South Dakota	Legislative Research Council reviews for style and form and makes <i>advisory</i> recommendations regarding the initiative language.
Utah	Attorney General reviews for constitutionality and will reject the measure if it is patently unconstitutional, nonsensical; or if the proposed law could not become a law if passed.
Washington	<i>Mandatory</i> review by Code Reviser. The sponsor may accept or reject any recommendations.
Wyoming	Secretary of State reviews for form only.

Source: "Comparison of Statewide Initiative Processes," Initiative & Referendum Institute, <http://www.iandrinstitute.org/New%20IRI%20Website%20Info/Drop%20Down%20Boxes/Requirements/A%20Comparison%20of%20Statewide%20I&R%20Processes.pdf>

Table 8 lists the venue at which initial challenges to ballot questions are to be made in the initiative and referendum states.

Petition Preparation. States typically leave it to the proponents to prepare petitions in accordance with statutory and/or regulatory guidelines, but the secretary of state offices in a few states supply the petition to the proponents to be reproduced for circulation. Past precedent in Michigan presumed that the spirit of complying with the requirements was sufficient for qualification for the ballot. In *Meridian v. City of East Lansing*, the courts said that “all doubts as to technical deficiencies or failure to comply with the exact letter of procedural requirements are resolved in favor of permitting the people to vote and express their will on any proposal subject to the election.” However, the controversy surrounding the 2012 referendum on Public Act 4 of 2011 and whether the petition used the proper font size draws attention to the potential whims with which this standard can be applied.

Recommendations

Michigan would be well-served to move to a front-loaded petition certification process. Much of the controversy and legal wrangling that seems to constantly surround the certification of ballot questions could be alleviated by requiring ballot question proponents to apply to circulate petitions for initiatives and referendums.

This process would have the 100 word description of the ballot question prepared before petitions are circulated. The law should require the description to appear on the petitions themselves. Reform of Michigan’s petition certification process should include requiring the state to prepare voter guides to provide some explanation of the ballot questions for which petitions are being circulated. Fiscal notes could be attached to the petitions. All of this infor-

mation would help potential petition signers to become better informed.

Future arguments over font size and other matters dealing with the form of the petitions could be addressed if Michigan either required proponents to use petitions prepared by the Board of State Canvassers, or if the BSC makes petition templates available to the circulators.

Michigan would be well-served to move to a front-loaded petition certification process. Much of the controversy and legal wrangling that seems to constantly surround the certification of ballot questions could be alleviated by requiring ballot question proponents to apply to circulate petitions for initiatives and referendums.

A number of states provide examples of how state officials could opine on the form, style, and substance of initiative ballot questions. Many of these states rely heavily on their attorneys general for input on the substance of the ballot questions. Those states’ attorneys general are to opine on whether the ballot questions conform to the U.S. Constitution and, if applicable, each state’s constitution. They are to opine on whether the ballot questions conform to state statutes. However,

it seems that this could further politicize the process in Michigan after recent attorneys general have taken positions on many ballot questions.

In light of this, a couple of alternatives are worth considering. The process used in Florida that pauses the signature gathering process to seek advisory opinions from the state Supreme Court may be the best reform option for Michigan.

Another approach would allow interested parties a window of time to raise issues with proposed ballot questions that they foresee as problems so that proponents can consider redrafting the measure to address those issues at the outset. Many states include arguments of limited length from proponents and opponents with the materials attached to the circulated petitions.

A third alternative would emulate the informal process used in Louisiana to have a neutral third party analyze the ballot questions. The non-partisan Public Affairs Research Council of Louisiana, a non-profit

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Table 8
Venue for Challenges to Proposed Initiatives and Referendums

<u>State</u>	<u>Venue</u>
Alaska	Alaska Superior Court
Arizona	Arizona Superior Court
Arkansas	Arkansas Supreme Court
California	Sacramento County District Court
Colorado	Sufficiency of Petitions – State District Court in that county. Title Board Decisions – Colorado Supreme Court
Florida	Signature challenges are made in county courts. Challenges to ballot title, summary, and fiscal impact statements are made to the State Supreme Court
Idaho	Challenges to ballot title - Idaho Supreme Court
Illinois	Objections submitted to State Elections Board, appealable to Illinois Judicial Circuit Court
Maine	Filed in Superior Court with appeal to the Maine Supreme Judicial Court
Massachusetts	Any 50 Massachusetts voters can challenge title, summary, or the yes/no descriptions with the Supreme Judicial Court
Michigan	Court of Appeals and then appealable to Michigan Supreme Court
Mississippi	Challenges to title or summary filed in State Circuit Court of the First Judicial District of Hinds County, Supreme Court can order Sec State to make required actions
Missouri	Cole County Circuit Court
Montana	Montana Supreme Court
Nebraska	District Court of Lancaster County
Nevada	Filed in the First Judicial District Court
North Dakota	Filed in the ND Supreme Court
Ohio	Filed in Ohio Supreme Court
Oklahoma	Filed in Oklahoma Supreme Court
Oregon	Compliance with state Constitution filed in Marion County Circuit Court. Challenges to title filed in Oregon Supreme Court
South Dakota	Title and summary filed with South Dakota Supreme Court, signatures and petition information filed in circuit court
Utah	Utah Supreme Court
Washington	Filed in Thurston County Superior Court... can be appealed to Washington Supreme Court
Wyoming	Filed in District Court of Laramie County

Source: Laws Governing the Initiative Process, BallotPedia.com, Accessed February 1, 2013, http://ballotpedia.org/wiki/index.php/State_laws_governing_initiative_and_referendum

CRC Report

organization very similar to the Citizens Research Council of Michigan, analyzes all ballot questions for the ballot and the Louisiana Secretary of State facilitates distribution of those analyses to the electors of the state.

The law should also be changed to create a formal place in the process for Michigan's Legislative Service Bureau to provide input on drafting of the initiated statutes or constitutional amendments to ensure that the style conforms to drafting standards used when legislators propose statutory or constitutional changes. This part of the process already is utilized for proposals headed to the ballot that are initiated by the legislature.

Input from the state budget office and/or the legislative fiscal agencies would facilitate preparation of fiscal notes so potential petition signers and voters can better understand how the ballot questions might affect the finances of the state and local governments.

The law should also be changed to create a formal place in the process for Michigan's Legislative Service Bureau to provide input on drafting of the initiated statutes or constitutional amendments to ensure that the style conforms to drafting standards used when legislators propose statutory or constitutional changes.

Requiring an application to circulate petitions and performing a cursory review of the form, style, and substance of ballot questions would address many of the problems that have become common in

Michigan's process. Fresh eyes could identify potential problems, allowing drafters to offer remedies before petitions are circulated. Legal opinions could be offered in that same time period, removing the last minute race to the courts and tight timelines that necessitate hastily drafted court orders. All matters except the sufficiency of the number of signatures gathered would be addressed at the beginning of the process, leaving the BSC only to count signatures.

If the Florida process is not replicated in Michigan, the state should statutorily provide for the venue through which challenges to ballot questions are to be made. For

the sake of expediency and competency with the material, it is suggested that this venue should be at least the court of appeals.

Campaign and Electioneering Reform

Fundamental to the question of reform of campaigns for ballot issues are two questions: 1) Can the proponents and opponents be compelled to be more truthful in their literature, advertisements, and other promotional material?; and 2) What can be done so the residents and voters at least know who is advocating for a yes or no vote on the questions?

Truthfulness in Campaigns

On the question of restricting the messages of proponents and opponents of ballot questions to what some perceive to be the truth, again it is necessary to look at what the courts have said about the freedom of speech and the government's role in promoting truthfulness:

The very purpose of the First Amendment is to foreclose public authority from assuming guardianship of the public mind . . . In this field, every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us.⁶³

It is not the role of the government to protect the public from fraudulent claims by limiting or abusing political speech rights of the First Amendment. This thought is emphasized in the opinion of *Citizens United v. Federal Election Commission*, a case on campaign finance. It is not the role of the government to decipher the trustworthiness of a source of information for the public:

When Government seeks to use its full power, including the criminal law, to command where a

person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.⁶⁴

The First Amendment allows freedom of speech regardless of truth in what is being said, as stated in decision in *NAACP v. Button*:

The First Amendment is a value-free provision whose protection is not dependent on 'the truth, popularity, or social utility of the ideas and beliefs which are offered'.⁶⁵

Given the inability to restrict the speech or messaging of particular parties, it should be the state's role to get non-biased information about the ballot questions to the people.

Recommendation

Given the inability to restrict the speech or messaging of particular parties, it should be the state's role to get non-biased information about the ballot questions to the people. This can be achieved by

adopting the 100 word descriptions when proponents apply to circulate petitions and including that description both on the petitions and in other material (website, pamphlets, etc.) that describe the questions. The state can also promote analysis of the ballot questions by disinterested parties either inside the government (e.g., the attorney general, the auditor general, the fiscal agencies, etc.) or outside of government (the Citizens Research Council of Michigan has a long history of preparing such analyses). Finally, Michigan can replicate the process used in other states wherein the opponents and proponents are empowered to write arguments of limited length making the case for a yes or no vote on the questions.

Disclosure of Funding

The state has more direct opportunities to implement reforms related to the disclosure of funding information regarding advocacy groups involved in ballot question campaigns.

In requesting permission for circulation, or in the circulation process, most states with the initiative process require that all financial contributions toward the petition campaign be reported. Michigan is one of those states. In these states, the state requires a list of financial contributors and the amount of their contributions be submitted to the designated state officer as part of the pre-circulation process. **Map 23** demonstrates the frequency of this requirement across the states. In Michigan, proponents must register with the secretary of state if they receive or spend more than \$500 in a calendar year on their campaign. Other campaign finance laws in Michigan include: a ban on campaign contributions from casino owners, or other gambling establishments; a requirement that all expenditures for campaigns over the amount of \$50 must be paid for using checks; and regulations regarding contributions from corporations and labor unions supporting or opposing a proposed constitutional amendment, initiated statute, or a referendum. The issue

that arises with Michigan's campaign disclosure laws is the insufficient level of detail on the origin of the campaign funding.

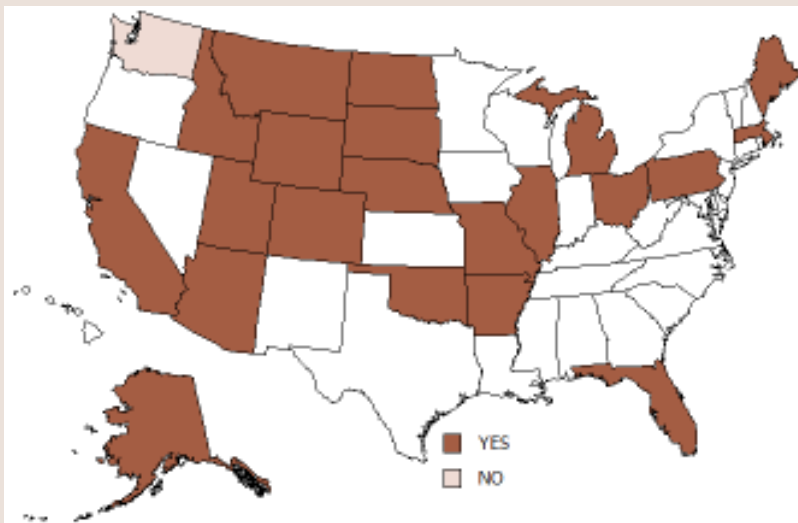
Ballot question committees are formed specifically for the purposes of supporting or opposing passage of one or more ballot questions. In 2012, Michigan residents and electors were exposed to issue ads sponsored by twelve different committees, including:

- Proposal 2
 - Protect Working Families
 - Protecting Michigan Taxpayers
- Proposal 3
 - Michigan Energy, Michigan Jobs
 - Clean Affordable Renewable Energy for Michigan
- Proposal 4
 - Citizens for Affordable Quality Home Care
- Proposal 5
 - Americans for Prosperity Michigan Ballot Committee
 - Michigan Alliance for Prosperity
 - Vote No on 5 – Defend Michigan Democracy
- Proposal 6
 - The People Should Decide
 - Taxpayers Against Monopolies.
 - Multiple Proposals
 - the Michigan League of Responsible Voters
 - Citizens Protecting Michigan's Constitution

The names of these committees may indicate the issue for which they are formed to advocate, but the names rarely indicate the committee's position on the issue or how the committees are funded. Michigan voters have no other easily accessible information by which to identify the committee's positions or how the committees are funded.

Michigan citizens interested in finding out more about who provided the money behind these committees often found the task difficult, if not impossible. In 2012, as has

Map 23
State Requirements for Reporting Financial Contributions



Source: The Book of the States, Volume 44

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

occurred in other recent elections, the main funders to these ballot committees were non-profit organizations and business associations organized under provisions of the Internal Revenue Code that do not require full disclosure of their contributors.⁶⁶ Sections 501(c)4 and 501(c)6 of the U.S. Internal Revenue Code do not require disclosure of finance contributions as long as the majority of the non-profit organizations' and business associations' activities are for the social purposes or business purposes for which they are organized. But that means that large amounts of their expenditures that still can be for electioneering.

The Michigan Department of State's interpretation of federal case law as it applies to the Michigan Campaign Finance Act an campaign spending limitations leads it to conclude that the department can not regulate issue ads absent legislative action (or a promulgation of administrative rules).⁶⁷ At the heart of this issue is a difference between "express advocacy ads" and "issue ads" as has been defined in federal case law over a number of cases.

U.S. case law has been, and continues to be, evolving in regards to expenditure limits and disclosure requirements for those funding political campaigns, including ballot questions. In a 1976 U.S. Supreme Court case, *Buckley v. Valeo*, 424 US 1, the court struck down several provisions in the 1974 amendment to the Federal Election Campaign Act (FECA) that limited campaign expenditures, independent expenditures by individuals and groups, and expenditures by a candidate from personal funds. The FECA had defined "expenditure" as "the use of money or other assets for the purpose of influencing a federal election." The Supreme Court found that this definition was vague and overbroad. To remedy this, the Court created the "express advocacy" test for determining which communications were considered expenditures under FECA and which were issue ads, exempt from FECA's reach.⁶⁸

Within the confines of this test, an ad would be subject to campaign finance regulation if the ad was "express advocacy," defined as being for or against a candidate. An express advocacy ad would contain specific phrases such as "vote for" or "vote against" a certain candidate. Ads that are not express advocacy are termed *Issue ads*. These ads focus on a legislative position, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter.⁶⁹ Because campaigns for ballot questions are not directed at one or more candidates for political office, they fall into the category of issue ads.

Because campaigns for ballot questions are not directed at one or more candidates for political office, they fall into the category of issue ads.

The Michigan Department of State's interpretation of federal case law as it applies to the Michigan Campaign Finance Act leads it to conclude that the department "does not believe it has the authority to regulate issue ads." At the heart of this issue is a difference between "express advocacy ads" and "issue ads" as has been defined in federal case law over a number of cases.

The reaction by some political interests following the *Buckley v. Valeo* decision was to create what have been called "sham issue ads": ads that avoid the specific words and phrases that are part of the express advocacy test and, therefore, are not subject to regulations. Advocacy ads and issue ads were funded the same way; however, sham issue ads created a loophole with "no limits on who could buy the ads, no limits on how they were financed, and no disclosure was required."

In reaction to the *Buckley v. Valeo* decision and these developments, Congress revisited the federal campaign financing issue and enacted the Bipartisan Campaign Reform Act of 2002 (BCRA) to amend the Federal Election Campaign Act. BCRA closed the loophole by prohibiting the funding of "electioneering communications" by corporations and unions during the pre-election period – 30 days and 60 days before a primary and general election, respectively.⁷⁰

In upholding the constitutionality of BCRA in *McConnell v. Federal Elections Commission* (540 U.S. 93 (2003)), the U.S. Supreme Court built on the *Buckley v. Valeo* ruling, not to further clarify express or issue advocacy, but to further emphasize the need to avoid vague and overbroad statutes. As it applies to the states, that ruling "unambiguously re-

quires the express advocacy test for any statutory definition of [campaign] expenditures that employs vague, overbroad language.”⁷¹ In 2004, the U.S. 6th Circuit Court of Appeals (which includes Kentucky, Michigan, Ohio, and Tennessee) confirmed the requirement to apply the express advocacy test to vague, overbroad definitions of campaign expenditures in *Anderson v. Spear*, 356 F.3d 651.

It is the Michigan Department of State’s position since 2004 that the definitions of contributions and expenditures contained in the Michigan Campaign Finance Act (MCFA – PA 388 of 1976, as amended) are sufficiently vague and overly broad that attempts by the department to determine the degree of control exercised by a candidate over a communication would be mere speculation and would lead to arbitrary applications of the law. In the absence of changes to the MCFA, the department does not believe it has the authority to regulate issue ads.⁷²

Campaign finance case law has continued to evolve since the secretary of state’s 2004 Declaratory Ruling. The definition of issue ads was further clarified in *Federal Elections Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007), which resulted in a close 5-to-4 decision favoring WRTL and ruling BCRA unconstitutional as it applies to the Wisconsin Right to Life ads.⁷³ The Supreme Court ruled that “an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” The overall message of the majority opinion was that “neither the interest in preventing corruption nor the goal of limiting the distorting effects of corporate wealth was sufficient to override the right of a corporation to speak through ads on public issues.” Therefore, benefit of the doubt is given to freedom of speech rights, not censorship by the government. Again, it is clear that at its core, the proponents and opponents of campaign questions are engaging in issue advocacy

as defined by *Federal Elections Commission v. Wisconsin Right to Life*.

In a more recent decision, the U.S. Supreme Court said in the *Citizens United v. Federal Election Commission* (2010) decision that while the government cannot restrict corporate and union spending on political campaigns, it is constitutionally permissible to require disclosure of sources of campaign funding. However, the court said that it should not be the

courts that require that disclosure.⁷⁴ The Court left it to the states to determine if and how funders should be disclosed in campaign finance reports. In the 5-to-4 decision, “the majority maintained that political speech is indispensable to a democracy, which is no less true because the speech comes from a corporation.” This decision, therefore, invalidated long-standing restrictions in the Federal Election Campaign Act (FECA) on tax-exempt organizations, such as 501(c)4 and 501(c)6 corporations and labor unions, that prevented them from using their general treasury funds to make independent expenditures

and electioneering communications.⁷⁵

The decision also opened the door to enhanced federal and state campaign finance disclosure laws. Though tax-exempt organizations, such as 501(c)4 and 501(c)6 corporations and labor unions, are required to report information on large donors to the IRS and FEC annually on their Form 990, no identifying information is required to be publicly disclosed on the form’s Schedule C for public disclosure.⁷⁶ As a result:

Only those donors giving more than \$200 specifically ‘for the purpose of furthering’ an independent expenditure are disclosed. For electioneering communications, FECA requires the disclosure of donors who contributed at least \$1,000; however, if the group established a separate bank account, consisting of only donations from U.S. citizens and legal resident aliens made directly to the account, then only those donors

The overall message of the majority opinion in *Federal Elections Commission v. Wisconsin Right to Life, Inc.* was that “neither the interest in preventing corruption nor the goal of limiting the distorting effects of corporate wealth was sufficient to override the right of a corporation to speak through ads on public issues.”

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

who contributed at least \$1,000 to the account are disclosed.

Therefore, the decision in *Citizens United v. Federal Election Commission* rejected arguments that FECA's disclosure requirements for electioneering communications must be limited to speech that is express advocacy. As a result of this ruling, the campaign activities of tax-exempt organizations will have fewer restrictions on their campaigning activities. The majority ruled that funding disclosure could be justified because of the "government interest" in providing the electorate with information regarding election-related spending resources. The majority wrote: "The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether."⁷⁷

A similar ruling by the U.S. Court of Appeals for the District of Columbia Circuit in 2010 solidified the results of *Citizens United v. Federal Election Commission* related to individuals' contributions and the reporting of political committees in *SpeechNow.org v. FEC* (599 F.3d 686). SpeechNow had filed a complaint that requiring disclosure of the funding of political committees was "unconstitutionally burdensome."⁷⁸ The court, however, held that though disclosure and reporting requirements do impose a burden on the First Amendment, they "impose no ceiling on campaign related activities . . . [and] do not prevent anyone from speaking."

As a result of the *Citizens United v. Federal Election Commission* (FEC) ruling, policymakers in states are considering amendments to their campaign finance laws to permit corporate and union funding and to improve and strengthen their disclosure rules. Twenty-three states plus the District of Columbia had campaign finance laws that prohibited or limited corporations in the past. With corporate funding permitted, a state's disclosure rules "will be one of the only ways left to regulate how corporations and other groups make expenditures in local races."

As a result of the *Citizens United v. Federal Election Commission* (FEC) ruling, policymakers in states are considering amendments to their campaign finance laws to permit corporate funding and to improve and strengthen their disclosure rules.

For instance, "states that previously banned corporate expenditures would begin adapting disclosure rules so that the public can get the same information about corporate political advertisements that is currently available for advertisements paid for by individuals or political action committees."⁷⁹

Information available on *Open States* (a website sponsored by the Sunlight Foundation that enables citizens to track what is happening in their state's capitol by aggregating information from all 50 states, Washington, D.C., and Puerto Rico) analyzed how state legislatures were addressing the *Citizens United v. FEC* ruling by looking at bills across all 50 states introduced in 2012 and 2013 that amended campaign finance laws.⁸⁰ During this time period, they found that: "more than three years after the Supreme Court's 2010 *Citizens United* decision ruled it unconstitutional to bar corporate entities, including nonprofits and labor unions, from freely spending to influence elections, many state legislators are still coming to grips with the ruling and its ramifications for state elections."⁸¹

This research identified only five states – Connecticut, Florida, Maryland, Minnesota, and Rhode Island – that have enacted laws that address campaign finance disclosure. Of these states, only Florida authorizes citizen initiatives and only Florida and Maryland authorize referendums. Open States assessed the changes made by these state laws and determined that only the laws enacted by Florida, Minnesota, and Rhode Island improved the states' disclosure requirements.

Florida, for instance, passed a bill that requires financial disclosure forms to be made available in an online database. Connecticut has a similar online database, which includes information about any transactions between campaign finance contributors and filers. Maryland passed the Campaign Finance Reform Act of 2013 to close Maryland's loophole that allowed corporations to route funds through inter-

McCutcheon v. Federal Election Commission

Currently, the United States Supreme Court is hearing another case on the constitutionality of the prior rulings regarding campaign finance limits. The case, *McCutcheon v. Federal Election Commission*, will decide whether or not limits on direct contributions to federal candidates, political action committees, and political parties are constitutional. Oral arguments began on October 8, 2013 in which Shaun McCutcheon, the plaintiff, was joined by the Republican National Committee to challenge the constitutionality of the overall federal limits on aggregate contributions.^a At the core to their argument is “the belief that campaign finance disclosure deters political corruption.” Thus, the campaign contribution cap is an unconstitutional infringement on political speech because the Supreme Court “has already suggested that so long as campaign contributions are disclosed, there should be little concern about corruption.”

On the other hand, a University of Virginia School of Law (UVA) professor and third-year student suggest the opposite – that disclosure of campaign finance contributions may actually exacerbate corruption versus reducing it. Though their analysis does not argue that disclosure is bad and causes corruption, they strive to caution campaign finance reformers from viewing disclosure as an antidote.^b For instance:

Disclosure records can tell politicians which private actors support compliant candidates, and the records can help private actors determine which politicians reward their benefactors. Disclosure can thus bring conspirators together and reduce the uncertainty that inheres in illegal transactions. That means disclosure has cross-cutting effects. It can deter corruption by increasing the certainty that parties to corrupt deals will keep their promises.

A future ruling in the McCutcheon case has the potential to shake the foundation established by the Citizens United ruling, which placed such faith in disclosure. The UVA analysis aims to “give new life to other potential solutions to corruption, including public financing and limitations on independent expenditures that the Supreme Court currently frowns upon.” One glance at www.FollowTheUnlimitedMoney.com – which is a real-time feed of independent expenditures as they are reported to the FEC – will show the great amounts individuals contribute to super political action committees alone. For the 2011-12 cycle it was \$620,559,129.^c The overall individual contributions, often referred to as “checkbook lobbying”, is argued to be a form of freedom of speech in which any limits upon would be a restriction of political speech rights. However, others argue that “seven figure contributions are not a megaphone amplifying the voices of the donors, they are a sonic boom, overpowering to the point of silencing all other voices.”^d

^a “In Light of McCutcheon, UVA Law Professor Questions Whether Disclosure Deters Political Corruption.” University of Virginia School of Law, October 2, 2013. www.law.virginia.edu/html/news/2013_fall/gilbert_mccutcheon.htm.

^b Gilbert, Michael D. and Aiken, Benjamin, Disclosure and Corruption (September 1, 2013). Virginia Public Law and Legal Theory Research Paper No. 2013-37; Virginia Law and Economics Research Paper No. 2013-10. Available at SSRN: <http://ssrn.com/abstract=2334454>.

^c Follow The Unlimited Money (2012). <http://reporting.sunlightfoundation.com/outside-spending-2012/super-pacs/>

^d Bartolomeo, Liz. “Resources Tool Kit: McCutcheon v. FEC.” October 8, 2013. <http://sunlightfoundation.com/blog/2013/10/07/mccutcheon-v-fec-tool-kit/>.

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

mediary limited liability corporations, thereby avoiding state contribution limits.

Recommendation

Addressing the shortcomings of the MCFA identified by the Michigan Department of State and the opportunity for the states to require disclosure of campaign funding for issue ads, it is recommended that Section 26 of the MCFA be amended to add a Subsection 7 with the following:

(7) A committee that is a nonprofit corporation making electioneering communications or independent expenditures, or contributing directly, or indirectly, to another committee that is making electioneering communications or independent expenditures for the qualification, passage or defeat of a ballot question, is required to report individual contributions that are used to pay for electioneering communications or independent expenditures made by the committee, or any contribution made to another committee that is used to pay for electioneering communications or independent expenditures.

(a) contributions must be fully and completely ascribed to individual persons, committees that report individual contributors of all their receipts or profit making corporations.

(b) disclosure of contributions is required only for those funds that are used directly, or indirectly, to pay for electioneering communications or independent expenditures.

(c) it is impermissible for a committee making electioneering communications or independent expenditures to accept a contribution from a nonprofit corporation unless the contribution is fully and completely ascribed to contributions from individual persons, committees that report individual contributors of all their receipts or profit making corporations.

This suggested wording is largely the same as that recommended by the Michigan Judicial Selection Task Force for the reporting of contributions and expenditures related to the election of justices and judges. Because justices and judges are not considered political candidates and judges cannot be lobbied on issues before the court, the increasing amounts associated with these elections are also considered issue ads. The Task Force recommended that Supreme Court campaign advertisements fully disclose the sources of their funding; extend the disclosure requirements of the MCFA to include all judicial campaign expenditures; establish and maintain a central registry disclosing people and groups who fund advertisements; and amend the MCFA.⁸²

Vote Requirements

According to the Initiative and Referendum Institute, 49 states call for legislative referendum for constitutional amendments.⁸³ Delaware is the only state that does not require a proposed amendment to be submitted to the voters. Instead of submitting constitutional amendments for popular ratification, the Delaware legislature must approve constitutional amendments by a two-thirds vote in consecutive session for enactment. (See **Table 9**.)

Most states with initiatives (including Michigan) require a simple majority vote (50 percent plus one vote) for approval; others include requirements for amendment initiatives to receive a higher percentage of approval votes if a majority of those participating in the election do not weigh in on that ballot question. Five states have set distinct requirements in the approval stage. Illinois, Massachusetts, Mississippi, Nebraska, and Nevada all require that any proposed amendment must receive a “number of affirmative votes [that] exceed a specific percentage of the total number of ballots cast.”⁸⁴ For instance, Illinois requires 60 percent approval if the number of yes votes fails to reach 50 percent or more of the ballots cast.⁸⁵ Additionally, Nevada voters must approve a consti-

Most states with initiatives require a simple majority vote (50 percent plus one vote) for approval; others include requirements for amendment initiatives to receive a higher voter approval if a majority is not reached.

tutional amendment in two separate elections before it goes into effect. Florida sets requirements only for specific types of amendments. Amendment approval in Florida is a three-fifths vote; however, if the amendment is for a new state tax or fee then it also requires two-thirds of voters to be voting in the election for adoption.⁸⁶

The fact that the Michigan Constitution calls for initiative and referendum questions to appear at November general elections where the presence of a presidential or gubernatorial election usually creates healthy voter turnouts lessens the need for additional vote

requirements. While fewer votes have been cast on ballot questions posed at elections other than the November general elections, only eleven of the 74 proposed constitutional amendments have appeared at special elections in March, May, June, or August elections since adoption of the 1963 Constitution. Voters approved eight of those eleven questions. If policymakers are to consider extraordinary vote requirements for constitutional amendments, the focus should be on questions appearing at special elections (See **Appendix A**).

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Table 9
Summary of State Requirements of Vote Requirements for Constitutional Amendments

<u>State</u>	<u>Vote Required for Ratification</u>	<u>State</u>	<u>Vote Required for Ratification</u>
Alabama	Majority vote on amendment	Missouri	Majority vote on amendment
Alaska	Majority vote on amendment	Montana	Majority vote on amendment
Arizona	Majority vote on amendment	Nebraska	Majority vote on amendment
Arkansas	Majority vote on amendment		(must be at least 35% of the total votes cast at the election, or at special election a majority of the votes tallied must be at least 30% of the total number)
California	Majority vote on amendment		
Colorado	Majority vote on amendment		
Connecticut	Majority vote on amendment		
Delaware	Not required		
Florida	3/5 vote on amendment	Nevada	Majority vote on amendment
	"new state tax or fee" after 11/7/94 requires 2/3 vote on amendment	New Hampshire	2/3 vote on amendment
Georgia	Majority vote on amendment	New Jersey	Majority vote on amendment
Hawaii	Majority vote on amendment (must be at least 50% of the total votes cast at the election, or at special election a majority of the votes tallied must be at least 30% of the total number of registered voters)	New Mexico	Majority vote on most amendments Certain elective franchise and education matters approved by 3/4 of electors voting in state and 2/3 voting in each county
Idaho	Majority vote on amendment Majority voting in election or	New York	Majority vote on amendment
Illinois	3/5 voting on amendment	North Carolina	Majority vote on amendment
Indiana	Majority vote on amendment	North Dakota	Majority vote on amendment
Iowa	Majority vote on amendment	Ohio	Majority vote on amendment
Kansas	Majority vote on amendment	Oklahoma	Majority vote on amendment
Kentucky	Majority vote on amendment	Oregon	Majority vote on amendment (exceptions)
Louisiana	Majority vote on amendment (if 5 or fewer political subdivisions are affected, must have majority vote in those subdivisions as well)	Pennsylvania	Majority vote on amendment
Maine	Majority vote on amendment	Rhode Island	Majority vote on amendment
Maryland	Majority vote on amendment	South Carolina	Majority vote on amendment
Massachusetts	Majority vote on amendment	South Dakota	Majority vote on amendment
Michigan	Majority vote on amendment	Tennessee	Majority voting for governor
Minnesota	Majority vote in election	Texas	Majority vote on amendment
Mississippi	Majority vote on amendment	Utah	Majority vote on amendment
		Vermont	Majority vote on amendment
		Virginia	Majority vote on amendment
		Washington	Majority vote on amendment
		West Virginia	Majority vote on amendment
		Wisconsin	Majority vote on amendment
		Wyoming	Majority vote in election

Source: *The Book of the States*. 2013 ed. Vol. 45. Lexington: The Council of State Governments, 2013, Constitutional Amendment Procedure: By the Legislature, Table 1.2, pp. 14-15.

Does it matter?

Comparisons of the 50 states show a significant variation across states in the frequency of proposals to alter their state constitutions and in the success of those measures. Alabama, a state in which the initiative and referendum are not authorized, has had the highest number of constitutional amendments proposed and adopted. South Carolina, which has one of the most stringent processes for legislatively placing proposals to amend the state constitution on the ballot, has had the third highest number of proposed amendments placed before its voters. Georgia, another state in which the initiative and referendum are not authorized, is working under its tenth state constitution since statehood in 1788. On the other hand, states like Alaska, Connecticut, Illinois, Indiana, Iowa, Kentucky, Massachusetts, North Carolina, Pennsylvania, Rhode Island, Vermont, and West Virginia have sought voter approval for constitutional amendments infrequently (see **Table 10**).

These differences may also reflect different understandings of the role of a state constitution. The U.S. Constitution is much more skeletal than most state constitutions with 4,440 words that focus mainly on the structure of government; whereas the state constitutions are thought to be more statutory in nature and lengthier in wording.⁸⁷ The U.S. Constitution has had 27 amendments since it was adopted in 1787; on the other hand, Alabama has had approximately 855 amendments, as of 2012, since its first 1819 constitution.⁸⁸ Now on its sixth constitution, adopted in 1901, Alabama's Constitution is the longest in the country at approximately 376,006 words. It is over four times the length of the second longest state constitution, close to 12 times the average length of the state constitutions, and around 85 times that of the U.S. Constitution. Comparatively, Michigan's Constitution adopted as the state's fourth constitution in 1963, contains 30 amendments and 31,164 words.⁸⁹ In discussing the length, number, and difficulty in passing amendments for the state constitution, it must be noted that not all of these amendments were derived from the initiative process. With most other states, the majority of constitutional amendments are proposed by the legislature. Then, in states with a referendum

process, most are required to seek the voters' approval for adoption.

Given that Michigan has procedures for legislatively introducing constitutional amendments to the electors that are about average when compared to those in place in other states and that Michigan has less restrictive procedures for citizen-initiated constitutional amendments compared to other states where this is authorized, it is not unexpected that citizens have targeted amendments to the constitution with greater frequency than initiating statutes. The policies promoted through the initiative process, especially the social issues that have been common to the ballot in recent years, tend to be more controversial and constitutional changes are harder to undo.

Michigan is a little unusual in that it currently is operating under its fourth state constitution. The average state has had three constitutions since statehood. Louisiana (11 constitutions) and Georgia (10) have operated under the most constitutions. Nineteen states have only operated under one state constitution, including Alaska and Hawaii for whom statehood came relatively recently. Massachusetts is still operating under the state constitution that was adopted in 1780.

The 1963 Michigan Constitution is relatively young when compared to those of other state constitutions. The average state is operating under a constitution adopted just prior to the turn of the last century (1899). Ten states (Rhode Island (1986), Georgia (1982), Louisiana (1974), Montana (1972), Illinois (1970), North Carolina (1970), Virginia (1970), Florida (1968), Pennsylvania (1968), Connecticut (1965)) have constitutions younger than Michigan's.

To look at the frequency of amendments to each state's current constitution, CRC examined the average number of proposed amendments submitted to the electors in each state per two-year general election cycle since the time that the state's current constitution was adopted. Michigan has averaged three proposed constitutional amendments per general election since adoption of the 1963 Constitu-

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

tion. This is less than the national average of 4.2 proposed amendments per general election and about equal to the median of 2.9 proposed amendments for all other states. Alabama (21.3 proposed amendments), California (13.4), Louisiana (12.6), South Carolina (11.7), and Texas (9.6) lead the nation in the average number of constitutional amendments submitted to the electors in their states at each general election.

While the data in **Table 10** do not suggest that Michigan is unusual in the number of proposed amendments that have been submitted to the electors, the low rate at which Michigan electors have adopted the proposals submitted to them stands out when compared to the other states. Only the

electors in Vermont (25 percent success rate) and Colorado (46 percent success rate) have defeated more proposed constitutional amendments than have Michigan electors. Delaware does not submit proposed constitutional amendments to the electors for adoption, as change occurs by legislative action.

It is not clear if the relatively low rate of adoption for the proposed constitutional amendments is a reflection of the quality of the proposals being brought to the voters, a general suspicion of the voters of the motives of those proposing the changes, an indictment on the complexity of the questions (when voters do not understand the implications of a proposal they may tend to vote against adoption), or something different.

CRC Report

Table 10
Number of Constitutions, Date Adopted, Number of Amendments by State

	<u>Number of Constitutions</u>	<u>Date Current Constitution Adopted</u>	<u>Number of Amendments</u>			<u>Number of Amendments Submitted to Voters per General Election</u>
			<u>Submitted to Voters</u>	<u>Adopted</u>	<u>Percent Adopted</u>	
Alabama	6	1901	1,180	855	72%	21.3
Alaska	1	1956	42	29	69%	1.5
Arizona	1	1911	266	147	55%	5.3
Arkansas	5	1874	196	98	50%	2.8
California	2	1879	891	525	59%	13.4
Colorado	1	1876	336	155	46%	4.9
Connecticut	4	1965	31	30	97%	1.3
Delaware	4	1897		142		0.0
Florida	6	1968	154	118	77%	7.0
Georgia	10	1982	94	71	76%	6.3
Hawaii	1	1950	131	110	84%	4.2
Idaho	1	1889	210	123	59%	3.4
Illinois	4	1970	18	12	67%	0.9
Indiana	2	1851	79	47	59%	1.0
Iowa	2	1857	59	54	92%	0.8
Kansas	1	1859	152	95	63%	2.0
Kentucky	4	1891	75	41	55%	1.2
Louisiana	11	1974	239	168	70%	12.6
Maine	1	1819	205	172	84%	2.1
Maryland	4	1867	261	225	86%	3.6
Massachusetts	1	1780	148	120	81%	1.3
Michigan	4	1963	73	30	41%	3.0
Minnesota	1	1857	215	120	56%	2.8
Mississippi	4	1890	161	125	78%	2.6
Missouri	4	1945	175	114	65%	5.2
Montana	2	1972	56	31	55%	2.8
Nebraska	2	1875	350	228	65%	5.1
Nevada	1	1864	232	136	59%	3.1
New Hampshire	2	1784	287	145	51%	2.5
New Jersey	3	1947	80	45	56%	2.5
New Mexico	1	1911	293	160	55%	5.8
New York	4	1894	295	220	75%	5.0
North Carolina	3	1970	37	30	81%	1.8
North Dakota	1	1889	265	150	57%	4.3
Ohio	2	1851	286	172	60%	3.6
Oklahoma	1	1907	354	187	53%	6.7
Oregon	1	1857	490	249	51%	6.3
Pennsylvania	5	1968	36	30	83%	1.6
Rhode Island	3	1986	12	10	83%	0.9
South Carolina	7	1895	686	497	72%	11.7
South Dakota	1	1889	229	215	94%	3.7
Tennessee	3	1870	62	39	63%	0.9
Texas	5	1876	652	474	73%	9.6
Utah	1	1895	167	115	69%	2.9
Vermont	3	1793	212	54	25%	1.9
Virginia	6	1970	54	46	85%	2.6
Washington	1	1889	178	105	59%	2.9
West Virginia	2	1872	121	71	59%	1.7
Wisconsin	1	1848	194	145	75%	2.4
Wyoming	1	1889	125	98	78%	2.0

Source: Book of the States, 2012 Table 1.3 p. 15

Conclusion

As an early authorizer of the tools of direct democracy, Michigan has a history of citizen involvement in crafting, adopting, and approving the laws of the state. These tools of democracy are valued and would be missed if they were eliminated, but a general sense of unease has created an opportunity to look at the use of these tools and the processes required for their use.

The causes of that unease are not entirely clear, and may vary among different observers of Michigan's initiative and referendum processes. What is clear is that the current use of initiative and referendum in Michigan is not entirely consistent with the motivations of those that advocated for their inclusion in the state Constitution 100 years ago. The fear at that time was that the legislature was controlled by special interests and the people needed a means to enact laws when those special interests did not find the proposals in their own interests. While those Progressive Era advocates sought a safety valve to enact laws that the legislature proved unwilling or unable to tackle, modern users of the initiative often use it as a tool to bypass the legislative process. Now special interests find it easier to work outside of the legislative process and appeal directly to the people for change. In addition to the other problems identified above, this method of enacting laws foregoes the legislative process wherein negotiation, compromise, and deal making that account for the a broad array of interests throughout the state.

The ability to employ Michigan's tools of direct democracy are not inconsistent with those available in other states, either for approving legislatively proposed constitutional amendments, petition-initiated constitutional amendments, petition-initiated statutory changes, legislative referendums, or petition-initiated referendums. Still, policymakers may wish to reexamine the threshold number of signatures required to qualify constitutional amendments and statutory changes for the ballot because of the narrow difference between the thresholds and because advances in communications, transportation, and political engagement have made it significantly easier to reach the threshold amounts.

Michigan lacks some of the restrictions and requirements other states place on ballot circulators, but policymakers are cautioned to tread lightly when considering the imposition of any of these restrictions and requirements. The courts have generally been wary of laws that diminish the freedom of speech rights of ballot proponents or those employed to further their causes. Also the courts have considered whether the restrictions and requirements were enacted to remedy past wrongs. Although some might have distaste for paid petition circulators, or the amounts some causes are willing to pay per signature, Michigan has little history of misconduct that would warrant new laws affecting this cottage industry.

What is more distinguishably missing from Michigan's laws and regulations when compared to other states with the initiative and referendum, is a means of educating registered voters about the content of petitions being circulated for signatures. While most states require proponents advocating change to apply to circulate petitions, those advocates do not have to work with the Michigan state election officials until they reach the point of actually submitting their petitions with the requisite number of signatures. The processes used in other states allow state elections officials to:

- adopt descriptions of the proposals when applying to circulate petitions;
- include those descriptions both on the petitions and in other material (website, pamphlets, etc.) that describes the questions;
- have disinterested parties either inside the government or outside of government analyze the ballot questions; and
- create a process wherein the opponents and proponents are empowered to write arguments of limited length making the case for a yes or no vote on the questions.

These changes could help to better inform the electors before they are approached to lend their signatures to petitions and before they enter the ballot booth to vote on these measures. Changes of this

CRC Report

nature would return the Board of State Canvassers to the intended role of simply certifying that the petitions collected the requisite number of signatures, and would eliminate, or at least minimize, the last minute rush to the courts for rulings on the legality of the proposals.

Finally, Michigan's laws were found lacking in the requirements for proponents and opponents of ballot questions to disclose the financial contributions

that support the intense campaigning to attract votes to their sides. Recent U.S. Supreme Court cases call on the states to carry the mantle in efforts to impose more intense reporting requirements.

These changes would neither make the petition process easier or harder to qualify ballot questions to appear before the voters, but they would improve the dissemination of information to the benefit of those voters.

Appendix A
Proposed Amendments to the Constitution of 1963 —
Summary of Adoption or Rejection

<u>Subject of Amendment</u>	<u>Article</u>	<u>Section(s)</u>	<u>Method of Proposal*</u>	<u>Date of Election</u>	<u>Action</u>	<u>Notes</u>	
						<u>For</u>	<u>Against</u>
Lower minimum voting age from 21 to 18 years	2	1	Senate Joint Resolution "A" of 1966	Nov. 1966	Rejected	703,076	1,267,872
Establish judicial tenure commission	6	30	House Joint Resolution "PP" of 1968	Aug. 1968	Approved	553,182	228,738
Require legislature to create state officers compensation commission	4	12	House Joint Resolution "AAA" of 1968	Aug. 1968	Approved	417,393	346,839
Define manner of filling judicial vacancies	6	20,22, 23,24	House Joint Resolution "F" of 1968	Aug. 1968	Approved	494,512	266,561
Permit election of members of legislature to another state office during their term of office	4	9	Senate Joint Resolution "O" of 1968	Nov. 1968	Rejected	778,388	1,783,186
Permit state to impose a graduated income tax	9	7	Senate Joint Resolution "G" of 1967	Nov. 1968	Rejected	614,826	2,025,052
Prohibit public aid to nonpublic schools and students	8	2	Initiatory Petition of 1970	Nov. 1970	Approved	1,416,838	1,078,740
Lower minimum voting age from 21 to 18 years	2	1	House Joint Resolution "A" of 1970	Nov. 1970	Rejected	924,981	1,446,884
Allow legislature to authorize lotteries and the sale of lottery tickets	4	41	House Joint Resolution "V" of 1972	May 1972	Approved	1,352,768	506,778
Permit members of legislature to resign and accept another office to which they have been elected or appointed	4	9	Senate Joint Resolution "DD" of 1972	May 1972	Rejected	866,593	915,312
Allow trial by jury of less than 12 jurors in all prosecutions for misdemeanors punishable by imprisonment for not less than 1 year	1	20	House Joint Resolution "M" of 1972	Aug. 1972	Approved	696,570	357,186

Appendix A (continued)

Subject of Amendment	Article	Section(s)	Method of Proposal*	Date of Election	Action	Votes	
						For	Against
Limit property tax for school, county, and township purposes and require legislature to establish a state tax program for support of schools	9	6	Initiatory Petition	Nov. 1972	Rejected	1,324,702	1,815,126
Permit state to impose graduated income tax and allow legislature to authorize political subdivisions to levy graduated income tax	9	7	Initiatory Petition	Nov. 1972	Rejected	959,286	2,102,744
Limit use of motor fuel tax fund	9	9	Senate Joint Resolution "LL" of 1972	Nov. 1974	Rejected	1,091,938	1,146,109
Eliminate sales tax and use tax on food and prescription drugs	9	8	Initiatory Petition of 1974	Nov. 1974	Approved	1,337,609	1,071,253
Lower minimum age of eligibility for office of state representative or state senator from 21 to 18 years	4	7	House Joint Resolution "B" of 1976	Nov. 1976	Rejected	698,993	2,580,945
Limit taxation imposed by legislature to 8.3% of state personal income	9	25,26,27, 28,29,30, 31	Initiatory Petition	Nov. 1976	Rejected	1,407,438	1,866,620
Permit state to impose a graduated income tax	9	7	Initiatory Petition	Nov. 1976	Rejected	897,780	2,332,513
Call for constitutional convention			Required by Constitution 1963, art 12, § 3	Nov. 1978	Rejected	640,286	2,112,549
Authorize deposit of state funds in savings and loan associations and credit unions, as well as banks	9	19,20	House Joint Resolution "GG" of 1978	Nov. 1978	Approved	1,819,847	933,101
Prohibit alcoholic beverages from being sold to, or possessed by, a person under the age of 21	4	40	Initiatory Petition of 1978	Nov. 1978	Approved	1,609,589	1,208,497
Establish limits on taxes imposed by legislature and units of local government (Headlee Amendment)	9	6,25,26,27, 28,29,30, 31,32,33,	Initiatory Petition	Nov. 1978	Approved	1,450,150	1,313,984

Appendix A (continued)

<u>Subject of Amendment</u>	<u>Article</u>	<u>Section(s)</u>	<u>Method of Proposal*</u>	<u>Date of Election</u>	<u>Action</u>	<u>Votes</u>	
						<u>For</u>	<u>Against</u>
Grant Michigan state troopers and sergeants right to collective bargaining and binding arbitration	8	5	Initiatory Petition	Nov. 1978	Approved	1,535,023	1,203,930
Prohibit use of property taxes for school operating expenses and establish a voucher system for financing education of students at public and nonpublic schools	9 / 8	6 / 2	Initiatory Petition	Nov. 1978	Rejected	718,440	2,075,583
Reduce property tax assessments to establish a maximum of 5.6% on the rate of the state income tax; prohibit legislature from requiring new or expanded local programs without state funding; and allow school income tax with voter approval (Tisch Amendment I)	9	3, 3(a),7(a), 7(b),25(a), 25(b),26	Initiatory Petition	Nov. 1978	Rejected	1,032,343	1,737,133
Allow courts to deny bail under certain circumstances involving violent crimes; provide for commencement of trial within 90 days	1	15	House Joint Resolution "Q" of 1978	Nov. 1978	Approved	2,307,038	458,357
Allocate at least 90% of gas tax revenues for general road purposes and the remainder for other transportation purposes; and replace state highway commission with transportation commission	5 / 9	28 / 9	House Joint Resolution "F" of 1978	Nov. 1978	Approved	1,478,316	1,233,196
Require legislature to create a railroad redevelopment authority to make loans to railroads with trackage in Michigan and to authorize authority to issue general obligation bonds in amount not to exceed 175 million dollars	4	54	House Joint Resolution "OO" of 1978	Nov. 1978	Rejected	1,257,606	1,415,441
Make local school boards responsible for school personnel and programs, reduce local property tax maximums for operational purposes, provide additional property tax relief for senior retirees, and require the state to raise revenues necessary for equal per pupil funding of public schools	8	2	Initiatory Petition	Nov. 1980	Rejected	746,027	2,769,497
	9	6, 31, 6a, 26a					

Appendix A (continued)

Subject of Amendment	Article	Section(s)	Method of Proposal*	Date of Election	Action	Votes	
						For	Against
Lower minimum legal age for possession or consumption of alcoholic beverages from 21 to 19 years	4	40	House Joint Resolution "S" of 1980	Nov. 1980	Rejected	1,403,935	2,250,873
Provide property tax relief; reimburse local and state governments with additional sales tax; require net state lottery revenues be deposited in school aid fund; and mandate creation of state "rainy day" fund	4	41, 54	Senate Joint Resolution "X" of 1980	Nov. 1980	Rejected	894,441	2,583,253
Decrease property taxes and prohibit new types of homestead taxes; require 60% voter approval to raise state taxes or fees; require partial state reimbursement to local units for lost income; limit legislature's ability to change tax exemptions or credits or change per pupil formula (Tisch Amendment I)	9	1, 2, 3, 31, 2a, 3a, 3b, 3c, 3d, 3e, 3f, 33a, 33b	Initiatory Petition	Nov. 1980	Rejected	1,622,301	2,051,008
Allow the legislature to pass laws relating to members' immunity from civil arrest and process during legislative sessions	4	11	Senate Joint Resolution "L" of 1980	Nov. 1980	Rejected	1,287,172	2,134,546
Restrict authority of lieutenant governor and establish a procedure to fill a vacancy in the office of the lieutenant governor	4	9	Senate Joint Resolution "K" of 1980	Nov. 1980	Rejected	1,410,912	1,927,001
Reduce property taxes and city income taxes; limit growth of property tax revenues; return additional sales tax to local governments and schools; and require net lottery revenues be deposited in school aid fund	4	41	House Joint Resolution "G" of 1981	May 1981	Rejected	560,924	1,451,305
	9	3, 8, 30, 31					

Appendix A (continued)

Subject of Amendment	Article	Section(s)	Method of Proposal*	Date of Election	Action	Votes	
						For	Against
Allow the legislature to pass laws to reform members' immunity from civil arrest and process during legislative sessions	4	11	Senate Joint Resolution "A" of 1981	Nov. 1982	Approved	1,804,728	1,029,743
Create a Michigan department of state police; provide for its personnel; prescribe its duties; and require minimum staffing	5	2, 30	Initiatory Petition	Nov. 1982	Rejected	720,915	2,111,802
Provide for an elected public service commission	5	30	Initiatory Petition	Nov. 1982	Rejected	1,026,160	1,771,098
Allow legislature to approve or disapprove administrative rules proposed by state agencies	4	37	House Joint Resolution "P" of 1984	Nov. 1984	Rejected	1,280,948	1,827,677
Establish a natural resources trust fund and a board to administer it; to provide revenues for the fund from natural resources leases and existing funds; specify and limit expenditures therefrom	9	35	House Joint Resolution "M" of 1984	Nov. 1984	Approved	2,066,554	1,120,794
Amend constitution relating to taxes, other revenues and voter or legislative approval for same	9	1, 2	Initiatory Petition	Nov. 1984	Rejected	1,376,141	2,035,867
Allow establishment of the library of Michigan within the legislative branch	4	54	House Joint Resolution "V" of 1986	Nov. 1986	Rejected	908,627	936,643
Allow for approval or rejection of administrative rules by the legislature	4	37	House Joint Resolution "W" of 1986	Nov. 1986	Rejected	648,116	1,136,721
Expand authority of state officers compensation commission to determine compensation of attorney general and secretary of state	4	12	House Joint Resolution "U" of 1986	Nov. 1986	Rejected	905,767	910,297
Provide for rights of crime victims	1	24	House Joint Resolution "P" of 1988	Nov. 1988	Approved	2,662,796	650,515

Appendix A (continued)

Subject of Amendment	Article	Section(s)	Method of Proposal*	Date of Election	Action	Votes	
						For	Against
Increase the sales/use tax from 4¢ to 4 1/2¢ and dedicate funds for local schools	4 9	41 8, 10, 11	House Joint Resolution "I" of 1989	Nov. 1989	Rejected	514,407	1,341,292
Increase the sales/use tax from 4 cents to 6 cents, reduce school prop-erty taxes, set permanent school operating millages not subject to voter renewal, and dedicate funds for local schools	4 9	41 3, 5, 6, 8, 10, 11, 14	House Joint Resolution "I" of 1989	Nov. 1989	Rejected	436,958	1,392,053
Limit annual increases in homestead property tax assessments and provide separate tax limitations for different property classifications	9	3,31	House Joint Resolution "H" of 1991	Nov. 1992	Rejected	1,433,354	2,384,777
Restrict/limit the number of times a person can be elected to congressional, state executive and state legislative offices	2 4 5 12	10 54 30 4	Initiatory Petition	Nov. 1992	Approved	2,295,904	1,613,404
Exempt property from a portion of school operating property taxes and limit annual increases in all property tax assessments	9	3	Initiatory Petition	Nov. 1992	Rejected	1,552,119	2,276,360
Limit property tax assessments and increase sales tax	4 9	41 3, 6, 8, 10, 11	House Joint Resolution "G" of 1993	Jun. 1993	Rejected	1,008,425	1,164,468
Increase sales and use tax rates from 4% to 6%; limit annual increases in property tax assessments, exempt school operating millages from uniform taxation requirement, and require 3/4 vote of legislature to exceed statutorily established school operating millage rates	9	3, 5, 8, 11, 36	Senate Joint Resolution "S" of 1993	Mar. 1994	Approved	1,684,541	750,952
Call for constitutional convention			Required by Constitution 1963, art 12, § 3	Nov. 1994	Rejected	777,779	2,008,070

Appendix A (continued)

<u>Subject of Amendment</u>	<u>Article</u>	<u>Section(s)</u>	<u>Method of Proposal*</u>	<u>Date of Election</u>	<u>Action</u>	<u>Notes</u>	
						<u>For</u>	<u>Against</u>
Limit criminal appeals	1	20	Senate Joint Resolution "D" of 1994	Nov. 1994	Approved	2,118,734	761,784
Establish a Michigan state parks endowment fund, increase maximum allowable funds in Michigan natural resources trust fund, and eliminate diversion of dedicated revenue from Michigan natural resources trust fund	9	35,36	Senate Joint Resolution "E" of 1994	Nov. 1994	Approved	2,007,097	806,888
Establish qualifications for judicial offices	6	19	Senate Joint Resolution "D" of 1995	Nov. 1996	Approved	2,806,833	629,402
Establish the current Michigan Veterans' Trust Fund in the state constitution and require that expenditures from the fund be made solely for purposes authorized by the trust fund's board of trustees	9	37, 38, 39	House Joint Resolution "H" of 1995	Nov. 1996	Approved	2,447,905	849,525
Change the word "handicapped" to "disabled" in the state constitution	8	8	Senate Joint Resolution "I" of 1998	Nov. 1998	Approved	1,708,873	1,181,138
Permit the state to indirectly support nonpublic school students	8	2,10	Initiatory Petition	Nov. 2000	Rejected	1,235,533	2,767,320
Require a 2/3 legislative vote to enact laws affecting local governments	4	55	Initiatory Petition	Nov. 2000	Rejected	1,242,516	2,548,995
Amend the provision of the state constitution governing the operation of the state officers compensation commission	4	12	House Joint Resolution "E" of 2001	Aug. 2002	Approved	1,057,503	404,682
Allow certain permanent and endowment funds to be invested as provided by law and increase allowed spending for state parks, local parks and outdoor recreation	9	19, 35, 35a	Senate Joint Resolution "T" of 2002	Aug. 2002	Approved	925,475	565,971
Grant state classified employees the constitutional right to collective bargaining with binding arbitration	11	5	Initiatory Petition	Nov. 2002	Rejected	1,336,249	1,591,756

Appendix A (continued)

Subject of Amendment	Article	Section(s)	Method of Proposal*	Date of Election	Action	Votes	
						For	Against
Reallocate the tobacco settlement revenue received by the state from cigarette manufacturers	9	36	Initiatory Petition	Nov. 2002	Rejected	1,018,644	2,011,105
Require voter approval for any new gambling authorization, with exceptions	4	41	Initiatory Petition	Nov. 2004	Approved	2,689,448	1,926,721
Provide that marriage may only be the union of a man and woman	1	25	Initiatory Petition	Nov. 2004	Approved	2,698,077	1,904,319
Require that conservation/recreation funds be used only for intended purposes	9	40,41,42	House Joint Resolution "Z" of 2004	Nov. 2006	Approved	2,915,106	680,859
Ban affirmative action programs for public employment, education, and contracting	1	26	Initiatory Petition	Nov. 2006	Approved	2,141,010	1,555,691
Restrict use of eminent domain	10	2	Senate Joint Resolution "E" of 2005	Nov. 2006	Approved	2,914,214	724,573
Permit stem cell research under certain conditions	1	27	Initiatory Petition	Nov. 2008	Approved	2,521,026	2,271,083
Call for constitutional convention			Required by Constitution 1963, art 12, § 3	Nov. 2010	Rejected	983,019	1,960,573
Ban felons from public office/positions	7	8	Senate Joint Resolution "V" of 2010	Nov. 2010	Approved	2,270,657	760,586
Right to collective bargaining	1	28	Initiatory Petition	Nov. 2012	Rejected	1,949,513	2,626,731
25-by-25 renewable energy proposal	11	5					
Michigan Quality Home Health Care Council and Provide Limited Collective Bargaining Rights to Home Health Care Workers	4	55	Initiatory Petition	Nov. 2012	Rejected	1,721,279	2,843,000
	5	31	Initiatory Petition	Nov. 2012	Rejected	1,985,595	2,550,420
	11	5					
2/3 vote requirement for tax increases	9	26a	Initiatory Petition	Nov. 2012	Rejected	1,410,944	3,105,649
Require votes for construction and/or financing of "international bridges and tunnels"	3	6a	Initiatory Petition	Nov. 2012	Rejected	1,853,127	2,699,558

Source: "Proposed Amendments to the Constitution of 1963 -- Summary of Adoption or Rejection," Michigan Manual 2011-2012, Michigan Legislative Service Bureau, pp. 94-100. [www.legislature.mi.gov/\(S\(h5gbdemwqgnaga45ovalzq45\)\)/mileg.aspx?page=getobject&objectname=2011-MM-P0094-p0100&query=on](http://www.legislature.mi.gov/(S(h5gbdemwqgnaga45ovalzq45))/mileg.aspx?page=getobject&objectname=2011-MM-P0094-p0100&query=on). CRC added 2012 proposals.

**Appendix B
Proposals to Initiate Laws**

<u>Subject of Petition</u>	<u>Date of Election</u>	<u>Action</u>	<u>For</u>	<u>Against</u>
New legislation to allow licensed physicians to perform abortions upon demand if period of gestation has not exceeded 20 weeks.	Nov. 1972	Rejected	1,270,416	1,958,265
Repeal Act 6 of 1967, to permit the establishment of daylight saving time in Michigan.	Nov. 1972	Adopted	1,754,887	1,460,724
New legislation to prohibit use of non-returnable beverage containers; to require refundable cash deposits for returnable containers; and to provide penalties for violation of the law.	Nov. 1976	Adopted ¹	2,160,398	1,227,254
Amend section 33 of, and add section 33a to, Act 232 of 1953, to revise standards for grant of parole and to prohibit grant of parole for certain defined crimes until court-imposed minimum sentence is served.	Nov. 1978	Adopted ²	2,075,599	711,262
Amend sections 3105, 3140, and 3204 of Act 236 of 1961, to prohibit lender from using a "due on sale" clause in foreclosure proceedings on a mortgage or land contract unless security is impaired.	Nov. 1982	Rejected	1,344,463	1,445,897
Amend title and sections 6a and 6b of Act 3 of 1939, to prohibit utility increases without full notice or hearing and to amend rate adjustment provisions.	Nov. 1982	Adopted ³	1,472,442	1,431,884
New legislation calling for mutual, verifiable nuclear weapons freeze between the United States and the Union of Soviet Socialist Republics and requiring transmission of communication to United States government officials.	Nov. 1982	Adopted ⁴	1,585,809	1,216,172
Amendments to auto insurance statutes.	Nov. 1992	Rejected	1,482,577	2,480,032
Amend the Natural Resources and Environmental Protection Act to limit bear hunting season and prohibit the use of bait and dogs to hunt bear.	Nov. 1996	Rejected	1,379,340	2,225,675
New legislation to permit casino gaming in qualified cities.	Nov. 1996	Adopted ⁵	1,878,542	1,768,156
Amendatory legislation to legalize the prescription of a legal dose of medication to terminally ill, competent, informed adults in order to commit suicide.	Nov. 1998	Rejected	859,381	2,116,154
Amend School Aid Act to set mandatory funding levels.	Nov. 2006	Rejected	1,366,355	2,259,247
New legislation, the Medical Marihuana Act.	Nov. 2008	Adopted ⁶	3,006,820	1,790,889

¹ Compiled as §445.571 et seq. of the Michigan Compiled Laws.

² Compiled as §§791.233 and 791.233b of the Michigan Compiled Laws.

³ Following the enactment of Public Act 212 of 1982, which amended Public Act 3 of 1939 and was made subject to referendum, the legislature received an initiative petition to amend the 1939 statute, upon which it failed to act. Under the provisions of the 1963 Michigan Constitution, Article 2, Section 9, the petition was placed on the ballot as Proposal D. Public Act 212 was placed on the ballot as Proposal H, following a court challenge to its submission to the voters (*Michigan State Chamber of Commerce v Secretary of State*, Court of Appeals [No. 65841 (1982)]).

At the November 1982 general election, both Proposals D and H were approved, with Proposal H receiving 1,670,381 votes to Proposal D's 1,472,442 votes. Subsequently, an action was commenced in Ingham County Circuit Court seeking a declaratory judgment as to which of the two conflicting proposals would become effective. At the request of the governor, the Michigan Supreme Court asked the lower court to certify the controlling questions directly to the supreme court. Addressing the issue of whether Proposal H was validly enacted, the supreme court ruled that the legislature had enacted Proposal H subject to voter approval consistent with its power to approve legislation subject to referendum under the 1963 Michigan Constitution, Article 4, Section 34. The court rejected the argument that the legislature was bound to act on the initiative under the 1963 Constitution, Article 2, Section 9, pointing out that when the legislature enacted Proposal H, it had not yet received the certified initiative petition which later became Proposal D. *In re Proposals D and H, Michigan State Chamber of Commerce v State of Michigan*, [417 Mich 409, 398 NW2d 848 (1983)].

To determine which proposal would become effective, the court "borrowed" the provision of the 1963 Michigan Constitution, Article 2, Section 9, which states that if two or more measures approved by voters conflict, that receiving the highest affirmative vote shall prevail. The court held that Proposal H would become the effective statute based on its higher affirmative vote in the election. *In re Proposals D and H*, supra.

⁴ Compiled as §3.851 et seq. of the Michigan Compiled Laws.

⁵ Compiled as §432.201 et seq. of the Michigan Compiled Laws.

⁶ Compiled as §333.26421 et seq. of the Michigan Compiled Laws.

Source: "Laws Proposed by Initiative Petition and Submitted to the People, 1964-2010," Michigan Manual 2011-2012, Michigan Legislative Service Bureau, pp. 574-576. www.legislature.mi.gov/%628S%28wogkog35dqp4bojrx1xq0r55%29%29/documents/2011-2012/michiganmanual/2011-MM-P0574-p0576.pdf

Appendix C
 Referenda on Legislation Enacted By the Legislature, 1964-2012

Subject of Petition	Date of Election	Action	Votes	
			For	Against
Public Act 240 of 1964, to amend sections 685, 696, 706, 737, 775, 782, 786, 803, and 804 of Public Act 116 of 1954, to institute use of Massachusetts ballot in Michigan to prevent straight party ticket voting. ¹ (Referendum Petition)	Nov. 1964	Rejected	795,546	1,515,875
Public Act 6 of 1967, to exempt Michigan from observing daylight saving time. ^{*1} (Referendum Petition)	Nov. 1968	Adopted	1,401,458	1,402,959
Public Act 76 of 1968, to authorize issuance of bonds for planning, acquisition, and construction of facilities for prevention and abatement of water pollution and for loans and grants to municipalities. ² (Legislative Action)	Nov. 1968	Adopted ³	1,906,385	796,079
Public Act 257 of 1968, to authorize issuance of bonds to provide funding for public recreational facilities and programs and for loans and grants to municipalities. ² (Legislative Action)	Nov. 1968	Adopted ⁴	1,384,254	1,235,681
Public Act 304 of 1969, to authorize issuance of bonds for urban redevelopment to increase the supply of low-income housing and for loans and grants to municipalities and redevelopment corporations. ² (Legislative Action)	Nov. 1970	Rejected	921,482	1,388,737
Public Act 231 of 1972, to authorize issuance of bonds to provide funding for bonus payments and educational benefits to Vietnam and other veterans. ² (Legislative Action)	Nov. 1972	Rejected	1,490,968	1,603,203
Public Act 106 of 1974, to authorize issuance of bonds to provide funding for bonus payments to Vietnam and other veterans. ² (Legislative Action)	Nov. 1974	Adopted ⁵	1,668,641	700,041
Public Act 245 of 1974, to authorize issuance of bonds to provide funding to plan, acquire, construct, and equip transportation systems and to make loans and grants for that purpose. ² (Legislative Action)	Nov. 1974	Rejected	963,576	1,319,586
Public Act 250 of 1980, to amend sections 51 and 475 of Public Act 281 of 1976, to increase the state income tax 0.1% for 5 years to fund the construction of regional correctional facilities, the demolition of the Michigan Reformatory, and other state and local correctional projects. ⁶ (Legislative Action)	Nov. 1980	Rejected	1,288,999	2,202,042
Public Act 212 of 1982, to amend sections 6a and 6b of Public Act 3 of 1939, to prohibit certain utility rate adjustment clauses, utility rate increases without notice and hearing, and acceptance of employment with any utility for 2 years by member of 81st Legislature. ⁶ (Legislative Action)	Nov. 1982	Adopted ⁷	1,670,381	1,131,990
Public Act 59 of 1987, to prohibit use of public funds for the abortion of a recipient of welfare benefits unless the abortion is necessary to save the life of the mother. ¹ (Referendum Petition)	Nov. 1988	Adopted ⁸	1,959,727	1,486,371
Public Act 326 of 1988, to authorize issuance of bonds to finance environmental protection programs that would clean up environmental contamination sites and address related problems. ² (Legislative Action)	Nov. 1988	Adopted ⁹	2,528,109	774,451

Appendix C (continued)

<u>Subject of Petition</u>	<u>Date of Election</u>	<u>Action</u>	<u>For</u>	<u>Against</u>
Public Act 327 of 1988 to authorize issuance of bonds to finance state and local public recreation projects. ² (Legislative Action)	Nov. 1988	Adopted ¹⁰	2,055,290	1,206,465
Public Act 143 of 1993, to reduce auto insurance rates; place limits on personal injury benefits, fees paid to health care providers, and right to sue; and allow rate reduction for accident-free driving. (Referendum Petition)	Nov. 1994	Rejected	1,165,732	1,812,526
Public Act 118 of 1994, to amend certain sections of Michigan Bingo Public Act. (Referendum Petition)	Nov. 1996	Rejected	1,511,063	1,936,198
Public Act 377 of 1996, an amendment regarding the management of Michigan's wildlife populations. (Legislative Action)	Nov. 1996	Adopted ¹¹	2,413,730	1,099,262
Public Act 284 of 1998, to authorize bonds for environmental and natural resources protection programs. (Legislative Action)	Nov. 1998	Adopted ¹²	1,821,006	1,081,988
Public Act 269 of 2001, to amend certain sections of Michigan election law. (Referendum Petition)	Nov. 2002	Rejected	1,199,236	1,775,043
Public Act 396 of 2002, to authorize bonds for sewage treatment works projects, storm water projects and water pollution projects. ² (Legislative Action)	Nov. 2002	Adopted ¹³	1,774,053	1,172,612
Public Act 160 of 2004, to allow hunting season for mourning doves.	Nov. 2006	Rejected	1,137,379	2,534,680
Public Act 4 of 2011, to provide for emergency managers in cities and school districts	Nov. 2012	Rejected	2,130,354	2,370,601

* This language is different than that provided in the Michigan Manual. Public Act 6 of 1967 provided that Michigan shall be exempt from observing Daylight Savings Time. The ballot question stated that "The purpose of the referendum is to approve or reject this act. Shall the State of Michigan observe Daylight Savings Time?" Because the proposal failed to pass, PA 6 was upheld. Note that Michigan had a 1972 initiative to repeal PA 6 of 1967 (see Appendix B), which was overwhelmingly adopted and the act was repealed. The initiative would not have been necessary if the 1968 vote had repealed PA 6.

¹ Referendum invoked by petition pursuant to the 1963 Michigan Constitution, Article 2, Section 9.

² Referendum required to borrow money for specific purposes pursuant to the 1963 Michigan Constitution, Article 9, Section 15.

³ Compiled as Section 323.371 et seq. of the Michigan Compiled Laws.

⁴ Compiled as Section 318.351 et seq. of the Michigan Compiled Laws.

⁵ Compiled as Section 35.1001 et seq. of the Michigan Compiled Laws.

⁶ Referendum required by statute pursuant to the 1963 Michigan Constitution, Article 4, Section 34. 7 Following the enactment of Public Act 212 of 1982, which amended Public Act 3 of 1939 and was made subject to referendum, the legislature received an initiative petition to amend the 1939 statute, upon which it failed to act. Under the provisions of the 1963 Michigan Constitution, Article 2, Section 9, the petition was placed on the ballot as Proposal D. Public Act 212 was placed on the ballot as Proposal H, following a court challenge to its submission to the voters (*Michigan State Chamber of Commerce v Secretary of State*, Court of Appeals No 65841 (1982)). At the November 1982 general election, both Proposals D and H were approved, with Proposal H receiving 1,670,381 votes to Proposal D's 1,472,442 votes. Subsequently, an action was commenced in Ingham County Circuit Court seeking a declaratory judgment as to which of the two conflicting proposals would become effective. At the request of the governor, the Michigan Supreme Court asked the lower

Appendix C (continued)

court to certify the controlling questions directly to the supreme court. Addressing the issue of whether Proposal H was validly enacted, the supreme court ruled that the legislature had enacted Proposal H subject to voter approval consistent with its power to approve legislation subject to referendum under the 1963 Michigan Constitution, Article 4, Section 34. The court rejected the argument that the legislature was bound to act on the initiative under the 1963 Michigan Constitution, Article 2, Section 9, pointing out that when the legislature enacted Proposal H, it had not yet received the certified initiative petition which later became Proposal D. *In re Proposals D and H, Michigan State Chamber of Commerce v State of Michigan*, 417 Mich 409, 398 NW2d 848 (1983). To determine which proposal would become effective, the court "borrowed" the provision of the 1963 Michigan Constitution, Article 2, Section 9, which states that if two or more measures approved by voters conflict, that receiving the highest affirmative vote shall prevail. The court held that Proposal H would become the effective statute based on its higher affirmative vote in the election. *In re Proposals D and H, supra*.

⁷ Compiled as Sections 460.6a and 460.6b of the Michigan Compiled Laws.

⁸ This added section was proposed by initiative petition pursuant to the 1963 Michigan Constitution, Article 2, Section 9. On June 17, 1987, the initiative petition was approved by an affirmative vote of the majority of the senators-elect and filed with the secretary of state. On June 23, 1987, the initiative petition was approved by an affirmative vote of the majority of the members-elect of the house of representatives and filed with the secretary of state. The legislature did not vote pursuant to the 1963 Michigan Constitution, Article 4, Section 27 to give immediate effect to this enactment.

In affirming the decision of the court of appeals in *Frey v Director, Department of Social Services*, the Michigan Supreme Court held that when a law is proposed by initiative and enacted by the legislature without change or amendment within forty days as required by the 1963 Michigan Constitution, Article 2, Section 9, it takes effect ninety days after the end of the session in which it was passed unless two-thirds of the members of each house of the legislature, as provided by the 1963 Michigan Constitution, Article 4, Section 27, vote to give the law immediate effect. Public Act 59 of 1987, not having received votes in favor of immediate effect by two-thirds of the elected members of each house, may not take effect until ninety days after the end of the session in which it was enacted. *Frey v Director, Department of Social Services*, 429 Mich 315; 414 NW2d 873 (1987).

On March 1, 1988, petitions to invoke the power of referendum with regard to Public Act 59 of 1987 were filed with the secretary of state. On April 13, 1988, the board of state canvassers certified the validity of a sufficient number of petition signatures to invoke the referendum.

In a letter opinion to C. Patrick Babcock, Director, Department of Social Services, dated March 28, 1988, the attorney general addressed the following question: "[I]f the filing of petitions, which include, if they are valid, a sufficient number of signatures to properly invoke a referendum, stays the effective date of Public Act 59 of 1987, which will otherwise become effective on March 30, 1988?" the attorney general concluded that "when a petition seeking referendum, which on its face meets legal requirements, is filed the signatures appearing on that petition are presumed valid and the statute at issue is stayed or suspended until either the petitions are found to be invalid or a vote of the people occurs."

Public Act 59 of 1987, as enacted by the legislature, was submitted to the people by referendum petition and approved by a majority of the votes cast at the general election held November 8, 1988. The board of state canvassers officially declared the vote to be 1,959,727 (for) and 1,486,371 (against) on December 2, 1988.

⁹ Compiled as Section 299.651 et seq. of the Michigan Compiled Laws.

¹⁰ Compiled as Section 318.551 et seq. of the Michigan Compiled Laws.

¹¹ Compiled as Section 324.40113a of the Michigan Compiled Laws.

¹² Compiled as Section 324.95101 et seq. of the Michigan Compiled Laws.

¹³ Compiled as Section 324.95201 et seq. of the Michigan Compiled Laws.

Source: Referenda on Legislation Enacted by the Legislature, 1964-2010, Michigan Manual 2011-2012, Michigan Legislative Service Bureau, pp. 575-576. www.legislature.mi.gov/%28S%28wogkog35dpq4bojrx1xq0r55%29%29/documents/2011-2012/michiganmanual/2011-MM-P0574-p0576.pdf. Wording for referendum on Public Act 6 of 1967 amended pursuant to discussion with Michigan Bureau of Elections. Referendum on Public Act 4 of 2011 added by CRC.

Appendix D State comparison of voter guide components

State	Ballot Measure Year	Voter Guide Publisher	Official Ballot Language	Explanation or Analysis	Fiscal Note	Pro and Con Argument	Text of statute or amendment		Available Languages Online	Notes
							Without Markup	With Markup		
CA	2012	Sec of State	Yes	Yes	Yes	Yes	No	Yes	English, Chinese, Japanese, Hindi, Khmer, Korean, Spanish, Tagalog, Thai and Vietnamese	Large print and audio guides also available by request
AK	2010	Div of Elections	Yes	Yes	Yes	Yes	No	Yes	English, Tagalog	Also contains candidate information
AL	2010	Sec of State	Yes	No	No	No	No	No	English	-
AR	2011	Sec of State	Yes	Yes	No	No	Yes	No	English	-
AZ	2010	Sec of State	Yes	Yes	Yes	Yes	No	Yes	English, Spanish	-
CO	2011	Legislative Council, Sec of State	Yes	Yes	Yes	Yes	No	Yes	English, Spanish	English audio available; separate detailed fiscal impact statement also available
FL	2010	DOE	Yes	No	No	No	No	Yes	English, Spanish	Basic ballot status is on the DOE website
GA	2010	SOS	Yes	Yes	No	No	Yes	No	English	-
HI	2010	Offc of Elections	Yes	No	No	NO	No	Yes	English, Chinese, Japanese, Ilocano	Online only in English
IA	2010	Sec of State	Yes	Yes	No	NO	Yes	No	English	-

REFORM OF MICHIGAN'S BALLOT QUESTION PROCESS

Appendix D (continued)

State ID	Ballot Measure Year	Voter Guide Publisher	Official Ballot Language	Explanation or Analysis	Fiscal Note	Pro and Con Argument	Text of statute or amendment			Available Languages Online	Notes
							Without Markup	With Markup	Markup		
	2010	Sec of State	Yes	Yes	No	Yes	No	NO	English	Online version only	
IL	2010	Bd of Elections	Yes	Yes	No	Yes	No	NO	English, Spanish	Online only	
IN	2010	Sec of State	Yes	No	No	No	No	No	English	-	
KS	2010	Sec of State	Yes	Yes	No	No	No	Yes	English, Spanish	-	
LA	2011	Sec of State	Yes	No	No	No	No	No	English	-	
MA	2010	Secretary of Commonwealth	Yes	No	No	Yes	Yes	No	English, Spanish	-	
MD	2010	SBE	Yes	Yes	No	No	No	Yes	English	Online only	
ME	2011	Sec of State	Yes	Yes	Yes	Yes	No	Yes	English	-	
MI	2010	Sec of State	No	Yes	No	No	No	No	English	-	
MO	2012	Sec of State	Yes	No	No	No	No	Yes	English	-	
MS	2011	Sec of State	Yes	No	Yes	Yes	No	Yes	English	-	
MT	2010	Sec of State	Yes	No	No	Yes	No	Yes	English	MT allows submit support and opposition to rebuttals	
NC	2012	St Bd of Elections	Yes	Yes	No	No	N/A	Yes	English	Only available for candidates covered by public funding programs	
ND	2012	Sec of State	Yes	Yes	No	No	No	Yes	English	Online only	
NE	2010	Sec of State	Yes	No	No	No	No	No	English, Spanish	-	
NJ	2011	Div of Elections	Yes	Yes	No	No	No	No	English, Spanish	-	
NM	2010	Sec of State	Yes	Yes	No	Yes	No	Yes	English, Spanish	No longer online	

Appendix D (continued)

State	Ballot Measure Year	Voter Guide Publisher	Official Ballot Language	Explanation or Analysis	Fiscal Note	Pro and Con Argument	Text of statute or amendment		Available Languages Online	Notes
							Without Markup	With Markup		
NV	2010	Sec of State	Yes	Yes	Yes	Yes	No	No	English	Online only
OH	2011	Sec of State	Yes	Yes	No	Yes	Yes	No	English	-
OK	2010	Sec of State	Yes	No	No	No	No	No	English	-
OR	2010	Sec of State	Yes	Yes	Yes	Yes	No	Yes	English, Spanish	Audio available in English
RI	2010	Sec of State	Yes	Yes	Yes	No	No	Yes	English	-
SC	2010	St Election Comm	Yes	Yes	No	No	No	No	English	-
TN	2010	Sec of State	Yes	No	No	Yes	No	No	English	Available in English audio and Braille
TX	2011	Legislative Council	Yes	Yes	No	Yes	No	Yes	English	Analysis not specifically addressed to voters
UT	2010	Lt Governor	Yes	Yes	Yes	Yes	No	Yes	English	Online only; UT allows support and opposition to submit rebuttals
VA	2010	St Bd of Elections	Yes	Yes	No	No	No	Yes	English	-
VT	2010	Sec of State	Yes	No	No	No	No	No	English	No separate document for ballot measure from Statewide Candidate Information Publication
WA	2011	Sec of State	Yes	Yes	Yes	Yes	Yes	No	English	Online only; video with pro and con arguments also available

Source: Ballotpedia

Endnotes

¹ *Meyer v Grant* [486 U.S. 414 (1988)].

² *Thomas v. Collins*, [323 U.S. 516, 323 U. S. 545 (1945)] (Jackson, J., concurring).

³ Article II, Section 8 of the 1963 Michigan Constitution also gives people the right to recall elected officials. This tool of direct democracy is not discussed in this paper, but is discussed in depth in the recent CRC recall paper, *Michigan's Recall Election Law*, CRC Report No. 379, June 2012, <http://www.crcmich.org/PUBLICAT/2010s/2012/rpt379.html>.

⁴ Michigan Election Law, Act 116 of 1954, www.legislature.mi.gov/documents/mcl/pdf/mcl-act-116-of-1954.pdf.

⁵ *Constitutional Amendments*, Initiative and Referendum Institute, University of Southern California, October 2006, Accessed February 6, 2013, www.iandrinstitute.org/REPORT%202006-3%20Amendments.pdf.

⁶ *Constitutional Amendments*, Initiative and Referendum Institute, University of Southern California, October 2006, Accessed February 6, 2013, www.iandrinstitute.org/REPORT%202006-3%20Amendments.pdf.

⁷ Article XI, Section 3 of the Tennessee Constitution.

⁸ Article XII of the Connecticut Constitution, www.sots.ct.gov/sots/cwp/view.asp?a=3188&q=392288.

⁹ Article XVII, Section 3 of the Hawaii Constitution, <http://hawaii.gov/lrb/con/conart17.html>.

¹⁰ Article IX, Section 1 of the New Jersey Constitution, www.njleg.state.nj.us/lawsconstitution/constitution.asp.

¹¹ Article XVI, Section 1 of the South Carolina Constitution, www.scstatehouse.gov/scconstitution/a16.php.

¹² "States with Legislative Referendum for Statutes and Constitutional Amendments." Initiative and Referendum Institute, Accessed May 9, 2013. www.iandrinstitute.org/New%20IRI%20Website%20Info/Drop%20Down%20Boxes/Requirements/Legislative%20Referendum%20States.pdf.

¹³ "Signature requirements." Michigan signature requirements. Ballotpedia, January 16, 2013. Accessed May 15, 2013. http://ballotpedia.org/wiki/index.php/Michigan_signature_requirements.

¹⁴ *Constitutional Amendments*, Initiative and Referendum Institute. University of Southern California, October 2006, Accessed February 6, 2013, www.iandrinstitute.org/REPORT%202006-3%20Amendments.pdf.

¹⁵ Mississippi technically allows initiated constitutional amendments, but its requirements are very burdensome. Some of the requirements are:

- Signatures equaling 12 percent of the vote for governor in the most recent gubernatorial election must be collected in a period not to exceed a year.
- Signatures of the qualified electors from any congressional district shall not exceed one-fifth (1/5) of the total number of signatures required to qualify the measure for the ballot.
- Initiated amendments cannot be about altering in any way the Bill of Rights of the Mississippi Constitution, they cannot modify the initiative process for proposing amendments to the Constitution (for example, to make it easier), they cannot alter the Mississippi Public Employees' Retirement System, nor can they be about amending or repealing the constitutional guarantee that the right of any person to work shall not be denied or abridged on account of membership or non-membership in any labor union or organization.
- The state legislature can place a competing measure on the ballot.
- To pass, an initiative must receive a majority of the votes thereon and not less than 40 percent of the total votes cast at the election at which the measure was submitted to be approved.
- No more than five initiatives can appear on any one ballot.

If an initiative is rejected, it (or a similar measure) cannot go on the ballot again for at least two years.

¹⁶ Ballotpedia, *Initiated Constitutional Amendment*, ballotpedia.org/wiki/index.php/Initiated_constitutional_amendment.

- ¹⁷ *The Book of the States*. 2012 ed. Vol. 44. Lexington: The Council of State Governments, 2012, pp. 325-76.
- ¹⁸ "Signature requirements." Michigan signature requirements. Ballotpedia, January 16, 2013. Accessed May 15, 2013. http://ballotpedia.org/wiki/index.php/Michigan_signature_requirements.
- ¹⁹ Steven L. Piott, *Giving Electors a Voice: Origins of the Initiative and Referendum in America*, University of Missouri Press, 2003.
- ²⁰ "Signature requirements." Michigan signature requirements. Ballotpedia, 16 Jan. 2013. Accessed May 15, 2013. http://ballotpedia.org/wiki/index.php/Michigan_signature_requirements.
- ²¹ *The Book of the States*. 2013 ed. Vol. 45. Lexington: The Council of State Governments, 2013, Table 6.15, pp. 325-6. Also Ballotpedia, various pages.
- ²² Michigan gained the initiative but the 19th Amendment to the U.S. Constitution granting women the right to vote was not ratified until 1920. As of 1956, 68.9 percent of the Michigan residents of voting age were registered. *General Election Voter Registration/Turnout Statistics*, Michigan Secretary of State website, Accessed October 16, 2013, www.michigan.gov/sos/0,4670,7-127-1633_8722-29616--,00.html.
- ²³ "General Election Voter Registration/ Turnout Statistics, Michigan Department of State, Accessed March 13, 2013, http://michigan.gov/sos/0,4670,7-127-1633_8722-29616--,00.html.
- ²⁴ Petition Circulation Periods, National Conference of State Legislatures website, Accessed October 22, 2013, www.ncsl.org/research/elections-and-campaigns/petition-circulation-periods.aspx.
- ²⁵ Petition Circulation Periods, National Conference of State Legislatures website, Accessed October 22, 2013, www.ncsl.org/research/elections-and-campaigns/petition-circulation-periods.aspx.
- ²⁶ "Hands off our Constitution," *The Detroit News*, November 11, 2012.
- ²⁷ Ballotpedia, History of restrictions on paid circulators, Accessed March 18, 2013, http://ballotpedia.org/wiki/index.php/History_of_restrictions_on_paid_circulators.
- ²⁸ To register to vote in California, you must be: a United States citizen, a resident of California, at least 18 years of age on Election Day, not considered to be mentally incompetent, and not incarcerated.
- ²⁹ "Buckley v. American Constitutional Law Foundation, Inc. - 525 U.S. 182 (1999)." *The Oyez Project at IIT Chicago-Kent College of Law*. Oyez, Accessed April 11, 2013. www.oyez.org/cases/1990-1999/1998/1998_97_930.
- ³⁰ "Buckley v. American Constitutional Law Foundation, Inc. - 525 U.S. 182 (1999)." U.S. Supreme Court Center. Justia, Accessed April 11, 2013. <http://supreme.justia.com/cases/federal/us/525/182/>.
- ³¹ "Laws Governing Petition Circulators." *Elections & Campaigns*. National Conference of State Legislatures, November 15, 2012. Accessed April 3, 2013. www.ncsl.org/legislatures-elections/elections/laws-governing-petition-circulators.aspx.
- ³² Andrews, Chris. "Next time, a tougher road to the ballot?." *Bridge Magazine*. The Center for Michigan, November 15, 2012. Accessed April 11 2013. <http://bridgemi.com/2012/11/next-time-a-tougher-road-to-the-ballot/>.
- It should be noted that the organizers of the ballot question campaign associated with Proposal 6 had a slow start to their collection efforts and, in the end, collected all of their signatures in less than 90 days. The increased pressure to meet the narrow timelines might have affected the circulator pay rates.
- ³³ "Meyer v. Grant." *Ballot Law*. Ballotpedia, September 26, 2011. Accessed March 28, 2013. http://ballotpedia.org/wiki/index.php/Meyer_v._Grant.
- ³⁴ "*Meyer v. Grant* - U.S. 414 (1988)." US Supreme Court Center. Justia, Accessed March 28, 2013. <http://supreme.justia.com/cases/federal/us/486/414/case.html>.
- ³⁵ *Meyer v. Grant*, 485 U.S. 420, 323 U.S. 516, 323 U.S. 545.
- ³⁶ *NAACP v. Button*, 371 U.S. 415 (1963).
- ³⁷ Pay-per-signature. Ballotpedia, October 24, 2012. Accessed April 3, 2013. http://ballotpedia.org/wiki/index.php/Pay-per-signature#cite_note-10.
- ³⁸ "Restrictions on circulators: Pay-per-signature." *Laws governing the initiative process in Alaska*. Ballotpedia, 30 August 2012. Accessed April 3, 2013. http://ballotpedia.org/wiki/index.php/Laws_governing_the_initiative_process_in_Alaska.

- ³⁹ "438 F.3d 949: Prete v. Bradbury." US Law. Justia, February 6, 2006. Accessed March 28 2013. <http://law.justia.com/cases/federal/appellate-courts/F3/438/949/598334/>.
- ⁴⁰ "Prete v. Bradbury." Ballot Law. Ballotpedia, August 29, 2011. Accessed March 28, 2013. http://ballotpedia.org/wiki/index.php/Prete_v._Bradbury.
- ⁴¹ "I&R Petition Circulators: Requirements for Witnessing Signatures." Laws Governing Petition Circulators. National Conference of State Legislatures, November 15, 2012. Accessed April 4 2013. www.ncsl.org/legislatures-elections/elections/laws-governing-petition-circulators.aspx.
- ⁴² "Buckley V. American Constitutional Law (97-930) 525 U.S. 182 (1999)." Legal Information Institute. Cornell University Law School, Accessed April 4, 2013. www.law.cornell.edu/supct/html/97-930.ZS.html.
- ⁴³ Craigslist, <http://columbus.craigslist.org/npo/3707539682.html>.
- ⁴⁴ Pringle, Paul. "Petition circulators make a living making the rounds." Los Angeles Times July 8, 2003. Accessed April 16, 2013. <http://community.seattletimes.nwsources.com/archive/?date=20030708&slug=petition08>.
- ⁴⁵ Jon Bruning, Nebraska Attorney General, Opinion 7006, *LB 39 - Constitutionality of Prohibition Against the Payment of Petition Circulators Based on the Number of Signatures Collected*, February 20, 2007, Accessed 18 March 2013, www.ago.ne.gov/ag_opinion_view?oid=4112.
- ⁴⁶ See Citizens Research Council of Michigan Memo #202, *The State Constitution: Its Nature and Purpose*, October 1961, www.crcmich.org/PUBLICAT/1960s/1961/memo202.pdf, Citizens Research Council of Michigan Council Comments #1023, *Constitutional Amendments and the Rule of Common Sense*, November 1993, www.crcmich.org/PUBLICAT/1990s/1993/cc1023.pdf, Citizens Research Council of Michigan Memo #1115, *Inserting Legal Code into the Michigan Constitution*, September 2012, <http://crcmich.org/PUBLICAT/2010s/2012/memo1115.html>.
- ⁴⁷ "Report of the Michigan Civil Rights Commission Regarding the Use of Fraud and Deception In the Collection of Signatures For the Michigan Civil Rights Initiative Ballot Petition." Michigan Supreme Court. Michigan Civil Rights Commission, June 7, 2006. Accessed May 16, 2013. www.michigan.gov/documents/PetitionFraudreport_162009_7.pdf.
- ⁴⁸ "MCRI v. Board of State Canvassers." Debate, Cases, Regulations, Statutes & More. Leagle, 2006. Accessed May 21, 2013. www.leagle.com/xmlResult.aspx?xmlidoc=2006793711NW2d82_1628.xml&docbase=CSLWAR2-1986-2006.
- ⁴⁹ Michigan Supreme Court Order re Michigan Civil Rights Initiative vs. Board of State Canvassers, et. al., http://publicdocs.courts.mi.gov:81/SCT/PUBLIC/ORDERS/20060713_S130342_215_130342_2006-07-13_or.pdf.
- ⁵⁰ Michigan Supreme Court Order re Michigan Civil Rights Initiative vs. Board of State Canvassers, et. al., http://publicdocs.courts.mi.gov:81/SCT/PUBLIC/ORDERS/20060713_S130342_215_130342_2006-07-13_or.pdf.
- ⁵¹ Michigan Supreme Court Order re Michigan Civil Rights Initiative vs. Board of State Canvassers, et. al., http://publicdocs.courts.mi.gov:81/SCT/PUBLIC/ORDERS/20060713_S130342_215_130342_2006-07-13_or.pdf.
- ⁵² "Fiscal impact statement." Voter Guides. Ballotpedia, July 23, 2012. Accessed May 29, 2013. http://ballotpedia.org/wiki/index.php/Fiscal_impact_statement.
- ⁵³ "Mississippi Election Code." Delbert Hosemann, Secretary of State. State of Mississippi, Accessed May 28, 2013. www.sos.ms.gov/links/elections/home/tab2/InitiativeCode.pdf.
- ⁵⁴ "Chapter 116 Initiative and Referendum Section 116.180 ." Missouri Revised Statutes. State of Missouri, August 28, 2012. Accessed May 28, 2013. www.moga.mo.gov/statutes/C100-199/1160000180.HTM.
- ⁵⁵ "Title 1: General Provisions Chapter 11: Acts, Resolves and Constitutional Amendments Subchapter 2: Constitutional Amendments." Maine Revised Statutes. State of Maine, December 16 2012. Accessed May 29, 2013. www.mainelegislature.org/legis/statutes/1/title1sec353.html.
- ⁵⁶ "Section 202.5 Initial fiscal impact estimate — Preparation of estimate – Challenge to estimate." Title 20A Chapter 7 Section 202.5. Utah State Legislature, 2013. Accessed May 29, 2013. http://le.utah.gov/~code/TITLE20A/htm/20A07_020205.htm.
- ⁵⁷ "Features of official voter guides, compared by state." Ballotpedia, September 2012. Accessed May 28, 2013. http://ballotpedia.org/wiki/index.php/Features_of_official_voter_guides,_compared_by_state#tab=Comparison_of_voter_guides.
- ⁵⁸ "Fiscal review." Laws governing the initiative process in Arizona. Ballotpedia, 23 May 2013. Web. 29 May 2013. http://ballotpedia.org/wiki/index.php/Laws_governing_the_initiative_process_in_Arizona.

- ⁵⁹ "Initiative and Referendum Petitions." *Ruth Johnson, Secretary of State*. Department of State, State of Michigan, January 2011. Accessed May 30, 2013. www.michigan.gov/documents/sos/Ini_Ref_Pet_Website_339487_7.pdf.
- ⁶⁰ "Initiative and Referendum Petitions." *Ruth Johnson, Secretary of State*. Department of State, State of Michigan, January 2011. Accessed May 30, 2013. www.michigan.gov/documents/sos/Ini_Ref_Pet_Website_339487_7.pdf.
- ⁶¹ "History and Duties." *Ruth Johnson, Secretary of State*. Department of State, State of Michigan, Accessed May 30, 2013. www.michigan.gov/sos/0,4670,7-127-1633_41221-141451--,00.html.
- ⁶² "Comparison of Statewide Initiative Processes," Initiative and Referendum Institute, www.iandrinstute.org/New%20IRI%20Website%20Info/Drop%20Down%20Boxes/Requirements/A%20Comparison%20of%20Statewide%20I&R%20Processes.pdf.
- ⁶³ *NAACP v. Button*, (371 U.S. 415, 371 U. S. 445 (1963))
- ⁶⁴ *Citizens United v. Federal Election Commission*, (558 U.S. 310 (2010))
- ⁶⁵ *NAACP v. Button* (371 U.S. 415 (1963))
- ⁶⁶ Lunder, Erika K., and Paige L. Whitaker. "501(c)(4)s and Campaign Activity: Analysis Under Tax and Campaign Finance Laws." Congressional Research Service, May 17, 2013. www.fas.org/sgp/crs/misc/R40183.pdf.
- ⁶⁷ Declaratory Ruling by Secretary of State Terri Lynn Land, April 20, 2004, Accessed November 5, 2013, www.michigan.gov/documents/2004_126239_7.pdf.
- ⁶⁸ *Buckley v. Valeo* - 424 U.S. 1 (1976), Accessed November 6, 2013, <https://supreme.justia.com/cases/federal/us/424/1/case.html>.
- ⁶⁹ Brennan Center for Justice at NYU School of Law Summary of Supreme Court Decision *FEC v. Wisconsin Right to Life* (2007), Accessed June 13, 2013, www.brennancenter.org/page/-/d/download_file_49656.pdf.
- ⁷⁰ Brennan Center for Justice at NYU School of Law. "FEC v. Wisconsin Right to Life, Inc." *Summary of Supreme Court Decision*, Accessed September 16, 2013, www.brennancenter.org/analysis/summary-supreme-court-decision-fec-v-wisconsin-right-life.
- ⁷¹ Declaratory Ruling by Secretary of State Terri Lynn Land, April 20, 2004, Accessed November 5, 2013, www.michigan.gov/documents/2004_126239_7.pdf.
- ⁷² Declaratory Ruling by Secretary of State Terri Lynn Land, April 20, 2004, Accessed November 5, 2013, www.michigan.gov/documents/2004_126239_7.pdf.
- ⁷³ "Federal Election Commission v. Wisconsin Right To Life," The Oyez Project at IIT Chicago-Kent College of Law, Accessed September 8, 2013, www.oyez.org/cases/2000-2009/2006/2006_06_969.
- ⁷⁴ "Citizens United v. Federal Election Commission," The Oyez Project at IIT Chicago-Kent College of Law, Accessed September 12, 2013, www.oyez.org/cases/2000-2009/2008/2008_08_205.
- ⁷⁵ Lunder, Erika K., and Paige L. Whitaker. "501(c)(4)s and Campaign Activity: Analysis Under Tax and Campaign Finance Laws." Congressional Research Service, May 17, 2013. Accessed October 31, 2013. www.fas.org/sgp/crs/misc/R40183.pdf.
- ⁷⁶ 501(c)(4) organizations that engage in advocacy are required to report information to the federal Internal Revenue Service (IRS) and Federal Elections Commission (FEC). The organizations are generally required to file an annual information return (Form 990) with the IRS. Information about campaign activity is reported on the form's Schedule C, which is subject to public disclosure. For more information see <http://www.fas.org/sgp/crs/misc/R40183.pdf>.
- ⁷⁷ "Citizens United v. Federal Election Comm'n Opinion." *Legal Information Institute*. Cornell University Law School, 2010. www.law.cornell.edu/supct/html/08-205.ZO.html.
- ⁷⁸ "Speechnow.org v. FEC Case Summary." Federal Election Commission, 2010. www.fec.gov/law/litigation/speechnow.shtml.
- ⁷⁹ Urbina, Ian. "24 States' Laws Open to Attack After Campaign Finance Ruling." *Politics*. New York Times, January 22, 2010. www.nytimes.com/2010/01/23/us/politics/23states.html.

⁸⁰ Bartolomeo, Liz. "Resources Tool Kit: McCutcheon v. FEC." October 8, 2013. <http://sunlightfoundation.com/blog/2013/10/07/mccutcheon-v-fec-tool-kit/>.

⁸¹ Olsen-Phillips, Peter. "Battle over dark money takes many forms on state level." Sunlight Foundation, September 5, 2013. Accessed October 30, 2013. <http://reporting.sunlightfoundation.com/2013/battle-over-dark-money-rages-state-level-open-states-data-shows/>.

⁸² "Michigan Judicial Selection Task Force: Report and Recommendations" April 2012, jstf.files.wordpress.com. CRC takes no position on the Michigan Judicial Selection Task Force recommendations since we have not studied the issue.

⁸³ "States with Legislative Referendum for Statutes and Constitutional Amendments." Initiative and Referendum Institute, Accessed May 9, 2013. www.iandrinstitute.org/New%20IRI%20Website%20Info/Drop%20Down%20Boxes/Requirements/Legislative%20Referendum%20States.pdf.

⁸⁴ Constitutional Amendments, *Initiative and Referendum Institute*. University of Southern California, October 2006. Accessed February 6, 2013, www.iandrinstitute.org/REPORT%202006-3%20Amendments.pdf.

⁸⁵ *The Book of the States*. 2012 ed. Vol. 44. Lexington: The Council of State Governments, 2012, pp. 325-76.

⁸⁶ *The Book of the States*. 2012 ed. Vol. 44. Lexington: The Council of State Governments, 2012, pp. 325-76.

⁸⁷ Constitutional Amendments, *Initiative and Referendum Institute*. University of Southern California, October 2006. (Accessed February 6, 2013) www.iandrinstitute.org/REPORT%202006-3%20Amendments.pdf.

⁸⁸ *The Book of the States*. 2012 ed. Vol. 44. Lexington: The Council of State Governments, 2012, pp. 325-76.

⁸⁹ *The Book of the States*. 2012 ed. Vol. 44. Lexington: The Council of State Governments, 2012, pp. 325-76.