

Do Ballot Initiatives Undermine Democracy?

On May 16 the Cato Institute sponsored a Book Forum on initiative campaigns. The main speaker was Washington Post columnist David S. Broder, author of *Democracy Derailed: Initiative Campaigns and the Power of Money*. Commenting were M. Dane Waters, president of the Initiative & Referendum Institute, and William A. Niskanen, chairman of the Cato Institute.

David S. Broder: The initiative process came to the United States about 100 years ago, imported from Switzerland by populists and progressives worried about the influence of money on legislatures. The purpose was twofold: one, break the power of interest groups, and, two, empower people to write the laws themselves on the ballot.

The system worked pretty well for about 20 or 25 years; it produced a great deal of progressive legislation. Then, from World War I until the famous Proposition 13 in 1978, it was not a dominant form of lawmaking. Today, however, public suspicion of the legislatures is at least as strong as it was 100 years ago, and initiatives are being used increasingly by people and groups on all parts of the political spectrum.

In this day and age, initiatives are both more sweeping in their content and more numerous than they have been for a very long time. Arizona will vote on an initiative to both abolish the state income tax and require that the people vote on future substitute revenue measures that are passed by the Arizona legislature. California will vote on a voucher initiative for the second time. Colorado and a good many other states are likely to be voting on initiatives to close the gun show loophole.

We are beginning to see large numbers of initiatives that have very significant impact, both fiscal and in terms of social policy. Oregon had 65 initiatives being circulated for signatures this year. California on the March ballot had 20 statewide initiatives and referendums. The initiative process is wildly popular everywhere it exists—more than half of Americans now live in states where the initiative is part of the governing process. Why should this be a matter of concern beyond the places where the initiative process exists?

I wouldn't be surprised if we soon have at least one presidential candidate who calls for a constitutional amendment for a national bal-

lot initiative. Is such a thing possible? I think that, with the growing use of the Internet and the growing number of people who have computers in their homes, it is perfectly possible to imagine an electronic kind of initiative-referendum process. Ross Perot talked about electronic town meetings in his 1992 campaign, and that idea now seems practical. The question now is not, Is it practical for the American people to vote even from their homes on legislation? but, Is it desirable? Is there any philosophical reason to concern ourselves about this?

We are talking about a very large and money-driven process. In the 1998 election cycle I was able to verify at least \$250 million spent on initiatives at the state level. That is about \$100 million more than the taxpayers gave



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the three presidential candidates in 1996 to conduct their campaigns for the presidency.

The Founders were very clear about their objectives. They wanted a strong government. They had lived for a time under the Articles of Confederation, and they knew that a weak central government was ill suited even for the nation that we were at that moment in history. But they were also clear that they wanted a limited government, with checks and balances. They were more intent on protecting freedom than on ensuring efficiency in government. They wanted to be very sure that minority rights, including property rights, were protected. And they wanted to be very sure that, before a new statute was enacted, there was a genuine consensus in society that the law was needed.

Most of those checks and balances, except for the final step of judicial review, are missing from the initiative process. In the initia-

tive process there is no requirement that you consider the views of those who may disagree with you, so that simply never takes place.

Thus, a fundamental part of the legislative process, the accommodation of legitimate but differing needs, is lost in an initiative process. That is what I have found in my reporting. That is why I hope that, before we have a national debate, which I think we will have quite soon, about bringing the initiative process to the federal government, we really look and consider what the pluses and the minuses have been in the states' experience with the initiative process.

M. Dane Waters: The initiative and referendum have existed in some form in this country since the 1600s. Citizens of New England placed ordinances and other issues on the agenda for discussion and then a vote in town meetings. Thomas Jefferson first proposed a legislative referendum on the 1775 Virginia State Constitution. The first state to hold a statewide legislative referendum for its citizens to ratify its constitution was Massachusetts in 1778; New Hampshire followed in 1792. Today every state but Delaware requires a final vote of the people before its constitution can be amended.

The initiative movement was intended, not to change our system of government, but to enhance it. James Madison said it best in *Federalist 49*: "As the people are the only legitimate fountain of power, and it is from them that the Constitutional Charter under which the several branches of government hold their power is derived, it seems strictly consonant to the republican theory to recur to the same original authority whenever it may be necessary to enlarge, diminish, or new-model the powers of government."

The modern movement to use the initiative process can be said to have begun in 1978 in California with the passage of Proposition 13, which cut property taxes from about 2.5 percent of market value to just 1 percent. Within two years, 43 states had implemented some form of property tax limitation or relief, and 15 states had lowered their income tax rates. A new report from the National Taxpayers Union makes the case that the tax revolt that began with Proposition 13 in the 1970s would never have occurred without the initiative process.

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The initiative process is vital to reforming our country. But, because it is such an effective tool for curbing the power of government, it is under heavy attack from career politicians who would like to see it destroyed. As William Jennings Bryan said in 1920: “We have the initiative and referendum. Do not disturb them. If defects are discovered, correct them



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and perfect the machinery. Make it possible for the people to have what they want. We are the world’s teacher in democracy. The world looks to us for an example. We cannot ask others to trust the people unless we ourselves are willing to trust them.” That statement is as true today as it was 80 years ago.

Many people try to make the case that the initiative process in this country is unregulated and gives us laws without government. In fact, the initiative process in this country is one of the most regulated in the world. The government sets all the rules: it tells you if you can or can’t collect signatures on a specific issue, how many subjects the issue must be limited to, the size and font of the petition you circulate, how many signatures you must collect and from what areas, how long you have to collect signatures, and who can and can’t collect those signatures. Ultimately the government decides if you can actually get your issue on the ballot. Just yesterday, the secretary of state of Oregon threw out thousands of signatures because the petition was printed on glossy paper. Many of the concerns about initiatives seem unfounded, and so addressing them in turn seems unfounded as well.

Political scientists have found that, whereas 40 percent of all initiatives on the Califor-

nia ballot from 1986 to 1996 passed, only 14 percent of initiatives promoted by special interests passed.

Many people are predisposed to believe that money influences elections. But when it comes to initiative campaigns, the proof does not exist.

In an era of growing government, the people need a mechanism to check government. Many claim that the people already have that check—elections. But that is a fallacy. Most people who support the initiative process and who use the process use it as a tool for addressing single issues. They want for the most part to keep a particular elected official, and so voting that official out of office for failing to deal with one specific issue is considered an extreme step, far more extreme than allowing the people to make laws occasionally.

In 100 years the people have made approximately 800 laws using the initiative process. That is not many considering that an average legislature passes more than 1,000 laws a year. Representative government is not always representative. It is full of imperfections; legislatures pass bad laws and ignore important reforms. Representative government and the initiative process are perfect complements to each other—two imperfect systems of government each designed to help the people and both carefully constructed to balance the weaknesses of one with the strengths of the other.

William A. Niskanen: I was a member of the committee that drafted an initiative that is now a part of the California Constitution. The primary wordsmith on that committee is now Supreme Court Justice Anthony Kennedy. And I was chairman of the committee that drafted an initiative that is now part of the Michigan Constitution. In both of those cases, we held extensive hearings around the state and had a lot of interaction with different groups. Every bit as much deliberation went into the preparation of those initiatives as is characteristic of laws coming out of legislatures.

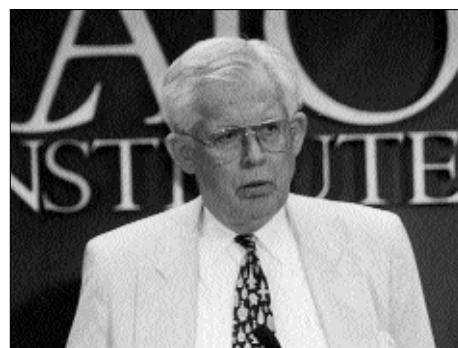
Although I do not support a general substitution of initiatives for the rules approved by legislatures, I support the selective use of initiatives to protect majorities against the coalitions of special interests that often dominate legislatures.

David Broder has written an interesting account of the early history of initiatives

and of some of the more important recent initiative campaigns. I respectfully disagree with him, however, on several issues.

First, the initiative process is best described as “one more check in our system of checks and balances,” not as a process that undermines the system. It is a limit on how far legislatures can go.

Second, most legislation involves some kind of vote trading or logrolling, within an individual bill or over time. Such vote trading is much easier within a legislature than in the general electorate. The current Senate bankruptcy bill, for example, is an important bill to pass, but it also includes a small business tax cut and an increase in the minimum wage. Those three elements are not related. There is no rule of germaneness in the Senate. It is vote trading that leads senators to package this particular set of measures together in one bill. Some of the effects of vote trading are clearly beneficial. Vote trading is the primary political process that protects minority interests against exploitation by the majority. Some of the effects of vote trading are clearly less desirable. Most of what we broadly regard as pork-barrel legislation is the result



William Niskanen: “Initiatives can protect majorities against the coalitions of special interests that often dominate legislatures.”

of packaging special-interest measures, none of which would command a majority on its own, in an omnibus bill with enough such measures to be approved by a majority. In either case, the evidence is quite clear that legislatures do not serve majorities very well.

Third, there is a lot of evidence that economic growth is a negative function of increases in government spending and taxes since the prior election. Now why isn’t the ballot box

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Dan Griswold and William H. Lash III, authors of a new Trade Briefing Paper on the WTO and U.S. sovereignty, discussed the WTO at a Cato conference last fall.

ed and denounced bank lending policies on the grounds that the bank was financing projects that led to ecological destruction, human rights violations, and forced resettlements. NGOs have since reversed their criticism of the bank's Global Environmental Facility as they have received dramatic increases in financial support from the bank.

◆Workers Should Own Retirement Funds

Social Security privatization would secure retirement benefits, according to the Cato Institute study "Property Rights: The Hidden Issue of Social Security Reform" (Social Security Paper no. 19). A Social Security system based on privatized individual accounts would provide workers with the benefits and safeguards of actual ownership not currently present in the government-run system, notes Charles E. Rounds Jr., a professor of law at Suffolk University in Boston. One of the most enduring myths of Social Security is that a worker has a legal right to his Social Security benefits, Rounds says. Rounds points out that two important Supreme Court cases, *Helvering v. Davis* and *Flemming v. Nestor*, hold that the payment of Social Security taxes conveys no property or contractual rights to Social Security benefits. As a result, says Rounds, a worker's retirement benefits depend entirely on the political decisions of the president and Congress.

◆Don't Just "Save" Social Security—Improve It

The drive to "save" Social Security obscures the more important goal of ensuring that Amer-

icans retire with enough money to live comfortably, writes Michael Tanner in a new Cato Institute study, "Saving' Social Security Is Not Enough" (Social Security Paper no. 20). "The current focus on saving Social Security is misguided," says Tanner, director of Cato's Project on Social Security Privatization. "Merely finding sufficient funding to preserve Social Security fails to address the serious shortcomings of the current system. The question should be not whether we can save Social Security but whether we

can provide the best possible retirement system for American workers. Workers should be allowed to take the money they are currently paying in Social Security taxes and redirect it to individually owned, privately invested accounts, similar to individual retirement accounts or 401(k) plans."

◆WTO Membership Is a Wise Exercise of U.S. Sovereignty, Not Its Surrender

If the World Trade Organization were in fact dictating the domestic laws and regulations of its members, it would indeed be a threat to U.S. sovereignty, but the WTO can do nothing of the kind, according to a new paper from the Cato Institute. In "WTO Report Card II: An Exercise or Surrender of U.S. Sovereignty?" (Trade Briefing Paper no. 9), William H. Lash III and Dan Griswold examine the rules and actions of the WTO and find that "membership in the WTO enhances the freedom and the prosperity of Americans without surrendering an inch of national sovereignty." The WTO wields no power of enforcement. It has no authority or power to levy fines, impose sanctions, change tariff rates, or modify domestic laws in any way to bring about compliance. The authors conclude: "Membership in the WTO is not a surrender of U.S. sovereignty but its wise exercise. The WTO encourages the United States to keep its own markets open for the benefit of U.S. consumers and import-using industries. WTO membership also promotes trade liberalization abroad, which opens markets and keeps them open for U.S. exporters." ■

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a sufficient protection against those effects? Because your vote for a candidate reflects a variety of concerns, and elected representatives don't have to serve the interest of the majority on any particular issue. Most candidates of the incumbent party benefit from generally good economic times whether or not their actions have had anything to do with the fact that economic conditions are healthy.

Second is that there is a very strong pro-incumbent bias in our electorate. People prefer continuity in the absence of scandal or really outrageous behavior. So the incumbent as candidate has a big advantage. Given that candidates of the incumbent party benefit from good times and have a strong advantage in the electorate, they can get away with a lot that has nothing to do with the interest of the majority.

So, since we vote on candidates as a package deal reflecting a variety of concerns, there isn't any inherent protection against behavior that does not serve the interest of the majority on particular concerns. An initiative is often the only way to offset this bias in favor of more expansive government.

Fourth, Broder seems concerned about the power of money in initiative campaigns, which is important. But he writes almost as if money had little influence in the outcomes of other political processes. Money is pervasive in our political system. In fact, the amount of money spent on initiative campaigns is a small fraction of the total amount spent on politics in any given election cycle. But where the money for initiative campaigns comes from and how it is spent are often more transparent and visible.

Fifth, the title of Broder's last chapter is quite misleading. Initiatives are not "laws without government." They are a different way of proposing and approving laws. For better or for worse, the government is still there presumably implementing laws that are passed either by the legislature or by initiative.

Finally, and maybe most important, Broder is clearly more concerned than I am that "fewer of the decisions that determine the quality and character of our lives and communities are being made in Washington, D.C." I had better conclude on that rare note of optimism. ■