

Florida's Constitutional Ballot Initiatives: Is This Any Way To Run Government?

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Douglas S. Bailey

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Executive Summary

- Florida's citizen initiative process often sacrifices public interest as well as the sanctity and supremacy of our state's constitution to special interests and the ever-changing winds of popular opinion. The constitution is the people's document and our access to it should not be impeded. However, it cannot be altered to the point that government does not function properly.
- Floridians have used the popular initiative to amend the constitution 16 times since the inception of the process in 1968. The state constitution should be brief and limited to fundamental rights, free of legislative matters such as marine fishing net bans, the creation of a high-speed rail system, the reduction of class sizes, prohibitions and limitations on taxes, and protection for pregnant pigs.
- There is too much money and special-interest group influence in the state's initiative process. Voters are often uninformed and, as a result, unable to make responsible decisions at the voting booth. Minority rights are at risk, and harmful fiscal and social implications are often left unexamined.
- Amending the constitution to address the problems with the current initiative process will be a politically challenging endeavor. Floridians indicate no willingness to ratify measures sponsored by the legislature that would further restrict citizens' access to the constitution. Reforms proposed by the legislature that are aimed at increasing petition requirements or at raising the bar for ratification will only fuel the claims that elected governments are elite, self-serving, and undemocratic assemblies.
- Initiative reform aimed at creating a more responsible process and protecting the integrity and supremacy of the constitution while maintaining the citizens' access to the constitution, may seem more sensible to voters.
- The Florida legislature should consider proposing a constitutional amendment requiring a popular initiative to pass two subsequent general elections before becoming enacted. If an amendment is approved once, the Division of Elections would publish and resubmit the question to the voters at the next succeeding general election in the same manner in which the question was originally submitted.

- The citizens of Nevada overwhelmingly adopted a two-election initiative process in 1958. Since then, the Nevada Constitution has been amended through the popular initiative process eight times. In three separate cases, a ballot initiative passed its first general election and then was defeated two years later during its second general election.
- A two-election initiative process in Florida would allow for a more deliberative and thoughtful analysis of the fiscal and social implications of a proposed constitutional amendment. The voters would not be forced to make policy decisions based on sound bites, interest group or elite endorsements, and slick 30-second commercials. Instead, the interim period between the two elections would allow for legislative preemption, agency implementation and fiscal analysis, and thoughtful debate and reflection. As the potential impact of proposed amendments become apparent to the voters, fewer constitutionally irrelevant issues will meet voter approval, thus making the constitution more sacrosanct and more difficult to amend.
- A two-election system would slow the process, thus lessening the influence of high-financed or popular special interest groups, protecting the interest of minority groups, and eliminating the need for hypothetical considerations during debate. As a result, Florida voters would be better prepared and would make more informed decisions on election day.
- While maintaining the people's access to the constitution, a two-election system would address the principles of our nation's founders, who expressed trepidation over the dangers of direct democracy. American Federalists James Madison, John Jay, and Alexander Hamilton recognized that majority rule did not constitute the most meaningful expression of sovereignty. Instead, dangers associated with heat-of-the-moment popular movements would be checked by exhaustive, deliberative, and careful consideration of policy matters by elected individuals. A two-election popular initiative system would help transfer the wisdom of the Founding Fathers to the process for amending the constitution.

I. A Populist Movement

Although the initiative process in Florida is a young and relatively new phenomenon, direct-democratic reform efforts can be traced back in the state's history to the mid-19th century. Populist reform was embodied by Jacksonville attorney Wilkinson Call, who had served as an adjutant general to the Confederate Army during the Civil War, a career decision that kept him from assuming the seat in the U.S. Senate that he won in December of 1865.

As a Populist, Democrat Call employed political rhetoric supporting a more pure form of democracy in the United States. In 1878 he was selected as a member of the Democratic National Executive Committee and was again elected to the Senate in 1879, (when he was allowed to serve), he was subsequently re-elected in 1885 and 1891.¹ Upon his retirement from the Senate in 1897, Call continued to work as a champion for a popular initiative process in Florida, and today is known as Florida's leading initiative and referendum backer of the Progressive Era.²

The closest Florida came to establishing a statewide initiative process was in a 1912 Florida Senate bill that was passed just one and a half years after Call's death. The Florida Senate's attempt to institute popular initiatives in the state's constitution met heavy criticism and opposition from both sides of the initiative argument. Populists and Progressives argued, most effectively, that the measure was restrictive and would have rendered nearly impossible any effort to put an initiative on the ballot. The Senate quickly rescinded the bill; 60 years would pass before direct-democracy reform would experience any success in Florida.³

II. Florida's Progressive Revolution

During the 1950s and the late 1960s, the Florida legislature deadlocked in repeated attempts to reapportion the state. Florida had already become a modern urban state, but it still had a 'horse and buggy' government.⁴ The population had reached nearly five million, but legislators were still being selected from large, multimember county-based districts, which limited the voting power of minorities, and were unresponsive to urban needs, specifically in the rapidly developing central and south Florida regions.

The progressive movement continued to pick up momentum as the state's population center shifted, and as its traditional rural southern heritage became less important.⁵ In an attempt to protect southern values or traditions from those who sought to build a new Florida, rural legislators formed the Pork Chop Gang and took a "blood oath" to stick together, which it fulfilled on all legislation, especially

reapportionment.⁶

The reapportionment battle continued well into the middle 1960s, finally requiring action by the federal government and the federal courts to solve Florida's reapportionment dilemma. By the end of the 1960s, the political stranglehold of north Florida was broken and power shifted to the high-growth population centers of central and south Florida.

Progressive members of the state legislature decided it was time to alter the way Florida's Constitution allowed the state to operate. Specific attention was focused on government accountability and citizens' roles in amending the constitution. The stage was set for another attempt to introduce the popular initiative.

The progressive theory of constitutional initiative reform was based on the assumption that legislative gridlock was a result of corruption in government and unresponsiveness of legislators. Contemporary Progressives supported the Federalist ideal of a representative democracy, but they also believed a representative democracy could be held even more accountable if it existed simultaneously with some form of direct democracy. The Populist movement was based on an entrenched confidence in a "pure" form of democracy that would leave citizens less dependent on vulnerable or influential elected representatives.

The trend towards citizen initiatives in the mid to late 1960s in Florida is described by former Governor Reubin Askew to have had elements of both Populist theories and Progressive theories. "Popular initiatives were needed because of our inability to go around the legislative majority and due to the inflexibility of the state's constitution," said Askew. "A citizen initiative would prevent [Florida] from ever getting deadlocked again by a recalcitrant legislature that wouldn't do [its] job,"⁷

The Florida legislature worked out the specifics of the popular initiative process in committee and in November of 1966, following a 20-day special session; the initiative amendment was adopted by the legislature and recommended to the Constitutional Revision Commission. According to Askew, the initiative amendment experienced little resistance in the revision commission because it was the result of an exhaustive legislative process. "I don't think it was really hotly debated before the revision commission," he reported.⁸

III. Reform Logic

Direct democracy, as it is embodied in Florida's popular initiative process, is dangerous and irresponsible. It often sacrifices public interest, as well as the sanctity and supremacy of our state's constitution, to the prevailing winds of public

opinion. There is too much money and interest group influence, voters are often uninformed and, as a result, are unable to make informed decisions at the voting booth. Minority rights are at risk, and too often fiscal and social implications go unexamined.

IV. Constitutional Supremacy

The constitution belongs to the people, who should not have their will to alter the document frustrated. However, the state constitution is the heart of the social contract and if it is to work properly, it cannot be altered to the point that government does not function properly.⁹

Constitutions historically are considered timeless documents that should be drafted in such a way as to need little modification. In an advisory opinion to the attorney general, one Florida Supreme Court justice wrote, “Recognizing the sovereignty of the people, I feel compelled to express my view that permanency and supremacy of the state constitution jurisprudence is jeopardized by the most recent proliferation of constitutional amendments.”¹⁰ Florida Supreme Court justices are powerless to address the social ramifications of mandating casino gambling, protecting pregnant pigs, class sizes, or smoking policies through the constitution.

Currently Florida is operating under its sixth constitution. The 1968 document has been amended 58 times during the last 34 years. By contrast, the United States Constitution has only been amended 27 times in more than 200 years; 10 of those amendments came in the form of the Bill of Rights in 1791.

There is common agreement among legal scholars that state constitutions should be brief and limited to fundamental rights, avoiding all legislative matters. Treating a subject in a state constitution, as opposed to codifying it in statutory law, places the matter beyond change by most lawmaking processes and at the highest level of legal authority of the state.¹¹ An overly permissive initiative process limits the ability of the legislature to address, or readdress, topics from year to year based on fluctuations in the state’s fiscal status or social barometer.

V. Monetary and Interest Group Influence

Perhaps the most ironic of all reform efforts are those made by groups interested in reducing the influence of money and special interests on the initiative process. The earliest Populist and Progressive movements made the same arguments against money and special interest, only then it was to reduce that influence on the

representative system of government. The proponents of direct democracy argued that, by empowering ordinary citizens to act as election-day legislators, citizens would approve ballot measures and reclaim the right of government by the people.¹² Allowing citizens to make direct policy decisions would break the political stranglehold of the wealthy, well-organized, and influential special interest groups. It has become quite clear during the past century that the process of direct democracy, or more specifically the popular ballot initiative, has been no more immune to the influence of money and special interest than has our representative style of government.¹³

In Florida, the arguments against the influence of special interests or money in the initiative process are even more interesting. The first initiative measure to make it onto a Florida ballot (and perhaps the issue that drove proponents of direct democracy to include an initiative process in the state's 1968 constitution) dealt with absolute and full public financial disclosure by state and county election officials and candidates. The Campaign Finance Reform Initiative came before the state's voters on November 2, 1976.

Former Governor Reubin Askew, author of Florida's Sunshine Amendment, decided to use direct democracy to enact campaign finance reform after years of what he describes as a failure of the state's legislature to act. In line with historical progressive arguments Askew help designed Florida's initiative process and then used it to circumvent a legislature that he believed was non-responsive to the public interest.

Askew's efforts in delivering Amendment One to the 1976 ballot were aimed at restoring higher levels of ethical standards in the state's campaign finance processes. The popular governor, through the normal legislative process, was successful in establishing the state's first ethics commission and the gift law requiring disclosure of gifts in excess of \$100 made to state lawmakers. Askew was not able however, after three legislative sessions, to bring about reform in campaign finance disclosure, so he turned to the untested initiative process.¹⁴

Acting as an average "citizen lawmaker," the powerful and respected governor set out to bring about change. "I was not an ordinary citizen," Askew said. "I was the governor, but I want to tell you [gathering signatures and passing an initiative] was an extremely difficult thing to have done".¹⁵ There were no signature gathering/consulting firms available to help, and special interest funds were nonexistent. Amendment One from 1976 may be the only example of Florida's initiative process working the way those who designed it intended it to work.

Florida's first initiative process had been designed to limit financial influence as had many initiative processes around the United States. In fact, of the 24 states that

permit the initiative process, no state currently limits the campaign contributions to or expenditures of ballot initiative campaigns, even though at one time or another roughly half of them had some sort of regulation limiting ballot campaign financing.¹⁶ In explaining the lack of restrictions limiting campaign expenditures on ballot initiatives, one must only consider the U.S. Supreme Court's unfavorable ruling on such restrictions.

The first case to deal directly with ballot initiative campaign finances was *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). In this case, the U.S. Supreme Court invalidated a Massachusetts law that banned corporate expenditures in ballot initiative campaigns. In this decision the Court referred to its prior decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), which ruled that campaign contributions and expenditures are a type of free speech and can be regulated only if such regulations support government efforts in halting corruption related to quid pro quos.¹⁷

Direct democracy via ballot initiative has had an antithetical effect on the U.S. political system with regard to lessening the influence of money and special interest. In fact, by allowing well financed, or well organized special interests to influence the opinions of voters, governments have removed the only check in the system that existed prior to an initiative process; that is, accountability of those responsible lawmakers come election day. Representative institutions—institutions accountable to the electorate—were designed by the Founding Fathers in such a way as to tame the passions of the moment and for the meticulous consideration of legislation from a variety of perspectives. Who is to be held accountable when well-financed, strategically marketed, political hot-topic initiatives become law?

VI. The Unprepared Voter

In 17th century America, groups of citizens practiced direct democracy by gathering in churches or town halls to vote on ordinances or agenda items. In an ideal world, the direct democracy process in the 21st century, though at a much larger scale, would be similar. Voters would research policy proposals, develop in-depth analyses of their social and fiscal impact, engage in exhaustive discussion and debate, and then turn out on Election Day to register their informed opinions. As the Founding Fathers recognized, however, ours is not an ideal world. Instead, citizens learn much of what they know about ballot measures from bumper stickers, sound bites, interest group or elite endorsements, and slick 30-second advertisements.¹⁸

The term “unprepared voter” does not suggest that citizen-voters lack

intelligence. Arthur Lupia offers the following definition of voter competence when considering the preparedness of American voters: “A voter’s choice is competent if it is the same choice that she would make given the most accurate available information about the consequences. Would she cast the same vote if fully informed about its consequences?”¹⁹ If the answer to Lupia’s question is yes, then the voter is considered competent or prepared.

The preparedness of Florida voters has endured testing with several complex and confusing ballot initiatives in the 30 years the process has existed in the state. This contention will be considered at greater length later with the consideration of the fiscal and social responsibility of direct democracy, but in measuring the competence levels of citizen voters in Florida one must only look back three years.

In November 2000, Florida voters were asked to consider the adoption of a constitutional amendment regarding the development of a statewide high-speed monorail system. To reduce traffic and increase travel alternatives, the amendment required that the state develop a high-speed monorail, fixed guide way, or magnetic-levitation system linking Florida’s five largest urban areas while providing for access to existing air and ground transportation facilities and services. The state and/or a state-authorized private entity would implement financing, acquire right-of-way, and design, construct, and operate the system. Finally, the amendment required that construction on the new rail system begin by November 1, 2003.

Nearly 5.5 million of Florida’s 8.7 million registered voters turned out to vote on the High Speed Rail Initiative. Fifty-three percent, (2.9 million), voted in favor of the constitutional amendment.²⁰ Eighteen percent of Florida’s 16 million residents turned out in November of 2000 and indicated based on “low-level information sources,” or on the opinions of “elite endorsements,” that a high speed rail mandated by a constitutional amendment costing taxpayers billions was a good idea.

Today, six months before the constitutionally mandated deadline for the rail construction to begin, Florida’s economy is down and the state cannot afford the project. In an October 13, 2000 press release from Associated Industries of Florida, Chief Executive Officer Jon L. Shebel is quoted as asking the questions, “What if the inevitable occurs and the November 1, 2003 deadline is missed? Will someone sue the state for violating the constitution? What if lawmakers can’t find the money? Will the Florida Supreme Court have to enter the construction business to fulfill the state’s constitutional duties?”²¹ These are all excellent questions, obviously not considered by Florida’s unprepared citizen-voters from the 2000 election.

VII. Minority Rights and Constitutional Initiatives

A third common criticism considered by initiative reformers is that the initiative process exposes minorities to severe rights violations. (In this section of the paper, minorities refers to any group of less than a majority of the population.) As discussed in the opening sections, the very definition of direct democracy describes a process of law-making by majority rule. A majority interest can propose, qualify, and pass legislation without any regard to the interests, preferences, or demands of others.²² Gerber defines “others” as either those important groups in society with substantial but not majority numbers, or those that consist of at-risk minority populations.

America’s Founders were especially cognizant of the risks direct democracy posed to minority groups, and they spoke and wrote at great length about the matter. James Madison reminded Americans about the dangers of a large pure-democracy and about the influence of the factional impulse. Madison warned of the potential for tyranny of the majority and made a case for a republican form of government designed to protect the interests and rights of minorities. “By a faction I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community,” Madison wrote in *The Federalist Papers*.²³ Even Thomas Jefferson, who supported more participatory forms of government, whose views aligned with the populists or antifederalist movement, never included in his proposals such large-scale application of direct legislation.

Today, more than ever before, statewide ballot initiatives are used to consider social and moral issues. During the past five years, initiatives have included topics such as immigration reform, affirmative action, gay and lesbian rights, and bilingual education. Because direct initiative processes involve decision making by simple majority, affected minorities have limited resources for protecting their interests from hostile majorities; their only options are to try to defeat the initiative or, if unsuccessful, to take their case to court.²⁴

In a representative government, minority groups are provided numerous opportunities to participate in deciding what policy prescriptions will be considered and how bills will be drafted. Also, minorities have numerous veto points at which they can protect their interests by blocking detrimental legislation.²⁵ Most importantly, in a representative system, minority leaders or legislators will have several opportunities to explain their interests to the constituents and to the media outlets in an attempt to influence public opinion. Reform efforts across the nation

have taken aim at protecting minority rights in the direct democracy process. Mandatory public hearings have been proposed, as have ideas of minority participation in initiative drafting or legal review.

VIII. Fiscal and Social Responsibility

Opponents of the initiative process are finding evidence in case studies and historical data to indicate popular initiatives are often fiscally irresponsible. With constitutional amendments either requiring or prohibiting specific policy programs, citizen lawmakers only serve to tie the hands of future government leaders or groups of citizens.

Use of initiative process to benefit groups with narrow interests only adds to the idea that initiative procedures promote social irresponsibility. Narrow-issue initiatives are those that seek to protect material rewards for select groups in society.²⁶ Restricting a worker's right to strike, riverboat casinos, liquor prohibitions, industry specific environmental regulations, tobacco taxes, and bullet trains are all examples of narrow-issue initiatives that stand to serve a special interest at the expense of the taxpayer or the state budget. Who is to be held accountable when the citizens affect public policy, and how can future governments respond to poor decisions?

There are several examples throughout the United States where direct-initiative decisions have had a negative impact on states' financial operations. Initiatives restricting state governments' policy options make sense to voters one year, but these initiatives could lead to the inability of a legislature to react to specific problems in future years. Amending the constitution to address specific policy issues erodes an elected government's ability to react to changing social and economic conditions.

IX. Initiative Reform Recommendation

It has been suggested that a direct-democracy process is one that serves to undermine the institution of representative government established more than 200 years ago by our Founding Fathers. The public interest is much better served by fair procedures that permit contentious matters to be hashed out face-to-face rather than by the imposition of the results of a plebiscite. That said, the direct initiative process exists in Florida and it is not going to go away. Since the inception of the citizen initiative in South Dakota more than 104 years ago, no state has ever removed such a process from its constitution.

Initiative reform movements have existed almost as long as the initiative processes itself. Initiative proponents however, have argued that reformers aim to make state processes overwhelmingly difficult in an attempt to discourage citizen initiative groups. Reform of initiative process by the erection of impossible barriers—especially by the legislature—only adds fuel to the populist’s and progressive’s claims that elected governments in America are elite, self-serving, and undemocratic assemblies responsive only to high-financed and well-organized special interests.

These opponents of initiative reform would only have to look to the 2003 Florida legislature to make their point (see Table 1). By the time this year’s legislators finish the regular session, no fewer than 14 resolutions and bills outlining numerous reform concepts will have been considered.

Table 1

SJR 318 – Statutory Initiative	HJR 345 – Ratification Threshold
SJR 464 – Fiscal Impact Statements	HJR 437 – Fiscal & Funding Implications
SJR 1172 – Ratification Threshold	HJR 1097 – Ratification Threshold
SB 1322 – Judicial Requirements	HJR 1109 – Ratification Threshold
SJR 1506 – Statutory Initiative	HJR 1119 – Statutory Initiative
SJR 1672 – Ratification Requirements	HB 1521 – Initiative Dates
SB 2644 – Petition Dates	PCB 11-03 – Ratification & Petition Threshold

Proposals that would change the initiative process will require a constitutional amendment approved by the electorate. Amending the constitution to alter the initiative process could appear to the voters as an attempt to make the process more difficult, thereby limiting citizen access to direct democracy. This could explain why attempts to change the process in the past by increasing qualifying signature requirements, extending deadlines, or by requiring supermajority approval consistently fail either in the state legislatures or on the ballots. Initiative reform aimed at creating a more responsible process and at protecting the integrity and supremacy of the constitution, while maintaining the citizens’ access to the constitution, may seem more sensible to voters.

To improve Florida’s initiative process, the legislature should consider proposing an amendment requiring the popular initiative to pass two subsequent general elections before becoming enacted.

X. A Two-Election System

In 1958, Nevada voters approved by a 61.9 majority, a constitutional amendment requiring that initiative constitutional amendments be approved by voters twice; that is, two successive elections, before taking effect.²⁷

Since the adoption of the two-election system in Nevada, 11 direct initiative constitutional amendments have been approved by the electorate in the first election (see Table 2). The voters in the subsequent general election approved eight of these amendment proposals. Nevada's constitution has been amended through the two-election direct initiative process eight times in 44 years.

Table 2

Repeal Lottery Prohibition	1968	Failed (57%)		
Limit Property Taxes	1978	Passed (78%)	1980	Failed (58%)
Taxes (Exempt Household Goods)	1980	Passed (77%)	1982	Passed (76%)
Taxes (Exempt Food Products)	1980	Passed (70%)	1982	Failed (59%)
Taxes (Limit Taxing Authority)	1984	Failed (52%)		
Taxes (Prohibit Personal Income Tax)	1988	Passed (82%)	1990	Passed (72%)
Campaign Finance Reform	1994	Passed (77%)	1996	Passed (70%)
Term Limits (State Offices)	1994	Passed (70%)	1996*	Passed (54%)
			1996**	Failed (60%)
Term Limits (US Congress)	1994	Passed (70%)	***	
Taxes (2/3 legislative, Maj. Refer.)	1994	Passed (78%)	1996	Passed (71%)
Informed Voter Law	1996	Passed (53%)	1996	Passed (57%)
Drug Policy Reform	1998	Passed (59%)	2000	Passed (59%)
Prohibition of Gay Marriage	2000	Passed (60%)	2002	Passed (67%)
Legalization of Marijuana	2002	Failed (61%)		

*** Between the 1994 and 1996 elections the Nevada Supreme Court separated judges from the executive and legislative term limit ballot based on a Separation of Powers argument.

*** Term Limits on the US Congress was determined to be unconstitutional by the US Supreme Court

*

Source: Nevada Division of Elections

Conversely, Florida's "hyperactive" constitution has been amended through its initiative system 16 times in 30 years (see Table 3). Nevada's more deliberative process has served to protect the consistency and supremacy of its constitution.

Table 3

1976 (% Unavailable)	Campaign Finance Reform
1986 (71%)	Lottery
1988 (64%)	English Official Language
1992 (54%)	Taxes (Limit Homestead Valuations)
1992 (77%)	Term Limits Legislature
1994 (72%)	Fishing Net Ban
1994 (58%)	Taxes (Government Revenue Limits)
1996 (57%)	Everglades Trust Fund
1996 (68%)	Environmental (Water Pollution Abatement in the Everglades)
1996 (69%)	Taxes (2/3 Vote for new constitutionally imposed taxes or fees)
2000 (53%)	High Speed Rail System
2002 (71%)	Smoke Free Work Place
2002 (59%)	Universal Pre-K Education
2002 (52%)	Class Size Reduction
2002 (55%)	Pregnant Pig Protection
2002 (61%)	State University Governing Board

Source: Florida Department of State

In Nevada, if an amendment is approved once, the state Division of Elections publishes and resubmits the question of approval or disapproval to a vote of the voters at the next succeeding general election in the same manner as the question was originally submitted. Under this proposal, the state has nearly two years to conduct an unbiased, more balanced analysis of the impact of an amendment eligible for second approval.

This cool-down period of cost and implementation analysis also allows for state legislators to address the issues once approved by the electorate. Nevada's state legislature has responded successfully to first election mandates twice.

A 1978 popular initiative would have limited all general (ad valorem) taxes levied on real property within the state for all public purposes to 1 percent. The initiative passed during the first general election with 78 percent of the popular vote. Understanding both the mandate of the people and the importance of the legislature's ability to control the state's tax code, the Nevada legislature completely overhauled the state's tax system prior to the initiative's 1980 general election ballot appearance. In this case the legislature was successful in accomplishing the peoples business—the ballot measure failed its second time up.

In 1980 another tax measure proposed by popular initiative passed overwhelmingly with 70 percent during its first ballot appearance. The interim legislature addressed the issue and in 1992 the same tax issue failed.

A two-election system, which includes voter education and governmental

accountability procedures and opportunities, would address all of the previously stated reform criteria on which direct-democracy processes should be based.

XI. Respect the Supremacy of the Constitution

Florida's constitution should be more difficult to amend, and changes should support the documents supremacy by defining basic legal parameters and basic legal rights. Providing citizens with an opportunity to affect change may be a desirable public policy; however, the constitution should not be too easily amended.²⁸ Currently Florida provides five methods for amending the constitution: proposal of the legislature, revision commission, popular initiative, constitutional convention, and through the taxation and budget reform commission.

Judge Thomas Barkdull stated before a public policy forum on the Florida constitutional issues in 1995 that based on the experience of other states, Florida may be on the "verge of getting into a position where every two years [voters] will have four or five petitions to consider." The judge went on to speculate that future constitution revision commissions may consider adopted measures "sacrosanct" and may be reluctant to revise the amendments because of perception that they are mandates from the people.

The first part of the judge's comments has been realized. Since 1995, Florida voters have had to consider an average of six constitutional amendments each election year. It is hard to imagine that any of these amendments, regardless of their impact on society, will be recommended for repeal by future amendments. Instead, state lawmakers will be held accountable for the policies' implementation and their impact on society.

Aside from the opinion of many in the legal community that the constitution is too often changed, there is a shared opinion that the constitution should be reserved for issues affecting basic and fundamental rights. While addressing the validity of a 2002 initiative petition aimed at protecting the rights of Florida's pregnant pigs, Florida Supreme Court Justice J. Pariente interjected this opinion about preserving constitutional supremacy, "[S]ome issues are better suited as legislatively enacted statutes than as constitutional amendments. It is my hope that the next Revision Commission will have the opportunity to establish some criteria regarding the subject matter of initiatives that will preserve the constitution as a document of fundamental laws, while still preserving the popular power of the people".²⁹

A two-election initiative process, as previously stated, will create a more responsible and informed electorate, and it would allow for the legislature to address some of the issues most important to Floridians. During impact analysis,

and as the potential fiscal and social impact of initiatives comes apparent to the voters, fewer constitutionally irrelevant issues will meet voter approval, thus making the constitution more sacrosanct and more difficult to amend.

XII. Maintain Freedom from Monetary and Interest Group Influence

One of the most interesting facets in the initiative reform debate is the evolution of special interest influence in the popular initiative process. The nation's earliest initiative proponents argued that representative government was failing because politicians were accountable only to high-financed special interest groups, and nonresponsive to their constituents' needs. Populists and Progressives saw direct democracy as a way to circumvent this spoiled process, and bring government back to the people.

It has been argued in this paper that the true effect of the popular initiative system in America, and in Florida, has served to empower these special interest groups, and remove all accountability from citizen-elected policymaking representatives. "Armed with political consultants, direct-mail firms, and paid signature gatherers, and waging exorbitant television campaigns, well-healed special interests manipulate the seemingly disinterested and uninformed voters. The absence of party identification, name recognition, and other common voting heuristics found in candidate elections is thought to further exasperate the influence of these moneyed interests".³⁰

A two-election system would lessen the influence of high-financed special interest by slowing the process down and by allowing the electorate the opportunity to take a more responsible look at an issue. A popular initiative that is put before the electorate twice would require considerable justification by the sponsor. No longer would an idea be able to rely solely on the influence of public opinion.

XIII. Promote the Conditions of Open and Thorough Debate

Early arguments for a representative style of government called for a system in which policy ideas are thoroughly debated, face-to-face, by enlightened decision makers. Florida's initiative process does not encourage open or thorough debate. It could be assumed that voters consider constitutional initiatives for the first time when they walk into the voting booth on Election Day.

If voters have considered specific policy options and initiative ramifications, their decisions on Election Day, more often than not, are based on an ideological alignment with newspaper editorial boards, or on 30-second ads they watched on

television or heard on the radio during the days and weeks leading up to the election.³¹ Conversely, voters who are afforded the opportunity to consider the costs and social impact of particular policy issues will ultimately make more competent and responsible decisions on Election Day.

The state's amendment analysis, and the legislative debate which would occur between the first and second elections, will provide the voters with a more conclusive understanding of how the initiative proposal could be implemented, what the proposal would cost, and what consequences could be experienced should the amendment initiative pass. The initial amendment impact statements provided by initiative sponsors will play to the integrity and forthrightness of the sponsors when balanced against state analyses. Sponsor intentions and policy analysis will alleviate the need for hypothetical considerations when initiatives are debated and discussed in the public arena. Florida voters will be better prepared and able to make more informed decision.

XIV. Protect the Interests of Minority Groups

Perhaps the most powerful argument against direct-democracy is the one made by early constitutionalists in which governments are warned about the passionate, heat-of-the-moment movements that tend to threaten the principles of enlightened decision making as well as the rights of minority groups. It has been discussed in this paper that the initiative process as it exists today serves to benefit moneyed special interests. Another argument against the citizen initiative contends that an impassioned Populist with an ax to grind could manipulate public opinion so as to gain support for the passage of an onerous law that could infringe upon the rights of minority communities.³²

By its very design, an initiative process ensures that concerns held by a minority will be subjected to the will of the majority.³³ By minority, reformers mean any group of Americans not large enough in population to amass the opposition required to kill an initiative. An impetuously designed initiative process that does not promote open and thorough debate makes it difficult for the voters to accurately access the many complex issues and the hidden consequences addressed through ballot measures.

In Florida, on average, 11 initiatives are being circulated at any one time; 10 measures are filed each election year.³⁴ Though ballot language is limited in length, Floridians are asked too frequently to make complex decisions that circumvent an exhaustive deliberation process.

A two-election initiative process would require the full disclosure of the

initiative sponsor's objectives and would be subjected to an analysis of its potential social impact. The two-election system would do more to protect minority groups against impassioned majority efforts.

XV. Respect the Fiscal Constraints That Exist

Several examples exist around the nation, as well as in Florida, where a constitutional initiative, regardless of the cost and impact on the state's budget, passed and became law. Initiatives mandating capital outlay projects and restricting class sizes are examples of issues that go straight to the pocketbook of state governments. The effects of such mandated expenditures could devastate a state's economy.

The complexities and ramifications of state budget expenditures are ones best left to an exhaustive committee process and a legislative debate. Citizen voters cannot be expected to understand the complexities of state finance laws or tax codes. The two-election system described will begin to address a need for a more fiscally responsible initiative process.

XVI. Conclusions

It has been argued that direct democracy contradicts the principles of representative government. Our nation's Founding Fathers considered—and rejected—direct democracy. They argued that public interest is the yardstick by which to measure policy, not public opinion. Public interest can best be discovered through a deliberative and thoughtful legislative process by informed and enlightened representatives.

Direct democracy has existed in Florida since 1968. The state's ballot initiative process provides its citizens a simple and direct method of amending the constitution. Florida's direct democracy process is too easy and, as a result, the interest in and the use of initiatives is on the rise.

There is no indication of public sentiment to deny citizens the right to propose initiatives no matter how irresponsible the current process might be. It is unlikely that the Florida electorate would vote to repeal current processes that provide direct access to the constitution. It seems more politically feasible however, that the electorate would consider initiative reform aimed at facilitating a more responsible process and at protecting the sanctity of the constitution.

There is too much money and interest group influence in Florida's current process, voters are often uninformed and, as a result, unable to make competent

decisions at the voting booth, minority rights are at risk, and too often fiscal and social implications go unchecked. It should be the objective of Florida initiative reformers to make the process a more responsible and accountable one.

The Florida legislature should propose a constitutional amendment that would create a two-election system for all direct amendment ballot initiatives. A two-election system, which includes voter education and government accountability procedures, would address the aforementioned criticisms of the state's initiative process, making Florida's citizen initiative more reflective of the long lasting public interest and less reactive to the public's transitory opinion.

Endnotes

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⁷ Reubin Askew, interview by Doug Bailey, Feb. 2002.

⁸ Ibid.

⁹ P.K. Jameson, M. Hosack, *Citizen Initiative in Florida: An Analysis of Florida's Constitutional Initiative Process, Issues, and Statutory Initiative Alternatives*, (Law dissertation, The Florida State University Law Library 1996).

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¹³ D. Smith, *Tax Crusaders and the Politics of Direct Democracy*, (New York: Routledge, 1998).

¹⁴ Ibid.

¹⁵ Reubin Askew interview.

¹⁶ J. S. Shockley, Testimony before the U.S. House of Representatives. In I.R.S. Administration of Tax Laws Related to Lobbying: Hearings Before a Subcommittee of the Committee on Government Operations, 95th Congress, 2nd Session, May and July 1978.

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- ²⁷ Initiative and Referendum Institution. [Online] Available: <http://www.iandrinstitute.org> (2001, February - March).
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- ³¹ *Dumber Than Chimps?*
- ³² Ibid.
- ³³ J. M. Turner, *The Anti-Federalists*. (Chapel Hill: University of North Carolina, 1961).
- ³⁴ Initiative and Referendum Institute. History of the Initiative in Colorado (Online). Available: <http://www.iandrinstitute.org/indepth/document6/history.htm> (2002, February).

Notes