Consensus Questions

2013 Initiative and Referendum Update

League of Women Voters of California adopted an update of the initiative and referendum process in California at its convention in May 2011.
Consensus Questions

2013 Initiative and Referendum Update

Preface
In considering these consensus questions, members are encouraged to refer two documents:


After a thorough review, the study committee determined that much of the current LWVC Initiative and Referendum position serves the League well and is still relevant. However, there are areas that the committee identified, after much research and discussion, as being in need of update, amendment, expansion, or possible deletion.

To aid members in evaluating the consensus questions, throughout this document text boxes contain the current LWVC positions on California’s Initiative and Referendum process. In these text boxes, the current position is formatted to show whether a position is proposed for update:

**Text box formatting:**

- **Bold-faced type:** Parts of the current position proposed for update are shown in bold-faced type.
- **Italic type:** Vertical positions (those which can be used at local levels) are set in boxes and shown in italic type, either bold-faced or not as appropriate.
- **Standard type:** Parts of the current position not proposed for update are shown in standard type and included in the document for context.

**Caveat**
Don’t worry about how something can be implemented—focus on what is good policy. Try to avoid letting today’s implementation obstacles stand in the way of supporting what you think is a good principle to apply.
Consensus Questions

For a quick icebreaker to take the “temperature of the room,” members should write down their answers to the first question. Then, repeat it at the end of the meeting as part of consensus.

1. Should California retain the citizens’ initiative and referendum process?

   Initiative:
   __ retain as is
   __ retain, but prefer with changes
   __ don’t retain
   __ No consensus

   Referendum:
   __ retain as is
   __ retain, but prefer with changes
   __ don’t retain
   __ No consensus

2. Our current position says: "Initiative sponsors should be required to submit draft proposals to an official authority for an opinion on clarity/language, constitutionality/legality, or single subject."
   a. Who should perform any pre-review? Mark all that would be acceptable.
      __ Legislature
      __ Judiciary
      __ Retired judges
      __ Bar Association appointed committee
      __ Independent citizens committee
      __ State agencies (e.g., Legislative Analyst’s office, Secretary of State)
      __ A combination or collaboration of the above
      __ Other: ____________________________
      __ No consensus

   b. Should the pre-review be voluntary or mandatory?
      (Our current position is that the pre-review should be mandatory.)
      __ Voluntary
      __ Preferred
      __ Mandatory
      __ No consensus

LWVC Current Position

Position in Brief: Support citizens’ right of direct legislation through the initiative and referendum process.

Current vertical positions shown in italics.

1. California should retain the referendum and direct initiative.

2. California should adopt an indirect initiative procedure, preferably as an optional alternative to the direct initiative.

3. Drafting
   a. Initiative sponsors should be required to submit draft proposals to an official authority for an opinion on clarity/language, constitutionality/legality, or single subject.
   b. Initiative proposals should be limited to a single subject and written in language that is precise, clear, and understandable.
   c. Initiatives dealing with timely subjects should include a “sunset clause,” providing for an automatic expiration of the measure.
c. What should be the result of the pre-review? *Mark all that apply.*
   __ Notification to proponents (not public)
   __ Public notice regarding result(s) of review
   __ Go/no-go decision on the initiative
   __ Other ______________________________
   __ No consensus

3. Title and Summary:
   Who or what office should be responsible for writing the ballot measure title and summary? *Mark all that are appropriate.*
   __ Attorney General
   __ Secretary of State
   __ Proponent(s) of initiative
   __ Legislative Analyst
   __ State Auditor
   __ Independent citizens committee
   __ A combination or collaboration of the above
   __ Other: ______________________________
   __ No consensus

4. Requirements to qualify:
The current LWVC position lists qualification requirements with a specific number of signatures and number of days allowed to gather signatures for each type of measure.
   a. Should a position with a specific percentage of signatures be retained?
      ___ Yes, retain a position with a specific number of signatures
      ___ No, do not retain a position with a specific number of signatures
      ___ No consensus

   b. If the requirement for a specific percentage of signatures is retained, should the requirement be:
      ___ About the same
      ___ Higher
      ___ Lower
      ___ No consensus

   1) direct initiative statute—valid signatures numbering 5 percent of the total vote for all candidates for governor in the last gubernatorial election, 150 days to collect signatures;
   2) direct initiative constitutional amendment—valid signatures numbering 8 percent of the total vote for all candidates for governor in the last gubernatorial election, 150 days to collect signatures;
   3) referendum on a legislative statute—valid signatures numbering 5 percent of the total vote for all candidates for governor in the last gubernatorial election, 90 days to collect signatures.

   b. The filing fee should reflect costs of processing initiative and referendum proposals.
   c. No requirement for geographic distribution should be imposed.
   d. Solicitation of signatures and campaign funds in the same mailing should be allowed.
c. Should a position with a specific number of days for gathering signatures be retained?
   ___ Yes, retain a position with a specific number of days for gathering signatures
   ___ No, do not retain a position with a specific number of days for gathering signatures
   ___ No consensus

d. If the requirement for a specific number of days for gathering signatures is retained, should the requirement be:
   ___ About the same
   ___ Higher
   ___ Lower
   ___ No consensus

5. Should the requirements required to get a measure on the ballot remain about the same, be made easier, or be made more difficult?
   ___ Made easier
   ___ Remain about the same
   ___ Made more difficult
   ___ Consider alternate methods
   ___ No consensus

6. Listed below in the following table are some ideas about potential changes to the process that have been proposed or adopted by other states. The list isn’t intended to limit the discussion but rather to guide the discussion around the process.

   To evaluate future reform measures for the citizens’ initiative and referendum processes in California, use the table to rate your opinion of the importance of the following proposals, from “mandatory” to “no consensus,” regardless of the signature gathering method used. In the far right columns, evaluate the reform measures as they relate to the signature gathering methods: paid signature gatherers, signatures gathered electronically, or volunteer signature gatherers. Mark all boxes that apply.
<table>
<thead>
<tr>
<th>Importance (select one)</th>
<th>Signature Gathering Methods (select all that apply)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandatory, but not mandatory</td>
<td>Paid Signature Gathering&lt;br&gt;Electronic Signature Gathering&lt;br&gt;Volunteer Signature Gathering</td>
</tr>
<tr>
<td>Would be nice</td>
<td></td>
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<tr>
<td>Not important</td>
<td></td>
</tr>
<tr>
<td>Work actively to avoid</td>
<td></td>
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<tr>
<td>No consensus</td>
<td></td>
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</tbody>
</table>

- **a.** Limits on number of words in the language of an initiative
- **b.** Require that language comply with standards of readability or simplicity
- **c.** Show that there is public support for the idea via a public poll or another trusted tool
- **d.** Specify the funding source for the program or plan in the initiative
- **e.** Limit the number of initiatives that can appear on a single ballot
- **f.** Include automatic sunset provision; e.g., automatic review after "x" number of years.
- **g.** Increase amount of time to circulate a petition
- **h.** Decrease amount of time to circulate a petition
- **i.** Allow use of internet and/or other technology for signature gathering
- **j.** Require registration of signature gatherers
- **k.** Require training for signature gatherers
- **l.** Other ____________________
7. Should California voters continue to have the right to amend their constitution through the citizens’ initiative process?
___ Yes
___ No
___ Yes, with changes; specify ___________________
___ No consensus

8. If amendments to the Constitution are allowed by citizens’ initiative:
   a. Should there be a higher standard for qualifying an initiative constitutional amendment than an initiative statute? (For example, there could be a requirement for more signatures, or a shorter time limit for an initiative constitutional amendment than for a statutory initiative.)
      ___ Yes, require higher standards for qualifying an initiative constitutional amendment
      ___ No, do not require higher standards for qualifying an initiative constitutional amendment
      ___ No consensus
   
   b. Should there be a higher standard than a simple majority at a single election needed to pass an initiative constitutional amendment than an initiative statute? (For example, a supermajority vote requirement or passage at multiple elections.)
      ___ Yes, require a higher standard than a simple majority for an initiative constitutional amendment
      ___ No, do not require a higher standard for passing a constitutional amendment
      ___ No consensus

9. Post-election conflicts: Currently if two or more conflicting measures on the same ballot all pass, the measure receiving the greatest number of votes is enacted. In such a case, should the provisions of all measures receiving fewer votes be allowed to be enacted insofar as they do not conflict with the measure receiving the most votes?
___ Yes
___ No
___ No consensus

6. Disclosure
   a. Sponsors of an initiative or referendum and organizations that form a committee to support or oppose a measure should be required to be listed by name in the ballot pamphlet, in mailings, and in advertisements.
   
   b. Principal contributors to an initiative or referendum campaign should be required to be listed by name in the ballot pamphlet, in mailings, and in advertisements.
   
   c. Initiative and referendum committees should be required to use names that reflect their true economic or special interest.

7. Election
   a. Voting on initiatives should take place at primary and general elections but not at special elections.
   
   b. An initiative statute or constitutional amendment, or a legislative statute appearing on the ballot as a referendum, should be approved by a simple majority of those voting on the measure to take effect.
10. The current LWVC position states that a measure that requires a supermajority vote for passage of future related issues should be required to receive the same supermajority vote approval for its passage.

In general, should an initiative which institutes new requirements for future initiatives (such as imposing new taxes) have to meet those same requirements in its own lifecycle?

___ Yes
___ No
___ Under some instances:
    ___ if the initiative places requirements on future tax increase initiatives
    ___ if the initiative requires a supermajority vote for certain future initiatives
    ___ if the initiative places requirements on (specify)
    _____________________
___ No consensus

11. Legislative amendments of initiatives that have been enacted:
   a. Should the Legislature have the authority to amend statutes approved by initiative without going back to a vote of the people?
      ___ Yes
      ___ No
      ___ Sometimes
      ___ No consensus

   b. If yes, should there be limitations on the Legislature’s authority? Mark all that apply:
      ___ After a waiting period
      ___ Only “in the spirit of” the original initiative
      ___ Require supermajority vote
      ___ Only as described in the language of the initiative (status quo)
      ___ Other __________
      ___ No consensus

7. Election, cont.
   c. An initiative statute or constitutional amendment that requires a supermajority vote for passage of future related issues should be required to receive the same supermajority vote approval for its passage.

   d. State initiative measures should apply to the entire state, not only to those political subdivisions in which they are approved.

   e. An initiative should not be allowed to provide for different outcomes depending upon the percentage of votes cast in its favor.

8. Post-Election
   a. Approval by the voters should be required for any changes made by the legislature in a statute adopted by initiative, unless the statute permits amendment without the approval of voters.

   b. Initiative proposals that do not win voter approval should be allowed to appear on subsequent ballots without restriction, if they again meet qualification requirements.
c. Should the Legislature have the authority to amend constitutional amendments approved by initiative without going back to a vote of the people?
   ___ Yes
   ___ No
   ___ Sometimes
   ___ No consensus

d. If yes, should there be limitations on the Legislature’s authority? *Mark all that apply:*
   ___ After a waiting period
   ___ Only “in the spirit of” the original initiative
   ___ Require supermajority vote
   ___ Only as described in the language of the initiative (status quo)
   ___ Other ______________
   ___ No consensus

PRINCIPLES
12. In evaluating proposed changes to the Initiative and Referendum process, what principles should apply considering the Stakeholders*?

   *Show continuum for each principle from “Critical” to “Unimportant.”*

Mark if the principle applies to the Initiative (I), the Referendum (R), or Both (B). In the last column, for all principles, rank them from 1-15, with 1 being the most important, and 15 being the least important.

*Stakeholders:* Voters, Proponents, Opponents, Legislature, Legislative Counsel, Legislative Analyst, Secretary of State, County Election Officials

Legend for Initiative & Referendum Process Stage: Drafting (D), Qualification (Q), Campaign (C), Disclosure (DI), Election (E), Post-Election (PE), Legal (L)
<table>
<thead>
<tr>
<th>Principle</th>
<th>Definition</th>
<th>Critical</th>
<th>Important</th>
<th>Somewhat Important</th>
<th>Unimportant</th>
<th>No consensus</th>
<th>Applicable to which stages of the I&amp;R process (see legend)</th>
<th>Applicable to Initiative (I), Referendum (R) or Both (B)</th>
<th>Rank (1-15)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Accessibility</td>
<td>Open to input from all stakeholders</td>
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<td>2. Accountability</td>
<td>The stakeholders are held to California laws with use of adequate and timely enforcement</td>
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<td>3. Amendability</td>
<td>The process should be subject to change with some level of stakeholder approval</td>
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<td>4. Authenticity</td>
<td>The process represents all stakeholders’ interests</td>
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<td>5. Comprehensibility</td>
<td>Understandable by all stakeholders</td>
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<td>6. Availability of compromise at some point or points in process</td>
<td>Stakeholders have opportunities to deliberate and compromise before an measure reaches the ballot</td>
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<td>7. Concentration of power (avoid)</td>
<td>No single stakeholder or group of stakeholders can dominate the process</td>
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<td>8. Deliberation</td>
<td>Adequate time for deliberation, including consideration of input from stakeholders</td>
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<tr>
<td>Principle</td>
<td>Definition</td>
<td>Critical</td>
<td>Important</td>
<td>Somewhat important</td>
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<td>Applicable to which stages of the I&amp;R process (see legend)</td>
<td>Applicable to Initiative (I), Referendum (R) or Both (B)</td>
<td>Rank (1-15)</td>
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<td>9. Expertise</td>
<td>Deference among stakeholders is given to subject matter experts</td>
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<td>10. Flexibility</td>
<td>Ability to adapt to differing circumstances</td>
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<td>11. Impartiality</td>
<td>Not partial or biased toward any position on a measure</td>
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<td>12. Integrity</td>
<td>Stakeholders and the public believe the system works, and is sound</td>
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<td>13. Respect for</td>
<td>A majority is not able to restrict the rights of any stakeholder</td>
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<td>stakeholder rights</td>
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<td>14. Transparency</td>
<td>Timely information about all aspects of the process are publicly available and searchable</td>
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<td>15. Other</td>
<td>Specify principle plus short definition</td>
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LAST TWO QUESTIONS

13. Please list any changes in the initiative and referendum process in California that you would support that have not been covered by the consensus questions.
_______________________________

14. Should California retain the citizens’ initiative and referendum process?
   Initiative:
   __ retain as is
   __ retain, but prefer with changes
   __ don’t retain
   __ No consensus

   Referendum:
   __ retain as is
   __ retain, but prefer with changes
   __ don’t retain
   __ No consensus

9. Legal Aspects

   a. The definition of “single subject” pertaining to initiatives should be redefined to ensure stricter interpretation and stricter enforcement.

   b. Constitutional challenges to voter-approved initiatives being reviewed in the state courts should be heard by a three-judge panel rather than a single judge.