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THE INITIATIVE, REFERENDUM, AND RECALL

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THE INITIATIVE, REFERENDUM, AND RECALL

The initiative, referendum, and recall, devices of direct popular rule which at one time were considered extremely radical, have come to be an accepted part of the political process in those states which have adopted provisions providing for their use.

Under the initiative and referendum, the people participate directly in the making of laws and constitutional amendments. The provisions in the states relating to them are alike in fundamentals but vary materially in their detail and in the extent to which this detail is prescribed by constitutional restrictions or by legislation. The following analysis of the use of the initiative and referendum in the states is based largely upon the material prepared for the Missouri constitutional convention of 1943.[1]

The Initiative

Direct and indirect initiative.

The initiative is a device whereby a stated number of voters, by petition, may frame a measure -- an ordinary law or an amendment to the constitution -- and cause it to be submitted to a popular vote. It is of two types, direct and indirect.

The direct type places a proposed measure upon the ballot for submission to the electorate without legislative action. In the indirect type, the initiated measure goes to the legislature which must act upon it within a specified period. If it is passed unchanged and signed by the governor,

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[1]Missouri (State). State-Wide Committee for the Revision of the Missouri Constitution. Manual on the Amending Procedure and the Initiative and Referendum for the Missouri Constitutional Convention of 1943. Paul G. Steinbicker and Martin L. Faust. Columbia, September 1943. pp. 24-35.

it becomes law forthwith, unless a referendum is held. If amended or if not acted upon within the specified period, it must be submitted to the electorate for their "yes" or "no" vote.

There is no uniform type of the initiative among the nineteen states which have adopted it. Each state presents its own peculiarities. (See summary in Appendix I for details). For ordinary legislation, eleven states[2] have only the direct initiative; six states[3] have only the indirect initiative; while two states, California and Washington, provide for both systems. In California, a measure may be initiated directly for submission to the voters by an eight per cent petition, but also may be initiated and sent to the legislature by a five percent petition. In the latter case, the measure must be passed or rejected as presented; and if rejected it goes to a popular vote, with power in the legislature to submit a competing or substitute proposal. In Washington, a measure initiated by petition goes to the legislature, providing the petition is submitted not less than ten days before the legislative session. If the petition is submitted not less than four months before an election, the measure goes directly to a popular vote at the election.

Constitutional Amendments.

Of the nineteen states, only thirteen[4] permit the use of the initiative for the amendment of the constitution, in eleven of which the constitutional initiative is direct, while in Massachusetts and Nevada the amend-

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[2]Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, Utah.

[3]Maine, Massachusetts, Michigan, Nevada, Ohio, South Dakota.

[4]Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon.

ment is first referred to the legislature for discussion and consideration. No state has both the direct and indirect constitutional initiative.

Number and geographical distribution of petitioners.

State constitutions vary considerably in providing procedural requirements for the use of the initiative. At one extreme may be found Idaho and Utah whose constitutions do not prescribe the percentage of voters required for the submission of an initiated law but leave this to the determination of the legislature. At the other extreme are such states as Massachusetts and Ohio whose constitutions contain detailed procedural requirements.

Appendix I indicates the number of petitioners required to propose a measure by the initiative, both statutory and constitutional. It may be noted that eight per cent is the more popular number, with a larger number necessary for the constitutional initiative. Some of the states, as Maine, Massachusetts, and North Dakota, require a specific number of petitioners rather than a percentage of voters. Washington combines these two methods by prescribing a certain percentage and also specifying that the total number of signatures required shall not exceed a designated number. In the states where percentages are required, some difference results through the basis taken for the percentage. Also, as the difficulty in qualifying a petition is greatly increased with an enlargement of the number of petitioners, a certain fixed percentage of the voters of the state is more difficult to obtain in a populous state than in a state which has a smaller population.

The requirement of a prescribed geographical distribution of petitioners is common among the nineteen states. This seems proper in order that petitions do not merely represent a single section of the state. However, difficulty may be encountered by a requirement such as that in Nebraska where the percentage for an initiative petition must be obtained from signers

so distributed as to include five per cent of the electors from each of at least two-fifths of the counties in the state.

Filing of petition.

Fifteen states[5] stipulate that the petition must be filled originally with the secretary of state. In Massachusetts, the petition must be filed originally with the attorney general for certification as to conformity with constitutional provisions regarding scope and subject matter. The petition is then filed with the secretary of state. The remaining three states, Idaho, South Dakota, and Utah, either make no provision on this matter or leave it to the discretion of the legislature.

Ten states[6] require that the petition be filed with the proper official not less than four months prior to the election at which the proposal is to be voted upon by the electorate. North Dakota stipulates ninety days, while Oklahoma, South Dakota and Utah allow the legislature to fix the period.

Inauguration and circulation of petition.

Most of the state constitutions contain no provisions or requirements as to the actual inauguration of an initiative petition, preparatory to its circulation for the securing of the requisite number of signatures. Arkansas explicitly forbids the enactment of laws passed to prohibit any person or persons from giving or receiving compensation for circulating petitions, or to prohibit the circulation of petitions, or in any manner interfering with the freedom of the people in procuring petitions. North Dakota pre-

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[5]Arizona, Arkansas, California, Colorado, Maine, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Washington.

[6]Arizona, Arkansas, California, Colorado, Michigan, Missouri, Montana, Nebraska, Oregon, Washington.

scribes that no law shall be enacted limiting the number of copies of a petition which may be circulated; nor any law prohibiting any person from giving or receiving compensation for circulating the petitions, nor in any manner interfering with the freedom of the people in securing signatures to petitions. Idaho, Oklahoma, South Dakota, and Utah merely provide that the legislature is to make suitable provisions for carrying into effect the initiative article of the constitution.

Only California and Massachusetts prescribe a requirement preliminary to the circulation of petitions for signatures. Under the California constitution, prior to the circulation of any initiative (or referendum) petition for signature, a draft of such petition must be submitted to the attorney general, with a written request that he prepare a title and a summary of the chief points and purposes of the proposed measure, not to exceed one hundred words in all. The persons presenting such a request to the attorney general are known as "proponents" of such proposed measure; moreover, the right to file the original petition, or any supplements thereto, is reserved to the proponents.

According to the Massachusetts constitution, an initiative petition must first be signed by ten voters and then submitted to the attorney general. If he certifies it to be in the proper form, and within the limitations prescribed as to scope and subject matter, the proposed petition may then be filed with the secretary of state. This latter official must then provide blanks for the use of subsequent signers. Each such blank is to have printed at the top a description of the proposed measure, as such description will appear on the ballot, together with the names and addresses of the first ten signers. Further, the petition must be supplemented by the signatures of 20,000 additional voters in order to be presented to the legislature. If

the legislature fails to act upon the measure before the first Wednesday of June, a majority of the first ten petitioners may make corrections in the proposed law, subject to the approval of the attorney general. An additional petition of 5,000 may require the submission of the measure to a popular vote. The steps upon an initiated constitutional amendment in Massachusetts are still more complex.

With respect to the circulation of petitions for signatures, all but five of the nineteen states concerned prescribe that, although the petition may be circulated on more than one sheet, copy or section, each such sheet, copy or section must set forth the full and correct text of the measure proposed. Arkansas prescribes that at least thirty days before the filing of the petitions the proposed measure shall have been published once, at the expense of the petitioners, in some paper of general circulation. Idaho, Maine, South Dakota, and Utah leave the manner of circulating petitions to the discretion of the legislature.

The Colorado provision respecting the requirements for circulators and signers of initiative petitions is sufficiently typical of the fifteen states specifying such requirements to merit quotation. Article V, Section 1 of the Colorado constitution reads:

> ...The petition shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the Secretary of State; such petition shall be signed by qualified electors in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some qualified elector, that each signature thereon is the signature of the person whose name it purports to be, and that to the best of the knowledge and belief of the affiant, each of the persons signing said petition was at the time of signing, a qualified elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are qualified electors....

The task of verifying the petitions as to sufficiency of signatures and conformity with other procedural requirements is usually entrusted to the secretary of state. In most of the states concerned, the petition must be sufficient and in proper form at the time of filing with this official, and if he should find it insufficient, except for the right of filing supplemental petitions the initiative would fail unless there is an appeal to the courts from his finding. However, Arkansas, North Dakota, and Ohio prescribe that if the secretary of state finds the petition insufficient upon his inspection, he must notify the sponsors and allow them thirty, twenty, or ten days, respectively, for "correction or amendment." These same three states provide, further, that the findings of the secretary of state as to the sufficiency of any petition are reviewable by the state supreme court and that, should the matter of sufficiency be under review at the time when the ballots are being prepared, the measure must be placed on the ballot. If, under such circumstances, the required majority of voters approve the measure, no subsequent decision as to the sufficiency of the petition can invalidate it.

Limitations on use of initiative.

Constitutional provisions contain a number of specific limitations upon the use of the initiative. As above mentioned, six states do not permit the popular initiative for constitutional amendments. Others allow its use for constitutional amendments in the same manner as for statutes. In eight states distinctions are made between the statutory and constitutional initiative. This is accomplished in Arizona, Arkansas, Nebraska, North Dakota, and Oklahoma by requiring a larger petition for constitutional amendments. In Michigan and Ohio the indirect initiative is provided for statutory measures while the direct initiative is the method of proposing consti-

tutional amendments, and a larger petition is required for the latter. Massachusetts not only provides for a larger petition but also for a much more complex procedure in the proposal of constitutional amendments than in the proposal of statutes.

A common limitation in the constitutions of the states is the exclusion from the operation of the initiative of all measures which carry appropriations for the current expenses of state government or for the maintenance of state institutions. The constitutions of Maine, Missouri, and South Dakota contain this restriction. The constitution of Montana also includes this restriction in addition to excluding constitutional amendments and local or special laws. Ohio prescribes that the initiative may not be used "to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property."[7]

The limitations in the Massachusetts constitution are the most numerous:

> No measure that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that makes a specific appropriation of money from the treasury of the commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the general court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.
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> Neither the eighteenth amendment of the constitution, as approved and ratified to take effect on the first day of October

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[7]Ohio Constitution. Art. II, sec. 1e.

in the year nineteen hundred and eighteen, nor this provision for its protection, shall be the subject of an initiative amendment.

No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition: The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

No part of the constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition; nor shall this section be the subject of such a petition.[8]

It might be noted that of the nineteen states authorizing the use of the initiative, eight[9] specifically provide that, subject to certain restrictions, the initiative, as well as the referendum, may be employed by local units of government, such as cities and towns, and in some cases, counties, on matters on which such local units are empowered, by constitutional and statutory provisions, to legislate.

Re-proposal of rejected measures.

Several states forbid the proposal by popular petition of a measure within a certain time after it has once been rejected. In Nebraska, the same measure may not be submitted oftener than once in three years. This state further prescribes that the constitutional limitations as to the scope and subject matter of statutes enacted by the legislature shall apply to those enacted by the initiative. In Oklahoma, a measure once rejected is not to be again submitted within three years by less than a twenty-five per

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[8]Massachusetts Constitution. Amendment 48, Part II, sec. 1.

[9]Arizona, Arkansas, California, Colorado, Nevada, Ohio, Oklahoma, Oregon.

cent petition. In Utah, "any desired legislation" may be originated by the initiative, but only "under such conditions and in such manner and within such time as may be provided by law."[10] The same is true in Idaho.[11]

Publicity on initiative measures.

A number of states make provisions for informing the general public concerning the nature of the initiative measure to be voted on. Most of these states have detailed statutory provisions governing this, rather than constitutional provisions. In a few states, publication of the text of the measure is required in newspapers scattered throughout the state while other states require "bulletins of information" or "publicity pamphlets" to be distributed to every registered voter in the state. These pamphlets usually contain the text of the measure with arguments for and against it prepared by its advocates and opponents.

The Referendum

Optional and compulsory referendum.

The referendum is a device to permit the people to accept or reject a statute or constitutional amendment proposed either by the legislative body or by the people. As in the case of the initiative, there is no uniform type of the referendum which has been adopted by all of the states. Likewise, there are two forms of the referendum, optional and compulsory.

Under the optional form of referendum, which is the more common type established by constitutional provision, measures are placed on the ballot by petition, while under the compulsory form certain types of measures must

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[10]Utah Constitution. Art. VI, sec. 1.

[11]Idaho Constitution. Art. III, sec. 1.

be referred to the people. In every state but Delaware, constitutional amendments are submitted to a popular vote.[12]

The constitutional provisions which authorize the use of the initiative also authorize the referendum. In addition to the nineteen states which have adopted the initiative for statutes, two states, Maryland and New Mexico, provide for the referendum of statutes. The provisions governing the referendum do not differ greatly from those governing the initiative, the important exception being that the percentage of signatures required for the referendum petition is frequently less. Likewise the procedure for its use differs from state to state in such matters as the basis upon which this percentage is calculated, the methods of verifying signatures to petitions, and the time and place of filing petitions.

The usual provision among the states for the completion of a referendum petition is that laws enacted by the legislature, and not excluded from the operation of the referendum, are not to take effect until a certain specified time after their adoption, or after the adjournment of the legislative session by which they were adopted. The referendum petition must then be filed, in proper form and with the required number of signatures, before the expiration of this period. The most common time limit is ninety days after the close of the legislative session at which the law in question was enacted. Eleven states[13] specify this time limit. Maryland designates a definite date, that of the first of June following the adjournment of the legislative

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[12]See manual on "Constitutional Amendment and Revision" prepared by the Legislative Reference Bureau for the Subcommittee on Legislative Powers and Functions, issued April 1948, p. 13.

[13]Arizona, Arkansas, California, Colorado, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, Washington.

session enacting the law. Massachusetts and Ohio prescribe the time at ninety days after adoption of the law, while Montana prescribes a period of six months after adjournment of the session. The remaining states specify no time limit, presumably leaving this to the discretion of the legislature.

The constitutions of six states[14] expressly authorize the use of the referendum at the option of the legislature. In such cases, effective date of the law or laws referred by the legislature are treated in the same manner as measures referred by petition.

In a majority of the states[15] with referendum provisions, the power of the people to approve or reject at the polls statutory measures passed by the legislative body of the state and referred as the result of petition may be exercised against an item or section of an act, as well as against the whole act.

Number and geographical distribution of petitioners.

Appendix II indicates the number of petitioners required to complete a referendum petition. It may be noted that the number required is less than that necessary for an initiative petition, the exception being found in Nevada where ten per cent is prescribed for both types of petitions. Those states which require a specific number of petitioners rather than a percentage of voters for the initiative also adopt this base for the referendum, with the requisite number being smaller. Other requirements as to geographical distribution of petitioners and the bases upon which the percentages of voters are taken are similar to those prescribed for the initiative petition.

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[14]Arizona, Colorado, Missouri, Montana, Oregon, Washington.

[15]Arizona, Arkansas, California, Colorado, Maryland, Michigan, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Washington.

Limitations on use of referendum.

The use of the referendum as a device of direct legislation is much more strictly circumscribed by limitations in the various state constitutions than is the use of the initiative. Exceptions are based upon the urgency or the necessity of certain types of legislation. For instance, most of the states exclude from the use of the referendum such laws as are necessary for the immediate preservation of the public peace, health or safety, and laws making appropriation for the current expenses of the state government and for the maintenance of public institutions. Laws for the support of the state government are excepted in six states.[16] Laws for the support of state institutions cannot be subjected to the referendum in six states,[17] and laws for the support of existing state institutions are excepted in three more states, Nebraska, South Dakota, and Washington. Exempted are laws for the support of public schools in Missouri and New Mexico, appropriation laws in Montana, general appropriation laws in New Mexico, appropriation laws to meet deficiencies in state funds in Michigan, and appropriation laws for departments of the state government in Colorado. Tax levies may not be subject to referendum in Ohio nor may laws for the payment of the public debt or interest thereon, or for the creation or funding of the same, in New Mexico. In Utah, any law passed by a two-thirds vote of the members elected to each house of the legislature may not be referred to the people by petition. Maine exempts from the operation of the referendum appropriations for the expenses of the legislature, appropriations for salaries fixed by law, and emergency measures. In Massachusetts, there is a detailed series of subjects upon

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[16]Arizona, Missouri, Nebraska, Ohio, South Dakota, Washington.

[17]Arizona, Colorado, Michigan, Missouri, New Mexico, Ohio.

which the referendum may not be used, encompassing measures relating to: "religion, religious practices or religious institutions; or to the appointment, qualifications, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city, or other political subdivision or to particular districts or localities of the commonwealth; or that appropriates money for the current or ordinary expense of the commonwealth or for any of its departments, boards, commissions or institutions." (Compare with restrictions on initiated measures, listed on page 8 above.)

Since emergency measures go into effect immediately after enactment and in many states are not subject to referendum, the power to determine which legislative acts are of an emergency character is an important one. The initial determination is commonly vested in the legislature itself, but may be subject to judicial review. Because of legislative abuses in the declaration of emergencies, constitutional provisions place certain definite limits in this matter. Ten states[18] prescribe that the existence of the emergency must be declared in the body of the act or in its preamble. Another common requirement is that emergency acts, or the section declaring the emergency, must be passed by an extraordinary majority in both houses of the legislature. In case of veto, repassage by a three-fourths vote in each house is required in Arkansas and Oklahoma. Arkansas, Maryland, Massachusetts, and North Dakota expressly permit the filing of a referendum petition against an emergency measure, but provide at the same time that any such law shall continue to be in operation pending the decision of the voters on it.

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[18]California, Maine, Massachusetts, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota.

Publicity on referred measures.

As in the case of the initiative, a number of the states[19] have provisions for the publication of official bulletins for dissemination of information upon measures referred to the voters. In some states, as California, it is required that these bulletins carry arguments both for and against the measures. The editing and distribution of these bulletins, in most of the states, is under the direction of the secretary of state, the cost being borne both by the state and those individuals or groups submitting arguments for or against the measures.

Matters Common to the Initiative and Referendum

For adoption of measures submitted to a popular vote, most of the state constitutions merely require a majority of those voting on it. New Mexico requires a majority equal to not less than forty per cent of the total number of votes cast at the election. In Nebraska there must be a majority of the votes cast on the measure and thirty-five per cent of the total vote cast at the election. The Massachusetts constitution contains the most detailed provisions with respect to this matter. An amendment to the constitution proposed by the legislature is adopted if approved by a majority of those voting thereon; in addition, an initiated amendment or a legislative substitute for such an amendment must be approved by at least thirty per cent of the voters at the election, as must also an initiated law. In the case of a legislative act referred on petition, it can be rejected only if the negative vote is thirty per cent or more of the total number of votes cast at the election.

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[19]Arizona, California, Massachusetts, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, Utah, Washington.

Measures voted upon through the use of the initiative or referendum and adopted by the required number of voters take effect immediately upon approval, upon declaration of the vote, or upon proclamation of the governor. With respect to the governor's veto power on measures adopted under initiative and referendum provisions, fourteen states[20] explicitly exempt such measures from the veto power, while the remaining states have no provisions on this matter.

In regard to the power of the legislature to repeal or amend legislative measures adopted under the initiative and referendum, only one state, Arizona, entirely forbids such subsequent action, while four states, Colorado, Massachusetts, New Mexico, and Oklahoma, expressly grant to the legislature full power to repeal or amend any legislative measure adopted by direct popular vote. California forbids legislative action with respect to measures originated by initiative petition but permits it with respect to measures approved after referendum petition. Three other states permit such legislative action, with limitations prescribed in the constitutions. Arkansas and North Dakota authorize it only if the amending or repealing act is approved by a two-thirds majority of all the members elected to each house of the legislature. Washington permits it only after an interval of two years has elapsed since the enactment of the measure by popular vote. The remaining states concerned have no constitutional provisions on this phase of the subject.

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[20]Arizona, Arkansas, California, Colorado, Massachusetts, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Washington.

The Recall

Though not to be considered as a mode of direct legislation, the recall is a device whereby the people, by petition, may order a special election to determine whether a certain official should continue in office or be immediately removed and superseded by a successor. The purpose of the recall is quite different from that of the initiative and referendum, its aim being to make officials more representative and responsive to the popular will by holding over them the constant threat of removal from office. The initiative and referendum, on the other hand, substitute direct government when representative government has failed to satisfy the popular demand.

Constitutional and statutory provisions of twelve states[21] have made the recall applicable to state officers, judges being specifically excluded in four of these states, Idaho, Louisiana, Michigan, and Washington. Other states provide for the use of the recall only in local government.

Practice varies among the states as to the procedure to be followed when a recall election is held. Generally, a recall petition may not be filed against an officer during the first six months of his term, but Wisconsin permits it only after the first year. For state legislators, a shorter period is designated, the usual provision being five days from the beginning of the legislative session after election.

The number of signatures required for the petition is generally high, ranging from ten per cent to thirty per cent of the total number of voters at the last election for the office for which the recall is sought. Three states, Michigan, North Dakota, and Wisconsin, use the previous vote cast

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[21]Arizona, California, Colorado, Idaho, Kansas, Louisiana, Michigan, Nevada, North Dakota, Oregon, Washington, Wisconsin.

for governor as the basis for the percentage of voters, while the vote for the justice of supreme court is used in Nevada and Oregon. (See Appendix III).

Most of the states provide that the petition, reciting the ground or grounds on which the recall is sought, must not exceed 200 words. Four states, California, Colorado, Nevada, and Oregon, expressly provide for the inclusion of the officer's justification of his course in office on the recall ballot.

The date usually designated for the holding of a special election to take place is within a period of from twenty to ninety days. The officer against whom the petition is filed may be given an opportunity to resign within a short period after the filing of the petition. In most of the states a recall election is held notwithstanding resignations.

Three forms of recall election are found used by the states:[22]

1. Under one plan, the incumbent becomes a candidate to succeed himself and competes with other nominees for the same office, essentially as in the original election. Under this plan the question of removal comes up before the voter indirectly. The voter is asked to express a choice between the incumbent and other candidates for the office. The candidate receiving the highest number of votes is declared elected for the remainder of the term. This type of recall election may be found in Arizona, Nevada, North Dakota, and Wisconsin.

2. Under another plan, as followed by California and Colorado, the voters first express themselves directly on the question of the recall of the official. On the same ballot they are allowed to cast a vote for a

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[22]Lien, Arnold J., and Fainsod, Merle. The American People and Their Government. New York, 1934. pp. 418-419.

successor should the decision of the electors be in favor of the recall.

3. Under a third plan, the election is concerned exclusively with the question of removal from office. If the voters approve a recall, a successor will be chosen at a later election or, in the case of Kansas, the vacancy is "filled as authorized by law." Louisiana also provides for this type of election.

The extension of the recall to include judges may be found in only eight states[23] which have made provision for the recall of public officers. Proposals to include the recall of judges have aroused much criticism. The gravity of the dispute is illustrated by President Taft's veto of the enabling act for the admission of Arizona into the Union in 1911 because of the provision in the Arizona constitution which provided for the judicial recall.[24] Arizona was admitted only after the constitution was modified to exempt the judiciary from the operation of the recall. Nevertheless, after admittance, Arizona amended her constitution to include the recall of judges (Art. VIII, 1, Sec. 1).[25]

The recall of judicial decisions, a plan whereby a majority of the electorate could set aside court decisions holding statutes unconstitutional, seems never to have been given very serious consideration elsewhere than in Colorado where a constitutional amendment was adopted in 1912 providing for

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[23]Arizona, California, Colorado, Kansas, Nevada, North Dakota, Oregon, Wisconsin.

[24]See manual on "State Judicial Systems" prepared by the Legislative Reference Bureau for the Subcommittee on Judicial Powers and Administration, issued February 1948, p. 26.

[25]Ibid.

this system.[26] According to this amendment, only the supreme court could declare laws unconstitutional. Whenever the supreme court should hold a law invalid, its decision could not take effect until sixty days had elapsed. In this period a petition might be circulated which, if signed by five per cent of the voters, would require that an election be held in ninety days to enable the voters to sustain or reverse the decision of the court. However, this amendment itself was declared unconstitutional by the Colorado Supreme Court in 1921,[27] and it has since disappeared as an issue.

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The initiative, referendum and recall, as devices of direct popular rule, do not constitute a panacea for all political ills. The impetus for the establishment of these devices appears to have been derived from a widespread impression that only through them could particular abuses in the political process be eradicated. Their most important contribution probably consists of the confidence it gives the public, since these instruments are available to restore popular control when such control is endangered. As one writer has phrased it: "Real popular control consists not in the people's passing upon every public question, but in their having power to pass upon every question upon which popular interest is sufficient to warrant such action."[28]

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[26]Lien, Arnold J., and Fainsod, Merle. Op. cit., p. 421.

[27]In People v. Western Union Telegraph Co. (1921) 70 Colo. 90, and People v. Max (1921) 70 Colo. 100.

[28]Dodd, W. F. "Some Considerations Upon the State-Wide Initiative and Referendum." Annals of the American Academy of Political and Social Science. September 1912. (Vol. 43) p. 215.

APPENDIX I

CONSTITUTIONAL PROVISIONS FOR STATUTORY AND CONSTITUTIONAL INITIATIVE

State	Citation	Petition Requirements					
		Statutory	Direct	Indirect	Constitutional	Direct	Indirect
Arizona	Art. 4, Pt. 1, secs. 1, 2, 4	10 per cent of qualified electors, based on vote for governor	X		15 per cent of qualified electors, based on vote for gov.	X	
Arkansas	Amdt. 7	8 per cent of legal voters with ½ signatures from at least 15 counties, based on vote for gov.	X		10 per cent of legal voters with ½ signatures from at least 15 counties, based on vote for gov.	X	
California	Art. 4, sec. 1	8 per cent of qualified electors, based on vote for gov. (direct); 5 per cent of qualified electors (indirect)	X	X	8 per cent of qualified electors, based on vote for gov.	X	
Colorado	Art. 5, sec. 1	8 per cent of legal voters, based on vote for secretary of state	X		8 per cent of legal voters, based on vote for secretary of state	X	
Idaho	Art. 3, sec. 1	As determined by legislature	X		None		
Maine	Amdt. 31	12,000 electors		X	None		
Massachusetts	Amdt. 48	10 qualified voters, then 20,000, plus 5,000 if amended by petitioners. Must be passed by a majority which equals 30 per cent of voters in last election		X	25,000 qualified voters. Must be passed by a majority which equals 30 per cent of voters in last election		X

CONSTITUTIONAL PROVISIONS FOR STATUTORY
AND CONSTITUTIONAL INITIATIVE (continued)

State	Citation	Petition Requirements					
		Statutory	Direct	Indirect	Constitutional	Direct	Indirect
Michigan	Art. 5, sec. 1	8 per cent of qualified and registered electors, based on vote for gov.		X	10 per cent of qualified and registered electors, based on vote for gov.	X	
Missouri	Art. 3, secs. 49-53	5 per cent of legal voters in each of 2/3 of congressional districts, based on vote for gov.	X		8 per cent of legal voters in each of 2/3 of congressional districts, based on vote for gov.	X	
Montana	Art. 5, sec. 1	8 per cent of legal voters in at least 2/5 of counties, based on vote for gov.	X		None		
Nebraska	Art. 3, secs. 1, 2, 4	7 per cent of qualified electors with 5 per cent in 2/5 of counties, based on vote for gov.	X		10 per cent of qualified electors with 5 per cent in 2/5 of counties, based on vote for gov.	X	
Nevada	Art. 19, sec. 3	10 per cent of qualified electors, based on vote for supreme court justice		X	10 per cent of qualified electors, based on vote for supreme court justice		X
North Dakota	Amdts. 15, 16, 26, 28	10,000 electors at large	X		20,000 electors at large	X	
Ohio	Art. 2, secs. 1, 1a-g	3 per cent of electors plus 3 per cent if legislature fails to act, based on vote for gov.		X	10 per cent of electors, based on vote for gov.	X	

CONSTITUTIONAL PROVISIONS FOR STATUTORY
AND CONSTITUTIONAL INITIATIVE (continued)

State	Citation	Petition Requirements					
		Statutory	Direct	Indirect	Constitutional	Direct	Indirect
Oklahoma	Art. 5, sec. 1-3; Art. 14, sec. 3	8 per cent of legal voters, based on vote for state office receiving highest number of votes	X		15 per cent of legal voters, based on vote for state office receiving highest number of votes	X	
Oregon	Art. 4, sec. 1	8 per cent of legal voters, based on vote for supreme court justice	X		8 per cent of legal voters, based on vote for supreme court justice	X	
South Dakota	Art. 3, sec. 1	5 per cent of qualified electors, based on vote for governor		X	None		
Utah	Art. 6, sec. 1	As determined by legislature	X		None		
Washington	Amdt. 7	10 per cent but in no case more than 50,000 of legal voters, based on vote for governor	X	X	None		

SUMMARY OF CONSTITUTIONAL INITIATIVE*

No. of States

Direct and indirect constitutional initiative

13 States provide for constitutional initiative:
Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon

11 States provide for direct constitutional initiative:
Arizona, Arkansas, California, Colorado, Michigan, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Oregon

SUMMARY OF CONSTITUTIONAL INITIATIVE (continued)

No. of States

2 States provide for indirect constitutional initiative:
Massachusetts, Nevada

Signatures and geographical districting

States which set percentage of signatures necessary to fill petition:

2 15 per cent: Arizona, Oklahoma

2 10 per cent: Michigan, Nevada

3 8 per cent: California, Colorado, Oregon

5 States require distribution of signatures by districts:
Arkansas, 10 per cent, with $\frac{1}{2}$ signatures from 15 counties; Massachusetts, 25,000, not more than one-fourth from any one county; Missouri, 8 per cent from two-thirds of the congressional districts; Nebraska, 10 per cent with 5 per cent from 2/5 of the counties; Ohio, 10 per cent with 5 per cent from $\frac{1}{2}$ of the counties

2 States set definite figures on necessary signatures:
Massachusetts, 25,000, not more than one-fourth from any one county; North Dakota, 20,000

Bases for signatures

6 States require number of signatures to be based on previous vote for governor:
Arizona, Arkansas, California, Michigan, Nebraska, Ohio

2 States require number of signatures to be based on previous vote for supreme court justice:
Nevada, Oregon

1 State requires number of signatures to be based on previous vote for secretary of state:
Colorado

1 State requires number of signatures to be based on state office which received highest vote at previous election:
Oklahoma

SUMMARY OF STATUTORY INITIATIVE*

19 States provide for statutory initiative:
Arizona, Arkansas, California, Colorado, Idaho, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington

6 States provide for statutory but not constitutional initiative:
Idaho, Maine, Montana, South Dakota, Utah, Washington

Direct and indirect statutory initiative

12 States provide for direct statutory initiative:
Arizona, Arkansas, California, Colorado, Idaho, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, Washington

SUMMARY OF STATUTORY INITIATIVE (continued)

No. of States	
9	States provide for indirect statutory initiative: California, Maine, Massachusetts, Michigan, Nevada, Ohio, South Dakota, Utah, Washington
2	States provide for both direct and indirect statutory initiative: California, Washington

Signatures and geographical districting

States which set percentage of signatures necessary to file petition:

3	10 per cent:	Arizona, Nevada, Washington (not more than 50,000)
5	8 per cent:	California (direct), Colorado, Michigan, Oklahoma, Oregon
2	5 per cent:	California (indirect), South Dakota
1	3 per cent:	Ohio (plus 3 per cent more if legislature fails to enact)

4 States require distribution of signatures by districts: Arkansas, 8 per cent with $\frac{1}{2}$ signatures from 15 counties; Missouri, 5 per cent from 2/3 of the congressional districts; Montana, 8 per cent from 2/5 of the counties; Nebraska, 7 per cent with 5 per cent in 2/5 of the counties.

4 States set definite figures on necessary signatures: Maine, 12,000; Massachusetts, 25,000; North Dakota, 10,000; Washington (not more than 50,000)

Bases for signatures

10	States require number of signatures to be based on previous vote for governor: Arizona, Arkansas, California, Michigan, Missouri, Montana, Nebraska, Ohio, South Dakota, Washington
1	State requires number of signatures to be based on previous vote for secretary of state: Colorado
2	States require number of signatures to be based on previous vote for supreme court justice: Nevada, Oregon
1	State requires number of signatures to be based on state office which received highest vote at previous election: Oklahoma
2	States whose legislatures determine procedural requirements: Idaho, Utah

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*Adapted from: Michigan, University of. Bureau of Government. "The Initiative and Referendum in Michigan." James K. Pollock. Ann Arbor, 1940. pp. 87-91; revised according to state constitutions.

APPENDIX II

CONSTITUTIONAL PROVISIONS FOR STATUTORY REFERENDUM

State	Citation	Petition Requirements
Arizona	Art. 4, pt. 1, sec. 1, 3, 4	5 per cent of qualified electors, based on vote for governor
Arkansas	Amendment 7	6 per cent of legal voters with $\frac{1}{2}$ signatures from at least 15 counties, based on vote for governor
California	Art. 4, secs. 1 1a, par. 1	5 per cent of qualified electors, based on vote for governor
Colorado	Art. 5, sec. 1	5 per cent of legal voters, based on vote for secretary of state
Idaho	Art. 3, sec. 1	As determined by legislature
Maine	Amendment 31	10,000 electors
Maryland	Art. 16	10,000 qualified electors with not more than $\frac{1}{2}$ from Baltimore or any one county
Massachusetts	Amendment 48	10 qualified voters first, then 15,000 qualified voters
Michigan	Art. 5, secs. 1, 38	5 per cent of qualified and registered electors, based on vote for governor
Missouri	Art. 3, secs. 49-53	5 per cent of legal voters in each of 2/3 of congressional districts, based on vote for governor
Montana	Art. 5, sec. 1	5 per cent of legal voters in at least 2/5 of the counties, based on vote for governor
Nebraska	Art. 3, secs. 1, 3, 4	5 per cent of qualified electors in 2/5 of the counties, based on vote for governor
Nevada	Art. 19, secs. 1-3	10 per cent of qualified electors, based on vote for supreme court justice
New Mexico	Art. 4, sec. 1	10 per cent of qualified electors in 3/4 of the counties. Petition with signatures of 25 per cent of qualified electorate will suspend operation of law until vote may be taken
North Dakota	Amendment 15,26	7,000 electors at large
Ohio	Art. 2, secs. 1, 1a-g	6 per cent of electors, based on vote for governor

CONSTITUTIONAL PROVISIONS FOR STATUTORY REFERENDUM (continued)

State	Citation	Petition Requirements
Oklahoma	Art. 5, secs. 1-4, 6-8	5 per cent of legal voters based on vote for state office receiving highest number of votes
Oregon	Art. 4, sec. 1	5 per cent of legal voters, based on vote for supreme court justice
South Dakota	Art. 3, sec. 1	5 per cent of qualified electors, based on vote for governor
Utah	Art. 6, sec. 1	As determined by legislature
Washington	Amendment 7	6 per cent but in no case more than 30,000 of legal voters, based on vote for governor

SUMMARY ON STATUTORY REFERENDUM*

No. of States

21 States provide for statutory referendum:
Arizona, Arkansas, California, Colorado, Idaho, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington

Signatures and geographical districting

States which set percentage of signatures necessary to demand a referendum:

1 10 per cent: Nevada
2 6 per cent: Ohio, Washington (not more than 30,000)
7 5 per cent: Arizona, California, Colorado, Michigan, Oklahoma, Oregon, South Dakota

5 States require distribution of signatures by districts:
Arkansas: 6 per cent with $\frac{1}{2}$ signatures from 15 counties
Missouri: 5 per cent with 2/3 of the congressional districts
Montana: 5 per cent from 2/5 of the counties
Nebraska: 5 per cent from 2/5 of the counties
New Mexico: 10 per cent from 3/4 of the counties

5 States set definite figures on necessary signatures:
Maine, 10,000; Maryland, 10,000 (not more than $\frac{1}{2}$ from Baltimore or any one county); Massachusetts, 15,000; North Dakota, 7,000; Washington (not more than 30,000)

SUMMARY ON STATUTORY REFERENDUM (continued)

No. of States	Bases for signatures
11	States base number of signatures on previous vote for governor: Arizona, Arkansas, California, Michigan, Missouri, Montana, Nebraska, New Mexico, Ohio, South Dakota, Washington
1	State bases number of signatures on vote for secretary of state: Colorado
2	States base number of signatures on vote for supreme court justice: Nevada, Oregon
1	State bases number of signatures on the state office which receives the highest vote at previous election: Oklahoma
2	States whose legislatures determine procedural requirements: Idaho, Utah

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Adapted from: Michigan, University of. Bureau of Government. "The Initiative and Referendum in Michigan." James K. Pollock. Ann Arbor, 1940. pp. 92-94; revised from state constitutions.

APPENDIX III

CONSTITUTIONAL PROVISIONS FOR THE RECALL OF PUBLIC STATE OFFICERS

State	Citation	To Whom Applicable	Petition Requirements
Arizona	Art. 8	Every public officer, elective or appointive	25 per cent of electors, based on vote cast at last preceding election for all candidates for office held by incumbent
California	Art. 23	Every elective officer	12 per cent of electors, based on vote cast at last preceding election for all candidates for office held by incumbent
Colorado	Art. 21	Every elective officer	25 per cent of electors, based on vote cast at last preceding election for all candidates for office held by incumbent
Idaho	Art. 6, sec. 6	Every public officer except judges	As provided by law
Kansas	Art. 4, secs. 3-5	Every public officer, elective or appointive	10 per cent of electors
Louisiana	Art. 9, sec. 9	Every public officer except judges	As provided by law
Michigan	Art. 3, sec. 8	Every elective officer except judges	25 per cent of electors, based on previous vote for governor
Nevada	Art. 2, sec. 9	Every public officer	25 per cent of electors, based on previous vote for justice of supreme court
North Dakota	Amdt. 33	Every elective officer	30 per cent of electors, based on previous vote for governor
Oregon	Art. 2, sec. 18	Every public officer	25 per cent of electors, based on previous vote for justice of supreme court
Washington	Amdt. 8	Every elective officer except judges	25 per cent of electors, based on vote cast at last preceding election for all candidates for office held by incumbent
Wisconsin	Art. 13, sec. 12	Every elective officer	25 per cent of electors, based on previous vote for governor

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*LH -- Library of Hawaii
LRB -- Legislative Reference Bureau
UH -- University of Hawaii