

Initiative, Referendum, and Recall: The Process

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Initiative, referendum, and recall are a trio of methods often called direct democracy. They allow citizens to become directly involved in their government by drafting and voting on laws or by removing elected officials from office.

The **initiative** enables citizens to draft laws and constitutional amendments and place them on the ballot for a popular vote.

The **referendum** provides for a popular vote on laws passed by the legislature.

The **recall** allows citizens to remove elected officials from office.

The initiative process is the most commonly used form of direct democracy. The first state to adopt it was South Dakota in 1898. Today, 24 states have the initiative. The most recent to amend its constitution and add the initiative was Mississippi in 1992.

There are two types of initiatives: direct and indirect. In the direct process, proposals that qualify go directly to the ballot for a popular vote. In the indirect process, proposals go first to the legislature, which has an opportunity to act on the proposed legislation. If the legislature rejects it or takes no action, the proposal then goes on the ballot. Fourteen states have only the direct initiative process, five have only the indirect, and five have both.

There are also two types of referenda: the legislative and the popular. The legislative referendum is not a part of direct democracy. Rather, it is a process by which the legislature can place a measure it has passed on the ballot for popular approval. The popular referendum, however, falls under the umbrella of direct

democracy. In the 24 states that have the popular referendum, citizens have the right to place measures passed by the legislature on the ballot for a popular vote.

An example of a popular referendum is Question 4, which appeared on the 1998 statewide ballot in Massachusetts. In 1997, the Massachusetts General Court passed a law deregulating the state's electric utility industry. Citizens who opposed this new law gathered enough signatures to have the law placed on the ballot. Sixty-five percent of the voters in Massachusetts voted to retain the law. If they had voted "no," the law would have been repealed.

The third form of direct democracy, the recall, is less often used. Alaska, Arizona, California, Colorado, Georgia, Idaho, Kansas, Louisiana, Michigan, Minnesota, Montana, Nevada, New Jersey, North Dakota, Oregon, Rhode Island, Washington, and Wisconsin have recall provisions. Virginia has a form of the recall process that allows a recall trial rather than an election. Recalls are rarely attempted at the state level, and successful attempts are even more rare.

Although the steps for using the initiative, referendum, and recall differ from state to state, they all share some common characteristics. Generally, the first step is to file a preliminary proposal with a state official (usually the secretary of state). What happens next varies greatly. Many states require a review to ensure that the provision conforms with statutory requirements, preparation of a ballot title, and an impartial summary of the proposal. At this point in the process, some states offer assistance and advice from the attorney general or legislative council in drafting the final language of a proposal; others leave it up to the proponents.

After those requirements have been met, the next step is circulating petitions for signatures of registered voters. The number of signatures required is usually based on a percentage of the votes cast for a statewide office (usually governor) in the preceding election. Some states also have a geographic distribution requirement for signature gathering. For example, Wyoming requires a total number of signatures equal to 15 percent of the votes cast in the last general election. Those signatures must be geographically distributed so they represent at least 15 percent of the qualified voters in at least two-thirds of the state's 23 counties. Generally, a recall petition requires more signatures than initiative and referendum petitions, and constitutional initiatives often require more signatures than statutory initiatives. Most states limit the time allowed for gathering signatures: In Massachusetts, it is 64 days, while it is four years in Florida. A few states allow petitions to be circulated for unlimited periods of time.

Signed petitions are then presented to the designated state official, who is responsible for determining whether the required number of signatures from

registered voters has been collected. Some states actually count signatures and compare them to signatures on voter registration rolls. Other states conduct a random sampling and use a formula to determine whether enough valid signatures have been gathered. Petitions with sufficient signatures are certified for the ballot.

At this point, petitions for direct initiatives, popular referenda, and recalls are placed on the ballot. Most states allow measures only on the general election ballot in even-numbered years, but there are exceptions. Most states also require a simple majority to pass an initiative or referendum or to recall an elected official. Exceptions include Nebraska, Massachusetts, and Mississippi. Those states require a majority, provided the votes cast on the initiative equal a percentage of the total votes cast in the election (35 percent in Nebraska, 30 percent in Massachusetts, and 40 percent in Mississippi). Wyoming requires "an amount in excess of 50 percent of those voting in the preceding general election." In Nevada, an initiated constitutional amendment must receive a majority vote in two successive general elections.

The Initiative Process

Perceived Positive Aspects

The initiative provides a way of enacting reforms the legislature is unwilling or unable to act on (campaign finance reform, medical marijuana, and term limits, for example).

The existence of the initiative process can increase the responsiveness of the legislature - it improves legislators' performance and accountability.

Having a controversial initiative on the ballot can increase voter turnout.

Initiatives may increase citizen interest in state issues and encourage participation in the political process.

Perceived Negative Aspects

Initiatives lack flexibility - once a measure is drafted and approved for circulation, it cannot be amended until after it is adopted (and in some states, the legislature's ability to amend laws passed by initiative is severely limited).

The initiative process lacks the benefits of the legislative process: debate, compromise, and analysis of effect on other areas of state policy, hearings, public input, and amendment.

Initiative elections are vulnerable to manipulation by special interests - high spending campaigns, media advertising blitzes, and simplistic, inaccurate arguments have become common.