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Future of Initiative and Referendum in Missouri, The

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THE FUTURE OF INITIATIVE AND REFERENDUM IN MISSOURI

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I. INTRODUCTION

When Massachusetts voters go to the polls on November 2nd, they will not only elect public officials. They will also decide important questions of public policy.

These questions are very complex. They address issues of profound significance to the quality of our lives. They ask us to revise the constitution, make laws, and advise the legislature on important policy issues.

.....

Two hundred years ago, Massachusetts citizens fought and died for the right to govern themselves. Today we do not have to fight for the privilege, we need only exercise it.¹

Voters in many states receive notices like this. They are a reaction to the rapid growth of direct democracy—the determination of law by public vote.² The initiative and referendum³ have become the primary vehicles

1. Guzzi, *Forward* to COMMONWEALTH OF MASSACHUSETTS, 1976 VOTER INFORMATION PAMPHLET. For an explanation of the Massachusetts voter information statute, see note 180 and accompanying text *infra*.

2. See Bone & Benedict, *Perspectives on Direct Legislation: Washington State's Experience 1914-1973*, 28 W. POL. Q. 330, 331 (1975). Direct democracy is a shorthand phrase for popular decision-making devices, including the town meeting and the initiative and referendum.

3. The term referendum may refer to the initiative and the referendum. Initiatives originate with the people, while the referendum originates with the legislature. See REFERENDUMS—A COMPARATIVE STUDY OF PRACTICE AND THEORY 4 (D. Butler & A. Ranney eds. 1978) [hereinafter cited as REFERENDUMS].

Simply defined, the initiative is a device whereby a prescribed number or percent of qualified voters, through the use of a petition, may have an amendment or legislative proposal placed on the ballot for adoption or

for direct democracy. Prior to 1982, Missourians had rarely voted on more than five initiatives and referendums in a single election year.⁴ In 1982, voters decided eighteen state issues.⁵ Nationwide, voters at the state and local level face an estimated ten to fifteen thousand issues each year.⁶ This Comment will examine the problems with the initiative and referendum,⁷ and analyze their use in Missouri.

Direct democracy is rooted in the ancient Greek city-states, and the Romans employed the referendum as a plebiscite.⁸ Issue elections have also been employed by totalitarian governments.⁹ American adoption of the referendum can be attributed in part to its use in Switzerland after 1848.¹⁰ Direct democracy first appeared in the United States through the New England town meeting, where citizens voted directly on community issues.¹¹ As populations grew, however, local meetings became impractical and elections arose to deal with major issues more effectively.¹²

The initiative and referendum each have two sub-categories: constitu-

rejection by the electorate. . . . The referendum, on the other hand, is a means by which decisions of legislative bodies do not become public policies until the electorate votes its concurrence with the policies and accepts them by the required affirmative vote.

G. BLAIR, *AMERICAN LEGISLATURES: STRUCTURES AND PROCESS* 306 (1967). See generally *THE INITIATIVE REFERENDUM & RECALL* (W. Munro ed. 1913).

4. In 1922, 16 initiatives and referendums appeared on the Missouri ballot. R. KARSCH, *THE GOVERNMENT OF MISSOURI* 124-26 (14th ed. 1978). Twenty-one constitutional amendments were offered at the special election of February 26, 1924. 8 *BALLOT BANTER* 1 (1982) (available from the Missouri Secretary of State's Office).

5. These issues were decided in four elections: General Election: November 2, 1982; Special Elections: August 3, 1982; June 8, 1982; April 6, 1982.

6. Hamilton, *Direct Legislation: Some Implications of Open Housing Referenda*, 64 *AM. POL. SCI. REV.* 124, 125 (1970).

7. Both *referenda* (Latin) and *referendum* (Anglosaxon) are correct, but current authority favors the latter. See *REFERENDUMS*, *supra* note 3, at 4.

8. *Id.* at 5; Note, *Initiative and Referendum—Do They Encourage or Impair Better State Government*, 5 *FLA. ST. U.L. REV.* 925, 937 (1977).

9. Hitler used the plebiscite to proudly exhibit 99% public approval. *REFERENDUMS*, *supra* note 3, at 3. Many dictatorships use the referendum at least occasionally. *Id.* at 8.

10. See *id.* at 5. Although used at the end of the Middle Ages by many of the Swiss cantons, direct democracy was suppressed during the 17th and 18th centuries. See J. Aubert, *Switzerland*, in *REFERENDUMS*, *supra* note 3, at 39. The referendum was used in Switzerland to deny the franchise to women for many years. *More Referendums?*, *ECONOMIST*, March 6, 1976, at 11, 12.

11. Scott & Nathan, *Public Referenda—A Critical Reappraisal*, 5 *URB. AFF. Q.* 313, 314 (1970).

12. Constitutional amendments were first used in 1779 in Massachusetts. The first statewide initiative was implemented in South Dakota in 1898. Ranney, *The United States of America*, in *REFERENDUMS*, *supra* note 3, at 67, 69.

tional and statutory.¹³ Most elections involve the referendum. The constitutional referendum, the most popular form of direct legislation, is used in all but one state.¹⁴ The second most popular form is the statutory referendum. Thirty-nine states employ it in some form, and twenty-four states, including Missouri, also allow citizens to petition the legislature for popular votes on legislative enactments.¹⁵ In the other fifteen states, the legislature must initiate the popular vote.¹⁶ The third most popular form is the statutory initiative, used in twenty-two states. Fifteen of these states allow the public to vote directly on proposals once the required signatures are obtained.¹⁷ The other seven states have an indirect version, where the proposal is first sent to the legislature.¹⁸ If the measure fails, it is put before the public. The least utilized form of direct legislation is the constitutional initiative, recognized in only fourteen states.¹⁹

II. DEBATE OVER INITIATIVE AND REFERENDUM

Authorities on the democratic process disagree on whether the initia-

13. Some commentators subdivide the categories to include the advisory and indirect initiative. See Price, *The Initiative: A Comparative State Analysis and Reassessment of a Western Phenomenon*, 28 W. POL. Q. 243, 246 (1975). One commentator has divided the referendum into four categories, including the compulsory, the advisory, the legislative, and the petition. See Gazey, *Direct Democracy—A Study of the American Referendum*, 24 PARLIAMENTARY AFF. 123, 125 (1971).

14. Delaware is the only state that does not submit constitutional amendments to its voters. See Ranney, *supra* note 12, at 70; CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS, INITIATIVE, REFERENDUM AND RECALL: A RESUME OF STATE PROVISIONS 2 (1976) [hereinafter cited as RESUME]; see, e.g., ALA. CONST. art. XVIII, § 284; COLO. CONST. art. 5, § 1; ILL. CONST. art. XIV, § 2; MD. CONST. art. XIV, § 2; MO. CONST. art. XII, § 2(a); N.Y. CONST. art. 19, § 1; PA. CONST. art. XI, § 1; R.I. CONST. art. XLII, § 1; VT. CONST. ch. 11, § 68; VA. CONST. art. XII, § 1; WASH. CONST. art. XXIII, § 1.

15. The petition must be submitted within a certain time, usually 90 days, after the legislature has adjourned. See, e.g., CAL. CONST. art. 4, § 23(b); COLO. CONST. art. 5, § 1; MASS. CONST. amend. art. 48, pt. 3, § 4; MO. CONST. art. III, § 49; OHIO CONST. art. II, § 1(c); WASH. CONST. art. II, § 1.

16. See, e.g., FLA. CONST. art. 6, § 5; ILL. CONST. art. IX, § 9; N.C. CONST. art. XIII, § 4; PA. CONST. art. 3, § 28; R.I. CONST. amend. XXI, § 1; VA. CONST. art. X, § 9; WIS. CONST. art. 8, § 7(e), (g).

17. See, e.g., ALASKA CONST. art. II, § 6; ARIZ. CONST. art. 4, pt. 1, § 1, art. 22, § 14; MO. CONST. art. III, § 49; NEB. CONST. art. III, § 2; N.D. CONST. art. II, § 1; WASH. CONST. art. II, § 1(a); WYO. CONST. art. III, § 52.

18. See, e.g., FLA. CONST. art. 6, § 5; ME. CONST. art. 4, pt. 3, § 18; MASS. CONST. amend. art. 74, § 1; MICH. CONST. art. 2, § 9; NEV. CONST. art. XIX, § 2; OHIO CONST. art. II, § 1(b); S.D. CONST. art. III, § 1.

19. See, e.g., ARK. CONST. § 2-200; CAL. CONST. art. 18, § 3; COLO. CONST. art. 5, § 1; FLA. CONST. art. 11, § 3; MO. CONST. art. III, § 49; OKLA. CONST. art. 5, § 1; OR. CONST. art. IV, § 1.

tive and referendum benefit the American political system.²⁰ The most widely accepted argument in favor of the initiative and referendum reasons that while the public may not always trust elected and appointed officials, it will always trust itself.²¹ Proponents maintain that all political decisions should strive for legitimacy, and the highest degree of legitimation is achieved when decisions are made directly by the people.²² The initiative and referendum further the goal by placing choices directly before the voters.

Proponents of direct legislation maintain that the initiative and referendum check special interest control of legislative groups.²³ The turn of the century Progressive movement,²⁴ inspired largely by disillusionment over big business's manipulation of the political process,²⁵ favored the initiative as a way to circumvent political organizations. The forces behind the movement hoped that individual voters would be able to "overpower grasping corporations, greedy special interest groups, boss-ridden political machines, and weakened, corrupt legislatures."²⁶ The referendum and initiative allowed voters to decide legislative issues without pressure from interest groups. The Progressive movement claimed that the initiative and referendum were the purest democratic institutions in the United States.²⁷

Supporters also assert that issue elections encourage the public to become more informed about government.²⁸ Issues placed on ballots spark more publicity and debate than decisions made in the legislatures. By studying constitutional and statutory proposals, citizens feel less apathetic and alienated.

Legislators cannot always predict their constituents reactions.²⁹ Posing questions directly to the people informs the representative of constituents' views. Some issues may be too emotional or politically controversial for

20. See PRICE, *supra* note 13, at 261-62. For a good examination of the pros and cons of the initiative, see LaPalombara & Hagan, *Direct Legislation: An Appraisal and a Suggestion*, 45 AM. POL. SCI. REV. 400 (1951).

21. See, e.g., 47 CONG. REC. app. 67 (1911) (remarks of Cong. Raker).

22. See REFERENDUMS, *supra* note 3, at 24.

23. See Note, *supra* note 8, at 939.

24. For background on the Progressive movement, see D. THELEN, ROBERT M. LAFOLLETTE AND THE INSURGENT SPIRIT (1976).

25. Lee, *California*, in REFERENDUMS, *supra* note 3, at 87, 88.

26. REFERENDUMS, *supra* note 3, at 29.

27. See Grossman, *The Initiative and Referendum Process: The Michigan Experience*, 28 WAYNE L. REV. 77, 80 (1981). But see R. WIEBE, *THE SEARCH FOR ORDER: 1877-1920*, at 153-54 (1967) (some Progressives preferred the order and organization of government by civil servants to popular decision-making).

28. See *Voter Initiative Constitutional Amendment: Hearings on S.J. Res. 67 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 95th Cong., 1st Sess. 160 (1977) [hereinafter cited as *Hearings*] (statement of R. Benedict, assistant professor of political science, University of Utah); Note, *supra* note 8, at 939.

29. Note, *supra* note 8, at 939.

legislators to take stances on.³⁰ Through the initiative and referendum, issues are settled decisively, without legislators isolating major constituencies.

There are counter-arguments to nearly all these assertions. Opponents maintain that the general public cannot intelligently decide complicated issues³¹ and that the limited membership of the legislature is more easily assembled and educated.³² A recent court decision overturned a public vote on a zoning issue, explaining that "voters may not have had an opportunity to read the environmental impact statement or any other relevant information."³³ Even courts that question voter competence, however, are unwilling to strike down public votes solely for this reason.³⁴

Direct democracy may fail to protect minority rights. Derrick Bell claims that the United States' failure to support social reforms is due largely to the belief that such programs primarily aid undeserving blacks.³⁵ He reasons that voters are more likely than elected representatives to support discriminatory laws because legislators are more susceptible to criticism.³⁶ Some elections, especially those dealing with zoning ordinances,³⁷ document this charge.³⁸

30. See Wilson, *The Issues of Reform*, in *THE INITIATIVE REFERENDUM AND RECALL* 69, 77-78 (W. Munro ed. 1913).

31. See, e.g., Snyder, *The Proposed National Initiative Amendment: A Participatory Perspective on Substantive Restrictions and Procedural Requirements*, 18 *HARV. J. ON LEGIS.* 429, 432, 450 (1981). But ignorance or misunderstanding of proposals does not prevent legislators from voting. See *Hearings*, *supra* note 28, at 162 (statement of A. Miller, professor, Harvard Law School). If the electorate is not informed enough to vote on issues, which are clearly presented, then arguably it should not be permitted to vote for representatives, whose positions are inherently less tangible and capable of discovery. *Hearings*, *supra*, note 28, at 164 (statement of C. Bezold, Director, Institute for Alternative Futures, Antioch School of Law).

32. See Note, *supra* note 8, at 940. Voters, however, consider only a fraction of the number of issues that legislators face. See J. LAPALOMBARA, *THE INITIATIVE AND REFERENDUM IN OREGON: 1938-1948*, at 111-12 (1950).

33. *Leonard v. City of Bothell*, 87 Wash. 2d 847, 854, 557 P.2d 1306, 1310 (1976) (en banc).

34. See Snyder, *supra* note 31, at 451.

35. Bell, *The Referendum: Democracy's Barrier to Racial Equality*, 54 *WASH. L. REV.* 1, 10 (1978).

36. *Id.* at 10-11. See also Gazey, *supra* note 13, at 135-36 (direct democracy is often successfully used by conservative groups to defeat liberal legislation).

37. See *City of Eastlake v. Forest City Enters.*, 426 U.S. 668 (1976); Scott & Nathan, *supra* note 11, at 319. Whites can often exclude all but the most affluent minorities from their neighborhoods. Residents can at least prevent zoning changes that would allow multifamily dwellings and construction of less expensive homes on small lots. See generally Note, *Zoning and Referendum: Converging Powers, Conflicting Processes*, *N.Y.U. REV. L. & SOC. CHANGE* 97, 113-14 (1977); Note, *The Proper Use of Referenda in Rezoning*, 29 *STAN. L. REV.* 819 (1977).

38. Bell, *supra* note 35, at 14-15 ("Ironically, because it enables the voters' racial beliefs and fears to be recorded and tabulated in their pure form, the referen-

The Constitution provides the only federal limit on majority control of minority rights.³⁹ Nevertheless, the Supreme Court has been reluctant to declare some discriminatory legislation unconstitutional. In *James v. Valtierra*,⁴⁰ the Court examined a California constitutional requirement that voters approve any federally financed low income housing, a provision that disproportionately burdened minorities.⁴¹ The Court upheld the law.⁴² Dean Bell argues that the decision was erroneous in equal protection terms⁴³ and that it can be explained only by the Court's "deep-rooted faith" in the sanctity of referendum results.⁴⁴

Aside from constitutional implications, some argue that the initiative and referendum can never protect minority rights. They distinguish modern direct democracy from the New England town meeting.⁴⁵ Town meetings worked well because populations were homogenous. The citizenry shared similar cultural and political views, so most decisions were unanimous.⁴⁶ Modern America is a mixture of races, religions, values, and interests. Decisions are rarely unanimous, and majority control may result in tyranny.

Loss of legislative values may be another drawback of the initiative and referendum.⁴⁷ Legislators lose power when faced with a public vote on issues. Representatives share an opportunity for compromise and negotia-

dum has been the most effective facilitator of . . . bias."). See Seeley, *The Public Referendum and Minority Group Legislation: A Postscript to Reitman v. Mulkey*, 55 CORNELL L. REV. 881, 902 (1970).

39. Some state courts have enjoined voting on the basis that zoning activities are administrative, and thus not subject to initiative and referendum votes. See Bell, *supra* note 35, at 8.

40. 402 U.S. 137 (1971).

41. See CAL. CONST. art. 34. The provision was held unconstitutional by the lower court in *Valtierra v. Housing Auth.*, 313 F. Supp. 1 (N.D. Cal. 1970), *rev'd*, 402 U.S. 137 (1971).

42. 402 U.S. at 143.

43. He argues that courts should not require a showing of discriminatory purpose before striking down provisions like California's article 34. The *Valtierra* Court used the rational basis test. Bell, *supra* note 38, at 23. See also L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1130 (1978).

44. Bell, *supra* note 35, at 5. The *Valtierra* majority observed that referendums demonstrate devotion to democracy, not to bias, discrimination, or prejudice. 402 U.S. at 137. *Valtierra's* analysis was applied with a similar result in *City of Eastlake v. Forest City Enters.*, 426 U.S. 668 (1976) (charter provision required 55% approval for zoning changes).

45. Zuckerman, *The Social Context of Democracy in Massachusetts*, 25 WM. & MARY Q. 523, 538-40 (1968).

46. Labaree, *New England Town Meeting*, 25 AM. ARCHIVIST 165, 166 (1962). New England towns were shaped by exclusionary controls tighter than most zoning ordinances. See P. SMITH, *AS A CITY UPON A HILL: THE TOWN IN AMERICAN HISTORY* 110 (1966); Bell, *supra* note 35, at 16.

47. See Scott & Nathan, *supra* note 11, at 313.

tion. Voters, however, do not command the luxury of diplomacy. They must decide issues on a "take it or leave it" basis.⁴⁸ If legislators believe that an initiative or referendum is pending, they may be unwilling to make efforts that could be superseded by the election.⁴⁹

Some authorities suggest that issue elections inform legislators of their constituents' views.⁵⁰ Election results, however, do not necessarily indicate a consensus; outcomes may be misleading because voters are ill-informed⁵¹ or a proposal is drafted so that neither alternative is desired by voters.⁵² Confusion is a problem when several issues are combined in one proposition.⁵³

III. MISSOURI LAW

The Missouri initiative and referendum laws are representative of provisions found in many states. The mechanisms include the constitutional initiative⁵⁴ and referendum,⁵⁵ and the statutory initiative⁵⁶ and referendum.⁵⁷ To place a statutory initiative or constitutional amendment on the ballot, 5% (8% for constitutional amendments) of the eligible voters that voted in the last gubernatorial election in each of two-thirds of the congressional districts in the state must sign petitions, submitted to the Secretary of

48. See *Taschner v. City Council*, 31 Cal. App. 3d 48, 64, 107 Cal. Rptr. 214, 227 (1973); Grossman, *supra* note 27, at 80-81. Legislative compromise is not always desirable because it tends to produce statutes of a low common denominator. See *Hearings*, *supra* note 28, at 162 (statement of A. Miller, professor, Harvard Law School).

49. See Radabaugh, *Tendencies of California Direct Legislation*, 42 Sw. Soc. Sci. Q. 66, 77 (1961). Cambridge Survey Research conducted nationwide telephone interviews and asked 750 people the following question:

Some people say that having referenda questions on State and national ballots actually weakens government because it encourages legislators, who are supposed to make hard decisions not to make them and instead to put them on election ballots where they often are not clearly decided.

Forty-six percent of the respondents thought this statement had "some truth," while 15% felt it had "a lot of truth." *Hearings*, *supra* note 28, at 16-17. *But cf.* Gazez, *supra* note 13, at 139 (no evidence that legislators "pass the buck").

50. See, e.g., Diamond, *California's Political Reform Act: Greater Access to the Initiative Process*, 7 Sw. U.L. REV. 453, 462-63 (1975); Note, *supra* note 8, at 941.

51. Campbell, *The Initiative and Referendum*, 10 MICH. L. REV. 427, 431 (1912); Key & Crouch, *The Initiative and Referendum in California*, 6 PUB. U.C.L.A. SOC. SCI. 423, 574-75 (1939).

52. See Scott & Nathan, *supra* note 11, at 315.

53. Snyder, *supra* note 31, at 452.

54. MO. CONST. art. III, § 49.

55. *Id.* § 52(a).

56. *Id.* § 49.

57. *Id.*

State four months prior to the election.⁵⁸ Proposals cannot cover more than one subject or contain more than one amended and revised article.⁵⁹ Once the minimum number of signatures is verified, the Secretary of State submits the proposal to the Attorney General, who drafts the ballot title.⁶⁰

The referendum process is similar; the people may order a vote on legislation when 5% of the eligible voters request a vote within ninety days after the adjournment of the General Assembly session that passed the challenged bill.⁶¹ The legislature may submit proposed statutes or constitutional amendments to voters by a majority vote in both houses.⁶² Statutory initiatives and referendums take effect thirty days after the election.⁶³

A recent Missouri Supreme Court decision has significantly changed initiative petitioning. Before *Rekart v. Kirkpatrick*⁶⁴ in 1982, persons who signed initiative petitions could withdraw their signatures prior to the election under Missouri Revised Statutes section 116.110.⁶⁵ *Rekart* involved an attempt by proponents of a citizen's utility board to place a proposition on the November, 1982 election ballot.⁶⁶ After obtaining the required number of signatures and submitting them to the Secretary of State, irregularities developed in some of the signatures.⁶⁷ The delay gave opponents time to convince some petition signers to withdraw their signatures. Certification of the petitions was denied due to the withdrawals, and because the filing deadline had passed, it was too late to obtain additional signatures.⁶⁸ Proponents challenged the withdrawal statute.⁶⁹ The Missouri Supreme Court ruled that section 116.110 was an unconstitutional interference with the right of the people to "propose and enact . . . laws . . . by the initiative,

58. *Id.* § 50.

59. *Id.*

60. MO. REV. STAT. § 126.081.1 (1978).

61. MO. CONST. art. III, § 52(a). *See State ex rel. Moore v. Toberman*, 363 Mo. 245, 248, 250 S.W.2d 701, 703 (1952).

62. MO. CONST. art. III, § 52(a).

63. *Id.* § 51 (initiatives "shall take effect when approved"); *id.* § 52(b) (referendums "shall take effect when approved"); *id.* art. XII, § 2(b) (constitutional amendments "shall take effect at the end of thirty days after the election").

64. 639 S.W.2d 606 (Mo. 1982) (en banc).

65. (Supp. 1982-1983).

66. Proposition D was defeated, 815,973 to 513,247. MISSOURI SECRETARY OF STATE, ROSTER—STATE, DISTRICT, COUNTY OFFICERS 1983-1984, at 59 [hereinafter cited as ROSTER].

67. The Secretary of State sent the petitions to the counties, and all but St. Louis County reported the number of verified signatures. When St. Louis County finally sent its findings to the Secretary of State, it noted that four pages of the petition were missing. These were sent back for verification. *Rekart*, 639 S.W.2d at 607.

68. *Id.*

69. The challenge was brought in the circuit court of Cole County, Missouri. *Id.* at 606.

independent of the general assembly.”⁷⁰ The court acknowledged the right of citizens to withdraw their signatures; the right, however, was held not to extend beyond the filing deadline.⁷¹ *Rekart* accords with the majority view.⁷² The court noted that signatures do not signify support for the proposition; they merely place the issue before the voters.⁷³ At election time, the petition signer could vote either way. Therefore, a change of opinion on the issue is not a valid reason to withdraw the signature. The holding creates a cut-off point that allows proponents to obtain signatures to make up for withdrawals made before the deadline.

IV. THE INITIATIVE AND REFERENDUM IN PRACTICE

After nearly a hundred years of experience with initiative and referendum, authorities do not agree on whether the benefits outweigh the disadvantages.⁷⁴ They consistently conclude, however, that regardless of the faults, voters want the process maintained.⁷⁵ In a survey of more than one hundred Missouri voters following the 1982 general election,⁷⁶ only two persons indicated that the initiative and referendum should be eliminated.⁷⁷

70. *Id.* at 608 (quoting MO. CONST. art. III, § 49).

71. *Id.* at 605.

72. See 42 AM. JUR. 2D *Initiative and Referendum* § 31 (1969). In *Missouri Farm Bureau Fed'n v. Kirkpatrick*, 603 S.W.2d 947 (Mo. 1980) (en banc) (per curiam) the court followed this rule, interpreting article III, section 50 to bar withdrawal of signatures after the filing deadline. *Id.* at 948. *Farm Bureau* was decided before passage of § 116.110.

73. 639 S.W.2d at 5.

74. See REFERENDUMS, *supra* note 3, at 37, 226.

75. *Id.* at 226.

76. This survey was designed only to randomly question voters in several areas of the state to see if they held strong views about the initiative and referendum process. Voters were questioned in northeast Missouri; around Columbia, Missouri; near the Lake of the Ozarks, in south central Missouri; and in the metropolitan Kansas City and St. Louis areas. The survey was taken during the week after the November 2, 1982, Missouri General Election. There were 15 objective questions on the survey. Another question was placed at the end of the survey proposing several changes in the initiative and referendum process. On all except the last question, persons were asked to give the best answer. This survey is unscientific because it is difficult to quantify voter understanding in a small area, let alone a whole state.

77. On the last question, persons were told to choose as many survey answers as they agreed with. “In your opinion, how should the initiative and referendum process be changed in Missouri?” The choices and number of responses to each were:

- a. “No change is needed.” (2).
- b. “Elections for the sole purpose of voting on proposals should be eliminated.” (17).
- c. “In addition to the general text of the proposals, each should be explained in common language.” (92).

Other conclusions are not as clear:

Experience has shown that neither the dire predictions of racial, irresponsible mob rule nor the optimistic visions of a more perfect government have come true. The reality is somewhere in between, especially since the initiative and referendum, despite their dramatic resurgence, remain ancillary means of enacting and rejecting legislation.⁷⁸

Some observations can be made. Special interest groups have demonstrated willingness to lobby voters as well as legislators.⁷⁹ Sixteen proposals appeared on California ballots between 1972 and 1976 and more than \$22,000,000 was spent campaigning.⁸⁰ This zeal is apparent in Missouri on a smaller scale. In 1977, Columbia, Missouri voters passed a city ordinance⁸¹ requiring a five-cent deposit on beverage containers. Opponents, including the soft drink and beer industries, delayed the effective date of the ordinance for more than a year by court challenges.⁸² Before the ordinance took effect, the courts ordered another vote on the proposal.⁸³ The ordinance was reapproved twice before it finally took effect.⁸⁴

Declining voter percentages create the potential for minority decision-making.⁸⁵ In Missouri, for example, approximately 3,600,000 persons are eighteen years or older, and 2,748,726 are registered to vote.⁸⁶ Yet in the 1982 general election, only 43% of Missouri adults voted in the hotly

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- d. "It should be more difficult to get proposals on the ballot." (17).
 - e. "An explanation of the desired future effects of the proposal should appear on the ballot." (55).
 - f. "The number of proposals on the ballot should be limited." (55).
 - g. "The entire initiative and referendum process should be eliminated." (2).
 - h. "Don't know." (9).

78. Grossman, *supra* note 27, at 80.

79. *See Lee, supra* note 25, at 101-07.

80. *See Diamond, supra* note 50, at 460. One measure proposed to raise the usury rate on certain business loans. Although opponents were outspent by over \$450,000, the measure was defeated. Proponents lost a second attempt, spending \$661,767 to the opposition's \$48,051. *Id.*

81. COLUMBIA, MISSOURI CODE art. XIV, §§ 10.10200-.10230.

82. *See Mid-State Distrib. Co. v. City of Columbia*, 617 S.W.2d 419 (Mo. Ct. App. 1981).

83. Election of November 3, 1981.

84. The ordinance was approved April 5, 1977. Voters defeated a measure in the November, 1981 general election that would have prevented the ordinance from going into effect on January 4, 1982. Interview with a representative of the Boone County, Missouri Clerk's Office in Columbia (August 29, 1983). *See COLUMBIA, MISSOURI CODE* art. XIV, § 10.10200.

85. *See Note, supra* note 8, at 941.

86. From Missouri Secretary of State's Office (obtained November 2, 1982).

contested Senate race between Harriett Woods and John Danforth.⁸⁷ Moreover, people turn out in smaller numbers when voting on issues rather than candidates.⁸⁸ In Missouri's 1982 general election, Proposition C, a sales tax for schools, received 1,424,946 votes,⁸⁹ more than any other issue, and approximately 90% of the senatorial votes cast. Constitutional amendment number two would have created a legislative veto.⁹⁰ It was the lowest vote-getter on the ballot, receiving only 1,260,302 votes,⁹¹ less than 82% of the 1,546,505 votes cast in the Senate race. The drop in the number of votes on a single issue may indicate that voters have the sense not to vote on issues about which they are uninformed.⁹² A majority of those surveyed were uncertain of the meaning of some or all of the thirteen issues that appeared on the 1982 ballot.⁹³ Nor did most voters understand the potential effects of the proposals.⁹⁴ Nevertheless, nearly 70% said they voted on

87. See ROSTER, *supra* note 66, at 52. The turnout for the August primary was only 34.1%. 8 BALLOT BANTER 1 (1982).

88. Lee, *supra* note 25, at 108; Scott & Nathan, *supra* note 11, at 324. *But cf. Hearings, supra* note 28, at 17 (74% of those polled by Cambridge Survey Research would be more inclined to go to the polls if they could vote on issues as well as on candidates).

89. ROSTER, *supra* note 66, at 59. Proposition C was placed on the ballot by initiative petition. The Secretary of State estimated that the proposition would raise \$153.1 million for public schools. See Memphis [Missouri] Democrat, October 28, 1982, at 2, col. 2.

90. Amendment two was placed on the ballot by referendum. See Mo. H.J. Res. 36, 81st Gen. Assembly, 1981 HOUSE JOURNAL, 1st Reg. Sess. 2157. It was described as prohibiting the change of law by regulations and authorizing the legislature to invalidate administrative regulations. ROSTER, *supra* note 66, at 60.

91. See ROSTER, *supra* note 66, at 52, 57. In the November 1972 general election, only 82% of those voting on presidential candidates cast votes on the leading constitutional amendment proposal. R. KARSCH, *supra* note 4, at 74.

92. See Schumacher, *Thirty Years of the People's Rule in Oregon: An Analysis*, 47 POL. SCI. Q. 242, 243 (1932).

93. For the basis of the survey, see note 76 *supra*. The question and the number of responses:

"Was the meaning of the proposals clear as they appeared on the ballot so you understood them as you read them?"

- a. "All of the proposals were clear." (17).
- b. "Most of the proposals were clear." (32).
- c. "Some of the proposals were clear." (62).
- d. "None of the proposals were clear." (5).

See also R. KARSCH, *supra* note 4, at 74 (technical wording and lack of personal elements in issue ballots cause thousands to mark ballots incorrectly or ignore them).

94. When asked whether "the future effects [were] clear to you by the time of the election?" voters responded:

- a. "The future effects of all the proposals were clear." (20).
- b. "The future effects of most of the proposals were clear." (25).
- c. "The future effects of some of the proposals were clear." (49).

every issue on the ballot.⁹⁵

A more dramatic drop in participation occurs in special issue elections.⁹⁶ People may be voting on issues in the general election just because they are already in the booths.⁹⁷ Not only do fewer voters turn out for primary and special elections, but a larger share of registered Republicans tend to vote in those elections than registered Democrats.⁹⁸ Proponents try to predict if an issue will be supported by the more conservative Republicans or the more liberal Democrats. A proposal that appeals to Republicans stands a better chance in a special election, while an issue preferred by Democrats should fare better in a general election. Direct legislation has become an integral part of the strategy of lawmaking.⁹⁹

Regardless of turnout, issues proposed by the legislature or a constitutional convention are twice as likely to be approved as issues originated by initiative petition.¹⁰⁰ Emotional issues, like gun control and pollution, elicit the largest voter turnout.¹⁰¹ Complicated taxation problems and matters of government structure bring smaller turnouts.¹⁰² This pattern is evident in Missouri's 1982 general election: the highest vote-getter was the proposed school tax increase,¹⁰³ and the lowest vote-getters were proposals dealing with redistricting,¹⁰⁴ a constitutional convention,¹⁰⁵ and the legislative

d. "The future effects of none of the proposals were clear." (22).

95. When asked "[h]ow many proposals did you vote on in this election?" voters responded:

- a. "I voted on all the proposals." (78).
- b. "I voted on most of the proposals." (21).
- c. "I voted on some of the proposals." (14).
- d. "I voted on none of the proposals." (3).

96. See Lee, *supra* note 25, at 109-10. In the 1982 Missouri general election, the high and low vote counts were 1,424,946 (Proposition C) and 1,260,302 (amendment 11). ROSTER, *supra* note 66, at 59. Proposition C was a sales tax for schools, and amendment 11 related to bond ceilings. *Id.* at 60. In the August primary, amendment four, a school tax issue, outpolled the only other issue, amendment seven, relating to commercial property taxes, 931,141 to 909,372. MISSOURI SECRETARY OF STATE, OFFICIAL RETURNS, PRIMARY ELECTION, AUGUST 3, 1982, at 7-8 (1983). There was one issue on the April 6th primary ballot (proposition A to permit longer and heavier trucks); it received 869,056 votes. *Id.* at 52-53. Amendment one, a state capital improvements bond authorization, the only issue in the June 8th special election, received only 443,552 votes. *Id.*

97. Scott & Nathan, *supra* note 11, at 326.

98. Lee, *supra* note 25, at 110.

99. *Id.* at 98.

100. Ranney, *supra* note 12, at 82.

101. See Bell, *supra* note 35, at 18. "Tumultuous, media-oriented campaigns such as the ones successfully used to repeal ordinances recognizing the rights of homosexuals . . . are not conducive to careful thinking and voting." *Id.*

102. *Id.*

103. The tax was proposed by initiative. ROSTER, *supra* note 66, at 60.

104. Amendment 12, proposed by referendum (1,268,916 votes). *Id.* at 59, 60.

105. Amendment nine, proposed by referendum (1,286,950 votes). *Id.*

veto.¹⁰⁶

Whatever the proposal, voters are likely to reject it.¹⁰⁷ “[P]artisan and regional influences are sometimes, but not consistently evident. And most often electors tend to vote no . . . leaving the fate of most legislation to their representatives and not to themselves.”¹⁰⁸ There are several explanations for this, including resistance to and suspicion of change,¹⁰⁹ which is evidenced by voters’ greater support of proposals that have legislative origins. Negative votes may be due to the ignorance of the electorate. If voters do vote “no” as a matter of course, considerable sums of money are being expended¹¹⁰ ineffectively to conduct initiative and referendum elections.

Voters usually wait until the last minute to evaluate the issues and decide their vote.¹¹¹ Those who have useful information are likely to use it.¹¹² Otherwise, they use less reliable sources, including last minute discussions at the polls.¹¹³ Unfortunately, decision-making at the polls is difficult because voters face longer, more complex ballots. In the 1982 general election, Brentwood, Missouri¹¹⁴ voters were confronted with a ballot containing forty issues.¹¹⁵ It is difficult to become informed about a large number of issues, and the multiplicity contributes to “voter fatigue,” or “voter drop off”: issues placed lower on the ballot receive fewer votes.¹¹⁶ Nearly 50% of

106. Amendment two, proposed by referendum (1,289,670 votes). *Id.*

107. Note, *supra* note 8, at 948.

108. Lee, *supra* note 25, at 115-17. The defeat of the proposal may cloud further efforts to solve the problem because no one knows if voters realized what they were voting on. See Scott & Nathan, *supra* note 11, at 321.

109. Grossman, *supra* note 27, at 81 n.20.

110. In 1982, \$4,569,345.70 was spent on statewide initiative and referendum campaigns in Missouri. Interview with a representative of the Secretary of State’s Office in Jefferson City, Missouri (January 18, 1983).

111. See Lee, *supra* note 25, at 11 (on one election eve in California, only 52% of the voters said they had definitely made up their minds).

112. See Scott & Nathan, *supra* note 11, at 315; Note, *supra* note 8, at 948.

113. Interviews on KOMU television, ABC affiliate, Columbia, Missouri, (November 2, 1982) (voter was glad that the election poll lines were long because she was able to use the time to talk to others in line about issues on the ballot).

114. Brentwood is near St. Louis, and its 1980 population was 8,209. BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, 1980 CENSUS OF POPULATION, VOL. 1, CHARACTERISTICS OF POPULATION, CHAPTER A, NUMBER OF INHABITANTS—MISSOURI 27-35 (1981).

115. All of the local measures were approved by voters. Telephone interview with a representative of the St. Louis County Clerk’s Office (January 16, 1983).

116. There is some indication that voter fatigue is not as likely to occur in later ballot measures as on lesser state officials. See Bone & Benedict, *supra* note 2, at 338-42. Voters may allocate a set amount of time to prepare, regardless of the number of issues on the ballot. When the number of issues increases, voters may not vote on issues that they have not prepared for.

the Missouri voters surveyed thought that the number of issues on the ballot should be limited.¹¹⁷

As a result of the tendency to last minute decision-making, voters now have less time to gather information on the increasing number of issues. Most arguments in favor of the initiative and referendum assume that voters are reasonably educated about the issues.¹¹⁸ If future ballots continue to grow, it will become more difficult to maintain the benefits of issue elections. Voters will become more dependent on special interest groups for education, because those groups use the most accessible source of information—the media.¹¹⁹ Interest groups pour considerable resources into their causes, and their influence should become greater as the number of issues on ballots increases.¹²⁰ The defeat of many referendums has been attributed to television campaigns.¹²¹ The media can be used to over-simplify,¹²² or over-complicate,¹²³ causing uncertainty and increasing the likelihood that proposals will fail.¹²⁴

V. THE FUTURE OF STATE BALLOT ISSUES

Only twelve states, including Missouri, use all four types of initiatives and referendums, and only nine of those use the direct initiative.¹²⁵ These nine states account for approximately 75% of all statewide initiatives and

117. See note 77 *supra*.

118. Note, *supra* note 8, at 949. See R. HOFSTADER, *THE AGE OF REFORM* 261 (1955) (unless voters are capable of informing themselves in ample detail about issues, the use of the referendum and initiative is "unintelligible").

119. See Hearings, *supra* note 28, at 177-80 (*The Initiative, Democracy, & Money: The Case of Colorado* (1976), J. Shockley, professor, Western Illinois University); see also Bell, *supra* note 35, at 18.

120. Slick campaigns have elicited pessimistic commentary:

Only well-organized, rather affluent coalitions of interests can afford to pursue the kinds of professional public relations campaigns associated with most ballot measures. The campaigns are often bitter, emotional contests in which the voter is likely to be asked to respond to false images and half-truths.

J. OWENS, E. CONSTANTINI & L. WESCHLER, *CALIFORNIA POLITICS AND PARTIES* 273 (1973). But see Hearings, *supra* note 28, at 128 (statement of Kenneth Thomson, Citizens for Participation in Political Action) (process has not been captured by special interests). Although money undoubtedly has an influence on initiative results, its corrupting influence is less than if the money was spent to lobby legislators. *Id.*

121. See Nader, *Direct Democracy via Referenda*, *Washington Star*, Nov. 6, 1976, § C, at 1, col. 1 (television campaigns distort issues in consumer and environmental campaigns).

122. Scott & Nathan, *supra* note 11, at 317.

123. Lee, *supra* note 25, at 104.

124. Bell, *supra* note 35, at 19 n.73.

125. See REFERENDUMS, *supra* note 3, at 27, 73; R. LUCE, *LEGISLATIVE PRINCIPLES*

referendums.¹²⁶ The variety of means of direct legislation open to the people in these states constitutes a factor in these disproportionate shares.¹²⁷

Missouri voters have faced relatively few issues. Between 1898 and 1976, seventy-nine issues were voted on at the state level.¹²⁸ During the same period, Oregon voters voted on 207 issues, while California voters decided 159 state issues.¹²⁹ Missourians can expect to vote on more issues in the future.

Several factors increase the use of initiative and referendum. The most widely accepted is the declining influence of political parties in formulating issues and policies on which candidates base campaigns.¹³⁰ Since the Nixon-Kennedy debates in 1960, the media have focused on the candidates; images have become more important than party platforms.¹³¹ Missouri has witnessed a decline in the influence of political parties as well.¹³²

Another factor in the increased use of the initiative and referendum is the growth of interest groups,¹³³ who have filled the void left by the decline of party influence.¹³⁴ Woodrow Wilson admonished, "The growing use of referendums means that the legislature had better get back to its proper business of popular (not special interests) representation."¹³⁵ Initiative and referendum use tends to increase as legislatures become more responsive to special interest groups. Developments in Missouri bear this out. Corporate

PLES: THE HISTORY & THEORY OF LAWMAKING BY REPRESENTATIVE GOVERNMENTS 572 (1930).

126. From 1898-1976, 1,224 statewide initiatives were placed on ballots across the United States. These nine states accounted for 939 of the initiatives, nearly 77%. Ranney, *supra* note 12, at 77.

127. *Id.* at 71-72.

128. R. KARSCH, *supra* note 4, at 7.

129. During the same period, North Dakota placed 130 initiatives on the ballot, Colorado placed 119, and Arizona placed 117. Ranney, *supra* note 12, at 76.

130. See Price, *supra* note 13, at 248; Stewart, *The Law of Initiative Referendum in Massachusetts*, 12 NEW ENG. L. REV. 445, 445 (1977).

131. See T. WHITE, THE MAKING OF THE PRESIDENT—1960, at 287-93 (1962).

132. Political parties have weakened because voters are less likely to identify with them; voters that do identify with a party don't do so as strongly as the electorate once did. Parties cannot guarantee that a candidate will be elected, so candidates have had to establish their own organizational structures and develop their own issues. Interview with David Leuthold, professor of political science, University of Missouri-Columbia (April 21, 1983).

133. See Price, *supra* note 13, at 248; Stewart, *supra* note 130, at 455. The ineffectiveness of legislatures is sometimes cited as a factor encouraging direct legislation. This ineffectiveness is connected with the growth of special interest groups. See Bell, *supra* note 35, at 1. Proponents argue that voters take legislation into their own hands only when legislatures fail to produce needed results. Dean Bell argues that direct democracy "is used comparatively infrequently to curb abuses in government or otherwise control elected officials." *Id.* at 18. But see Price, *supra* note 25, at 257.

134. See Grossman, *supra* note 27, at 78 n.4.

135. See Scott & Nathan, *supra* note 11, at 315.

concerns are strong,¹³⁶ but consumer and public interest groups have also become powerful.¹³⁷ Proposition D on the 1982 general election ballot, a proposal to create a state citizens' utility board,¹³⁸ was supported by a consumers' group and opposed by several utility companies.¹³⁹ Although corporate interest groups have long been influential, well-educated consumer groups have forced corporate concerns into greater public advocacy. Both groups find direct democracy useful.¹⁴⁰

Missouri is particularly susceptible to increased use of the initiative and referendum because it is relatively easy to place proposals on the state ballot.¹⁴¹ Most states require the signatures of 5-10% of the total registered

136. Corporate influence was the original impetus for the modern initiative and referendum system. See Price, *supra* note 13, at 243. Corporate concerns are still strong. In 1982, more than \$2.5 million was spent in Missouri on Proposition A, which pitted the trucking industry against the public and the railroads. The proposition would have permitted longer and heavier trucks on Missouri highways. Over a million and a half dollars were spent in support of the proposition, and \$1,068,276 was spent in opposition. Telephone interview with a representative of the Missouri Secretary of State's Office in Jefferson City (March 10, 1983). The proposal was defeated, 463,585 to 405,471. ROSTER, *supra* note 66, at 59-60.

137. Some of the most dedicated initiative and referendum uses are for "liquor, gun control, pollution, pornography or race," generally considered to be public interest issues. See Bell, *supra* note 35, at 18. *But cf.* Gazey, *supra* note 13, at 138 (moral issues rouse little interest).

138. See text accompanying note 68 *supra*.

139. The largest opponent of the proposal was Union Electric Company, joined by the Electrical and Communication Workers Unions. Telephone interview with Pete Basofin, local spokesperson for proponents of the Citizens Utility Board, in Columbia (April 20, 1983).

140. Groups that lobby legislators also make use of the initiative and referendum. See Ranney, *supra* note 12, at 96; Brestoff, *The California Initiative Process: A Suggestion for Reform*, 78 S. CAL. L. REV. 944, 947 (1975). Some may wonder whether there is any gain from trading special interest influence in the legislature for manipulation of the electorate.

It is conceivable that direct legislation with its sensitivity to the wishes of special interests can be as injurious to statesmanship as the bribe to the corrupt legislator.

On the other hand, if democratic government is based on the consent of the governed, what simpler device than to have the people vote on a matter, regardless of how complex the details. The rights of the minority can be pleaded here, and cynical doubt may be expressed about the wisdom of the people; yet the necessity of explaining issues to a large audience in an initiative or referendum election would seem to be an improvement over the lobby politics which are practiced in any state capital.

Radabaugh, *supra* note 49, at 78.

141. *But see* Price, *supra* note 13, at 248 (no relationship between ease of qualification and number of proposals that eventually appear on ballots).

voters casting ballots in the last election for a particular state office.¹⁴² Missouri requires only the signatures of 5% of the voters in two-thirds of the congressional districts.¹⁴³ Not only is the proportion of signatures needed less than other states, but proponents are allowed to choose the districts most likely to produce the signatures needed.¹⁴⁴ Proposition D proponents, for example, worked to obtain signatures from districts where consumer sympathy was strong and districts where the number of required signatures was least.¹⁴⁵

As interest groups become more powerful, they may look for states in which to test particular issues. Cost will be a major factor in the search. In 1978, a California petition drive cost fifty cents per signature, with a \$225,000 minimum.¹⁴⁶ In Missouri, at the same rate per signature, a successful drive could be completed for about \$45,000¹⁴⁷—a bargain by comparison. Thus, Missouri could become a site for testing national proposals.

The most significant factor in the recent boom in initiatives and referendums in Missouri is the "Hancock Amendment" to the Missouri Constitution.¹⁴⁸ In 1980, the electorate approved an amendment that required voter approval of increases in taxing and spending by state government.¹⁴⁹ The effect has been acute at the local level. The Missouri Supreme Court,

142. See Note, *supra* note 8, at 928. North Dakota requires only 10,000 signatures to place an initiative on the ballot. N.D. CONST. art. II, § 25.

143. MO. CONST. art. III, §§ 50, 52(a). Few other states have similar geographic distribution requirements. See, e.g., NEB. CONST. art. III, §§ 2, 3 (5% of the voters in each of 2/5 of the counties for an initiative); NEV. CONST. art. XIX, § 2 (10% in at least 75% of the counties for initiative).

144. There is no requirement that the signatures be gathered in any particular district. See MO. CONST. art. III, § 50.

145. The proposal originated in the St. Louis area. At the time there were ten congressional districts; three were in and around St. Louis. Since the largest number of the people that were acquainted with the proposition were from this area, the petition drive began there. The effort branched to the Kansas City area, and finally to Columbia. Proponents have speculated that these choices were the downfall of the proposition because prior to the election, few outstate voters had even heard of the citizen's utility board. Basofin, note 139 *supra*.

146. L. TALLIAN, DIRECT DEMOCRACY: AN HISTORICAL ANALYSIS OF THE INITIATIVE, REFERENDUM, AND RECALL PROCESS 103 (1977).

147. In 1982, Missouri was reorganized into nine congressional districts. See *Shayer v. Kirkpatrick*, 541 F. Supp. 922, 935-49 (W.D. Mo.), *aff'd mem. sub. nom.*, *Schatzle v. Kirkpatrick*, 102 S. Ct. 2228 (1982). If the number of registered voters in each district is roughly equal, then the total number of registered voters in Missouri (2,748,726), see note 86 *supra*, divided by nine would equal 305,414 registered voters in each of the nine districts. Since petitioning requirements for the statutory initiative and 5% of the registered voters in each of 2/3 of the congressional districts, the minimum cost would be six times 152,707 (305,414 times .05) multiplied by 50¢ per signature, equals \$45,812.10.

148. Art. X, §§ 16-24.

149. The Hancock Amendment was proposed by initiative.

in *Roberts v. McNary*,¹⁵⁰ interpreted the amendment to require voter approval of fee increases for county services, such as park and building inspections.¹⁵¹ The decision broadly defined "fee" as "a charge fixed by law or by an institution for certain . . . services."¹⁵² The amendment has resulted in ballots proposing increases in fees and expenditures, subjects that confuse many voters. Besides the voters' natural tendency to disapprove issues, they may vote against a statewide measure assuming it proposes a major change by virtue of its presence on the ballot, when it is really a minor adjustment. In at least one city, however, this prediction has not materialized; voters in Brentwood, Missouri approved all local fee increases in the 1982 general election.¹⁵³

The initiative and referendum also should gain usage because of the expanding class of proponents utilizing them. The past growth of the initiative and referendum can be credited largely to special interest groups. The most visible special interest groups are business concerns and, recently, consumer and public interest organizations.¹⁵⁴ As government bureaucracy increases, however, administrative agencies have become proponents of direct legislation.¹⁵⁵ Agencies command the expertise and manpower to initiate legislation;¹⁵⁶ moreover, they have good reason to resort to direct legislation. State legislatures and agencies inherently clash, particularly over the scope of agency authority and funding. Agency personnel may

150. 636 S.W.2d 332 (Mo. 1982) (en banc).

151. *Id.* at 334-36.

152. *Id.* at 335. For cases interpreting the Hancock Amendment, see Buechner v. Bond, 650 S.W.2d 611 (Mo. 1983) (en banc); State *ex rel.* Savad v. Zych, 642 S.W.2d 907 (1982) (en banc); Roberts v. McNary, 636 S.W.2d 332 (Mo. 1982) (en banc); Oswald v. City of Blue Springs, 635 S.W.2d 332 (Mo. 1982) (en banc); Boone County Court v. Carnahan, 631 S.W.2d 321 (Mo. 1982) (en banc); Buchanan v. Kirkpatrick, 615 S.W.2d 6 (Mo. 1981) (en banc); Citizens for Rural Preservation, Inc., v. Robinett, 648 S.W.2d 117 (Mo. Ct. App. 1982). *See also* STATE AUDITOR OF MISSOURI, REVIEW OF THE HANCOCK AMENDMENT, TWO YEARS ENDED JUNE 30, 1982 (1983).

153. *See* note 115 *supra*.

154. *See* notes 79-80 and accompanying text *supra*.

155. For example, amendment one on the 1976 general election ballot was drafted by high-level Conservation Commission officials. Proposition C, on the general election ballot in 1982, although originally not drafted by Department of Education officials, was strongly endorsed by the department once its implications were made public. Interview with Chris Kelly, Missouri State Representative, in Columbia, Missouri (January 14, 1983).

156. Most agencies have supporters in the legislature who have access to the drafting service. *See* MO. CONST. ART. III, § 35 (created Committee on Legislative Research as a permanent standing committee in the General Assembly); 1981-1982 MISSOURI OFFICIAL MANUAL 130. The Governmental Affairs Division of the Attorney General's office is available to most administrative agencies. This division "provide[s] legal counsel and services to a wide variety of state agencies including . . . many of the state's regulatory and licensing agencies." *Id.* at 39.

find that their interests will be better served by appealing directly to the people, rather than wrestling with legislative appropriations. For example, voters in 1976 supported the Missouri Conservation Commission by passing a sales tax for forestry and wildlife programs.¹⁵⁷ Voters also cooperated with an agency in 1982 when they approved a sales tax for the Missouri Department of Education.¹⁵⁸ An agency with public support for specific activities may be able to bypass the legislature and attain its goals through the electorate.

Agencies are not the only group to take its causes to the people. The Missouri legislature placed a constitutional amendment on the 1982 ballot legalizing the legislative veto.¹⁵⁹ The proposal would have given the legislature the right to veto agency regulations, a veto the governor could not override.¹⁶⁰ Voters soundly defeated the amendment,¹⁶¹ possibly due to influence from the Conservation Commission. The Commission lobbied against the proposal, charging that the amendment threatened "the traditional authority of the Commission to make wildlife and forestry regula-

157. MO. CONST. art. IV, §§ 43(a)-(c). In the fiscal year immediately prior to the passage of the conservation amendment, the Conservation Commission reported \$16,447,305 in revenues (principally from licenses and fees), not including another \$2 million in appropriations from the legislature. Although appropriations were cut off after the amendment was passed, in the following fiscal year the Commission reported revenues of \$40,491,476. The Commission had attempted with minimal success to get appropriations from the legislature prior to 1976. Members thought it was important not to postpone the purchase of lands for conservation. They obtained a relatively small amount of money from a federal revenue sharing trust fund. The Commission tried to get a soft drink tax on the 1972 election ballot, but technical errors resulted in noncertification of the petition by the Secretary of State. Telephone interview with Al Brand, Assistant Fiscal Officer of the Missouri Conservation Commission, Jefferson City, Missouri (March 8, 1983). *See also* R. KARSCH, *supra* note 4, at 9.

158. *See* ROSTER, *supra* note 66, at 59-60.

159. The proposal was amendment two on the November 2, 1982 general election ballot. Section 54 provided:

The general assembly may, by a separate resolution of either house, concurred in by the other, invalidate any state agency regulation. Such resolutions shall not be submitted to the governor. Any regulation invalidated by the general assembly shall ten days thereafter have no force or effect, nor shall any regulation having the same general effect be thereafter promulgated unless legislative authority to promulgate such rule is delegated by future statute

160. *Cf.* Consumer Energy Counsel v. Federal Energy Regulatory Comm'n, 673 F.2d 425 (D.C. Cir. 1982) (concurrence of Senate and presentation to President would be prerequisites to the effectiveness of House disapproval), *aff'd mem. sub nom.* Process Gas Consumers Group v. Consumers Energy Council, 103 S. Ct. 3556 (1983).

161. The vote was 792,329 to 497,341. ROSTER, *supra* note 66, at 56.

tions based on scientific data."¹⁶²

Missouri voters can expect to see more local proposals, partially because of the Hancock Amendment. They may also be asked to give their opinions on local advisory ballots. The nuclear freeze movement, for example, has succeeded in placing advisory proposals on many local ballots.¹⁶³

VI. PROBLEMS AND PROPOSALS

In a survey conducted after the 1982 general election,¹⁶⁴ Missouri voters commonly expressed frustration with the initiative and referendum proposals.¹⁶⁵ Although many voters felt obligated to go to the polls, they lacked information that would enable them to competently decide the variety of issues confronted. A small percentage of voters said they did not understand any of the proposals, a slight majority understood only some of the proposals, approximately one-fourth understood most of the proposals, and only about 14% stated that they understood all of the proposals.¹⁶⁶ The least educated were the most certain that they understood the meaning of the proposals; therefore, an even smaller percentage probably understood all issues.¹⁶⁷

Voters were questioned on their understanding of the future effects of the proposals. A majority said they understood the future effects of only some of the proposals. Almost one-fifth were unsure of the future effects of all proposals. The most convincing indication of voter misunderstanding, however, was the number of suggestions for improvement. Nearly four-fifths of the persons surveyed recommended that a common language explanation of each issue be included on the ballot.¹⁶⁸

The responses support the need for changes in Missouri election procedures. Arguments in favor of direct democracy are founded on voter under-

162. See note 188 *infra*.

163. On November 2, 1982, Columbia voters approved a local variant of the nuclear freeze resolution, 9,718 to 6,683. Over 90% of those who went to the polls voted on the issue, although only 60% of the voters registered turned out for the election. Interview with a representative of the Boone County, Missouri Clerk's Office, in Columbia (August 29, 1983). Advisory elections allow the people to show the government what they want without voting otherwise effective legislators out of office. See Note, *supra* note 8, at 939.

164. For the basis of the survey, see note 77 *supra*.

165. See note 92 *supra*.

166. *Id.*

167. The author assembled assistants immediately following the surveying sessions, and all agreed with this conclusion.

168. See note 77 *supra*. Technical wording in statutes is a by-product of legislative compromise. Simplifying the language in proposals to improve voter understanding may exacerbate the "take it or leave it" quality of initiatives. See *Hearings, supra* note 28, at 118 (statement of Peter Fish, associate professor of political science, Duke University).

standing of the issues. Voters lacking reliable information cannot be expected to make intelligent choices.¹⁶⁹ Although people recognize the obligation to make educated choices, they feel they have inadequate access to information.¹⁷⁰ States experiencing heavy initiative and referendum use have measures to ensure that voters have the opportunity to learn about issues.¹⁷¹ If, as in 1982, Missouri voters are to decide fifteen to twenty issues in each general election, they need help.¹⁷²

The survey results support adding to ballots an explanation of each issue. Michigan statutes, for example, require that each proposal be explained on the ballot in one hundred words or less, in addition to the ballot title.¹⁷³ The statements summarize and outline the effects of proposals. Summaries are prepared by the State Director of Elections with the approval of the Board of State Canvassers.¹⁷⁴

169. See notes 28-32 and accompanying text *supra*.

170. See *Hearings, supra* note 28, at 160 (statement of Robert Benedict, assistant professor of political science, University of Utah).

171. Several states' measures are discussed in this Comment, including California, Massachusetts, and Michigan. Other states provide voters with more than copies or summaries of the texts of proposals. See, e.g., ARIZ. REV. STAT. ANN. § 19-123 (1975); IDAHO CODE § 34-1812C (1981); NEB. REV. STAT. § 32-711 (1978); WASH. REV. CODE ANN. §§ 29.81.010-.160 (1965 & Supp. 1983-1984). "[A] clear, high quality official voters pamphlet is essential if wise policy outcomes are to be derived from the use of direct legislation and from judgments on the increasing number of legislatively referred statutes and constitutional amendments." Bone, *The Initiative in Washington: 1914-1974*, 2 WASH. PUB. POL'Y NOTES 13 (1974).

172. Cf. Gazezy, *supra* note 13, at 139 (voters were overburdened with issues back in 1971).

173. MICH. COMP. LAWS § 168.474 (1970).

174. *Id.* A summary on the 1980 Michigan General Election Ballot read:
Proposal A

A proposal to make local school boards responsible for school personnel and programs, to reduce local property tax maximums for operational purposes, to provide additional property tax relief for senior retirees, and require the state to raise revenues necessary for equal per-pupil for public schools.

This proposed amendment would:

1. Make local school boards responsible for school personnel and programs.
2. Reduce current maximum property tax for county, township and educational operations from 50 to 24.5 mills and allocate millage.
3. Allow state 30.5 mill school property tax on non-homesteads.
4. Eliminate property taxes on \$25,000.00 of home assessments of retirees 65 and older.
5. Require general state taxation for equal per-pupil school financing at highest state support level.
6. Limit school tax to 7 mills or 1% income tax by vote of the electors.

Missouri ballots currently contain only a ballot title written by the Attorney General.¹⁷⁵ The Attorney General, due to his legal training and the subject matter, may phrase titles in legal terms that the average voter may not readily comprehend. The title can greatly affect the election outcome.¹⁷⁶ Although the Attorney General's wording may be challenged, suit must be filed in circuit court within ten days of the submission of the title to the Secretary of State,¹⁷⁷ usually well before election day. Unfortunately, most circuit court judges are inexperienced in electoral jurisprudence. If the challenge is unsuccessful, the only recourse is appeal, a process that could delay the proposal for years. Proponents might give up the appeal and hope that voters can interpret the proposal rather than delay the vote. Missouri's process could be improved by allowing direct challenges before the state supreme court.¹⁷⁸

A growing number of states clarify issues by providing voter information pamphlets.¹⁷⁹ Most pamphlets incorporate the text of the proposal, the summary that will appear on the ballot, and a common language explanation. Massachusetts pamphlets contain one argument for and against each proposal, cautioning that neither argument is the opinion of the government. The pamphlet does not disclose the names of the groups responsible for the arguments, but the information is available upon request.¹⁸⁰ Oregon, on the other hand, allows multiple arguments for each side in pamphlets, requiring only that the sponsor pay for its inclusion.¹⁸¹ To prevent

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7. Exclude additional school financing from other revenue and spending limits of constitution and require millage reduction by class.

175. MO. REV. STAT. § 126.081.1 (1978).

176. This is important not only from the standpoint of oversimplifying or complicating issues, but also from the standpoint of semantics, i.e., the use of double or misleading negatives. This was a common complaint in the second election concerning the Columbia beverage container deposit ordinance, *see* note 84 *supra*, where a "yes" vote indicated support for withdrawal of the ordinance rather than its retention. *See also* Gazezy, *supra* note 13, at 128.

177. MO. REV. STAT. § 126.081.2 (1978).

178. Oregon has such a system. *See* OR. REV. STAT. § 250.085 (1979). Petitioners must supply a different title and state why the existing title is inadequate. The statute provides that "review by the Supreme Court shall be conducted expeditiously to insure the orderly and timely . . . conduct of the election at which the measure is to be submitted to the votes." *Id.* Colorado provides expedited review of appeals challenging ballot titles. *See* COLO. REV. STAT. § 1-40-101(3) (1980).

179. *See* note 171 *supra*.

180. *See* MASS. GEN. LAWS ANNO. ch. 54, §§ 53, 54 (West Supp. 1983-1984); *see also In re* Opinion of the Justices, 309 Mass. 571, 34 N.E.2d 527 (1941); MASS. CONST. amend. art. XLVII, pt. V.

181. The Oregon pamphlet includes a copy of the title and text, explanatory statements, and arguments. *See* OR. REV. STAT. § 251.185 (1981). The explanatory statement is prepared by a committee of two proponents, two opponents, and one member elected by the other four. *Id.* § 251.205. It is designed to be an "im-

the influence of big money, however, the statute also provides that no charge is levied if the sponsor can obtain a minimum number of supporter signatures.¹⁸² California has similar provisions.¹⁸³

Pamphlets give the voters access to reliable, understandable information until they enter the polls. The voter is not overwhelmed by masses of data, yet he or she may to compare the principle arguments on both sides.¹⁸⁴ This mechanism is not free of drawbacks. The pamphlet sent to voters in the 1980 Massachusetts general election cost an estimated eight cents per copy.¹⁸⁵ The cost for the entire electorate was substantial.¹⁸⁶ Pamphlets from the government may also give voters the false impression that the opinions are official.¹⁸⁷

The only Missouri program similar to the voter information pamphlet is a summary of the issues drafted by the Secretary of State. Prepared as a voter service, the summary is sent to local newspapers.¹⁸⁸ Summaries are

partial, simple and understandable statement explaining the measure and its effect." *Id.* If the proposal is submitted as a referendum, an argument in favor of the measure is prepared by one Senator and two Representatives. *Id.* § 251.245. Interested citizens may have their arguments included. *Id.* § 251.255. The arguments must include a disclaimer substantially similar to the following form: "The printing of this argument does not constitute an endorsement by the State of Oregon, nor does the state warrant the accuracy or truth of any statement made in the argument." *Id.* § 251.265.

182. *Id.* § 251.255.

183. There are three components to the California voter pamphlet: the measure, the arguments and rebuttals for and against, and analysis. CAL. ELEC. CODE § 3570 (1976). Although only one argument for and against the proposal is included in the pamphlet, any number of persons may submit arguments. The statute incorporates a priority system to determine which arguments are selected. *Id.* § 3565. The pamphlet includes a summary prepared by a legislative analyst. *Id.* § 3572.

184. A study in Washington found that voters named the state prepared information pamphlet as their first choice of information for ballot proposals. The same voters exhibited significantly better knowledge of the issues. Bone & Benedict, *supra* note 2, at 340. *But cf.* THE FEDERALIST No. 55, at 239 (J. Madison) (A. Beard ed. 1948) ("Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.").

185. *See* note 147 *supra*.

186. Considering that there are approximately 2,750,000 registered voters in Missouri, sending a pamphlet comparable to the one that Massachusetts voters received would cost around \$220,000. Cheaper pamphlets could be used.

187. Most government departments already employ public relations personnel. If the government was clear in saying that the pertinent parts of the pamphlet were not official opinions, the media would support the pamphlet. Interview with Daryl Moen, Professor of Journalism at the University of Missouri-Columbia and managing editor of the daily *Columbia Missourian* (January 7, 1983).

188. Some newspapers print the Secretary of State's summaries verbatim, but most of the larger papers use the information as part of broader election coverage.

published separately from the text,¹⁸⁹ and at different times. They have been incomplete,¹⁹⁰ and in at least one case, misleading.¹⁹¹ The pamphlet is a better alternative.

Other methods of disseminating information, including television and radio, are useful but inadequate if used alone. Information from these media is available only at specific times and locations.¹⁹² Television and radio inherently preclude re-examination and messages require concentration

Id. The press release provided by the Secretary of State for amendment two (the legislative veto) follows:

This amendment affects the rules state agencies adopt to administer laws. Passage would permit the General Assembly to void a state agency's rule, effective 10 days after a majority vote in both the Senate and House.

Amendment Two is aimed at "every rule, regulation, order or standard" of any state agency not connected with the courts or legislature, the National Guard or state-supported colleges, or the official attorney's group known as the Missouri Bar Association.

Amendment Two was submitted by the General Assembly. The House vote was 147 in favor, eight against, with six absent and two vacancies. The Senate vote was 30 in favor, one opposed and three absent.

A campaign committee called People Against Regulation Without Representation has been formed to support Amendment Two. The Missouri Farm Bureau has endorsed the amendment.

Supporters insist state agencies sometimes abuse rule-making authority granted by the legislature to clarify or administer a law. They support the amendment as a check against such abuse.

Those opposing the proposal include the Missouri State Labor Council and the Missouri Conservation Commission. The Conservation Commission contends Amendment Two "threatens the traditional authority of the Commission to make wildlife and forestry regulations based on scientific data" and that the amendment "is in direct opposition to what the citizens of Missouri intended when they created the non-political system of wildlife and forestry management back in 1936."

189. MO. CONST. art. XII, § 2(b) directs that "[i]f possible, each proposed amendment shall be published once a week for two consecutive weeks in two newspapers of different political faith in each county, the last publication to be not more than thirty nor less than fifteen days next preceding the election." See also MO. REV. STAT. § 125.010 (1978) (Secretary of State to designate newspapers).

190. See note 188 *supra*.

191. This concerned the fuel tax increase proposal on the 1982 general election ballot. The Secretary of State referred to the proposal as a "gas tax" increase. Missouri voters may have erroneously believed that the tax increase would affect only gasoline, excluding other energy sources, such as diesel and propane. Those voters may have read the summary, but not the complete text of the proposal that had appeared in the same newspaper one week earlier. The full text detailed the proposition as a motor fuel tax increase. If the same information were sent to voters in pamphlet form, they would be less likely to be misled.

192. In one survey, voters listed television as the last choice for an information source on ballot proposals. See Bone & Benedict, *supra* note 2, at 339.

when they are presented. As one voter commented in the survey, "[I]nformation can usually be obtained, but we as voters have to work to get it. Our own time constraints often may not permit this."¹⁹³

Information dissemination is not the only area needing improvement. Many initiatives are drafted poorly. Colorado has attempted to remedy this by requiring that the original drafts of all initiative petitions proposing laws or amendments to the state constitution be submitted for review by the directors of the legislative council and the legislative drafting offices.¹⁹⁴ Legal drafting experts are given two weeks to examine the proposals, find errors in format or content, and offer optional suggestions to proponents of the bill.¹⁹⁵ If proponents decide that the comments are constructive, they may amend the proposal, incorporate the comments, and resubmit the petition.¹⁹⁶

Poor drafting is a problem in Missouri as well. Opponents of Proposition D, a sales tax issue on the 1982 general election ballot, charged that the proposition contained a drafting error.¹⁹⁷ A procedure similar to the one employed in Colorado might have allowed early detection of the error.

Critics have suggested other remedies to the growth of the use of the initiative and referendum, including increasing the number of signatures necessary to put a measure on the ballot, or requiring more than a simple majority for passage.¹⁹⁸ Either suggestion would result in reduced proposal approval. The first suggestion is likely to attain widespread support if the growth of the Missouri initiative continues,¹⁹⁹ in light of the state's relaxed petition requirements. Opponents of increased use of the initiative and referendum claim that it would not be detrimental to increase the petition requirements. They argue that increasing the minimum signatures would reduce the number of proposals on the ballot to a manageable number of issues to be seriously considered by voters.²⁰⁰

Requiring more than a simple majority to pass a proposal only treats the symptoms. The growth of direct democracy represents a fundamental

193. See note 76 *supra*.

194. COLO. REV. STAT. § 1-40-101(1) (Supp. 1982). The statute also provides that "[n]o later than two weeks after the date of submission of the original draft, unless it is withdrawn by the proponents, the directors of the legislative council and the legislative drafting office shall render their comments to the proponents of the petition concerning the format or contents of the petition at a meeting open to the public." *Id.*

195. *Id.*

196. *Id.*

197. The error pertained to the distribution of the new tax money. A bill was proposed in the 1983 session of the Missouri House of Representatives to redraft the proposal. See S. 59, 82d Gen. Assembly, 1st Sess. (1983).

198. Snyder, *supra* note 31, at 452.

199. If the signature requirements are not linked to the number of issues that appear on the ballot, this measure may not be successful. See note 141 *supra*.

200. Grossman, *supra* note 27, at 83.

change in United States' civic tradition,²⁰¹ shifting the decision-making responsibilities from representatives to the public.²⁰² The democratic process has long functioned under the general assumption that a simple majority rules.²⁰³ Attempts to limit the number of proposals should be rejected. Rather, Missouri should opt for changes that allow voters to make educated, well-reasoned decisions.²⁰⁴

VII. CONCLUSION

Initiative and referendum use has grown phenomenally, and this growth has made it necessary to reevaluate the course of direct democracy. The proper role of the initiative and referendum is a complex issue. The advantages of the process revolve around the principle that people should take part directly in the formation of legislation. The disadvantages relate to the fear of voter apathy and misunderstanding. Voter information is the key.

Many states have changed their processes to help voters make informed decisions. The Missouri General Assembly should recognize that changes are needed to help voters decide the numerous and complex issues on the ballot. Legislation or constitutional amendments could provide for improved voter education, including voter information pamphlets and legislative drafting services. These measures would help preserve public confidence in the initiative and referendum and improve democratic participation.

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201. Snyder, *supra* note 31, at 429-37.

202. Note, *supra* note 8, at 939.

203. See MO. CONST. art. III, § 27. There are exceptions, however, when popular votes on taxation are involved. See *id.* art. X, § 11(c).

204. Initiative and referendum are becoming more popular, partly in response to dissatisfaction with government. The "solutions" to the increasing use of direct democracy are those that make government more responsive. Theoretically, the problem of an excessive number of issues should solve itself. As legislators perceive public willingness to resort to direct democracy, they should become more responsive, reducing the electorate's need to resolve problems through direct voting. See Bone, *supra* note 171, at 13. Nevertheless, requiring more than a simple majority to pass a proposal takes into consideration that voters often do not understand the voting issues. Only proposals clearly approved would become law. See Snyder, *supra* note 31, at 452.