

BACKGROUND PAPER 88-3

THE INITIATIVE AND REFERENDUM  
IN NEVADA

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January 1989



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# THE INITIATIVE AND REFERENDUM IN NEVADA

## I

### INTRODUCTION

Issues are placed on the ballot in two primary ways: (1) legislatures place them on the ballot, as in the case of constitutional amendments which must be approved by the people in every state but Delaware, or (2) the people put them on the ballot by circulating petitions. This latter process may be used to propose an entirely new law, amend a state constitution or an existing law, or refer a law passed by a legislature to the public for its approval.

This background paper presents information on the history and development of direct legislation in other states and Nevada; summarizes the use of the initiative and referendum in other states, including information on the types of initiatives and arguments for and against their use; and reviews the use of the initiative in Nevada, including a description of the process in this state, how often it has been used, and recent changes made in the process.

## II

### HISTORY AND DEVELOPMENT

#### A. EARLY ORIGINS

Article IV, Section 4, of the United States Constitution guarantees to every state a republican form of government. Although elected representatives are responsible for the legislative role, the constitutions of nearly all states provide for some form of popular participation in government, usually the requirement of voter approval of constitutional amendments. But a number of states allow their citizens to participate directly in the lawmaking process through the initiative and referendum.

Broadly defined, the initiative is the process by which a specified number of voters petition to propose statutes or constitutional amendments to be adopted or rejected by the voters at the polls. The referendum is the process whereby a specified number of voters can petition to refer an existing state law or legislative action to the voters at the polls.

The initiative and referendum have ancient roots. The Assembly of Athens governed by direct popular consent and Rome used the plebiscite, a precursor of the initiative, as early as the eighth century B.C. Under this practice, a law was never promulgated in the name of the people, yet the plebiscite gave the appearance that the ruler's actions were taken with their consent. In America, various forms of the referendum were used in New England town government throughout the 1700's. In 1778, for example, voters in Massachusetts were allowed to decide the fate of a proposed new state constitution. Although initially rejected, the constitution was ratified through another referendum 2 years later.

## B. THE PROGRESSIVE ERA

The modern initiative and referendum originated in Switzerland during the 19th century. The use of the initiative and referendum was just one of many reforms enacted by the Swiss in an attempt to limit the privileges of wealth and make their political institutions more responsible to the people. In the 1890's, the Swiss system of popular government came to the attention of the leaders of a major political movement in the United States known as the "populist" or "progressive" movement.

During this period, many people did not trust politicians and government officials who were seen as being under the thumb of "special interests." These special interests, particularly in the West, were banks, meat processors, mining companies, railroads, and those allied with them. In an effort to curb the influence of these interests, especially the railroads which many believed had "bought" state legislatures, the Populists advocated the adoption of direct legislation through the initiative as a means of taking power away from "politicians" and returning it to the people.

Early proponents of the initiative and referendum argued that society should have faith in the abilities of its citizens and that organizations which stood between the individual and the political process should be distrusted. They were confident that the initiative and referendum, as well as the recall of public officials, would allow citizens to control influential corporations, greedy politicians, and corrupt political machines. They believed that these procedures either would force public officials to behave honestly or be overpowered by the people.

In 1898, South Dakota became the first state to adopt the initiative. During the next 20 years, 21 additional states

adopted the initiative or referendum. No state subsequently adopted the initiative or referendum until 1959 when Alaska entered the Union with a constitutional provision for the initiative. Wyoming adopted the initiative in 1968; Illinois adopted a constitution providing for the initiative only relative to constitutional amendments in 1970; and Florida adopted the constitutional amendment in 1972. The following table lists the states that have either the initiative, referendum or both, and the year the state first adopted these provisions.

TABLE 1

Adoption Of The Initiative And  
Referendum By The States

<u>Region and State</u>	<u>Year Adopted</u>
Northeast and Middle Atlantic	
Maine	1908
Maryland	1915
Massachusetts	1918
South	
Arkansas	1909
Florida	1968
Midwest	
Illinois	1970
Kentucky	1917
Michigan	1908
Missouri	1908
Nebraska	1912
North Dakota	1914
Ohio	1912
Oklahoma	1907
South Dakota	1898
West	
Alaska	1959
Arizona	1910
California	1911
Colorado	1910
Idaho	1912
Montana	1906
Nevada	1904
New Mexico	1911
Oregon	1902
Utah	1900
Washington	1912
Wyoming	1968

Source: State Policy Research, Inc., State Policy Reports,  
November 8, 1983.

Several reasons may account for the fact that states west of the Mississippi were the most receptive to the initiative and referendum. First, the timing of the progressive movement and its reforms coincided with the establishment of many Western States. As a result, the concept of direct legislation was able to catch on because the political institutions in the West were not as firmly rooted in tradition as they were in Eastern, Southern, or Midwestern states. In addition, many Western States were dominated by mining interests or the railroads, which were the very "villains" that the progressive movement hoped to control. Consequently, the progressive movement was very strong in the western half of America and populists were quick to advocate the adoption of direct legislation as a panacea for political corruption.

Nevada was no different from most other states in the West. Long under the influence of mining interests and the Central Pacific Railroad which bisected the state, Nevada was "ripe" territory for progressive reforms. A resolution establishing the referendum was approved by the legislature in 1901, approved again in 1903, and was ratified by the voters in 1904. Nevada was only the fourth state to enact this reform.

According to Russell R. Elliott, author of History of Nevada, there was an attempt at the same time to adopt the power of the initiative. However, "somewhere along the legislative trail the initiative was dropped from the bill, but not from the title." As a result, when the referendum was made part of the state constitution it carried the title "Initiative and Referendum," but only the latter measure was actually included. In subsequent years, several attempts were made to add the initiative power, but it took until 1912 before it was finally approved by the voters.

### III

#### INITIATIVE AND REFERENDUM IN THE STATES

Currently, a total of 26 states have adopted either the initiative or referendum. Of these, 23 have adopted the initiative, 21 of which allow their citizens to initiate new legislation, 17 of which allow their citizens to initiate constitutional amendments, while 15 states (including Nevada) allow both. A total of 25 states (including Nevada) allow citizens to circulate petitions to refer measures enacted by the legislature (referendum) to the people for their approval before the measures go into effect. Twenty-two of the 26 states have both the initiative, in some form, and the referendum. Three states, Kentucky, Maryland and New Mexico, have adopted only the referendum.



#### A. USE OF THE INITIATIVE PROCESS

The initiative process varies greatly among the various states. Some states limit the initiative to only constitutional amendments, while others allow their citizens only to initiate statutes. The majority of states with the initiative process permit their citizens to initiate both constitutional amendments and statutes.

In addition, the initiative process may be either direct or indirect. Under the direct initiative, the entire legislative process is circumvented as proposals are placed directly on the ballot, providing sponsors have gathered the requisite number of signatures. The indirect initiative requires that the proposed law or constitutional amendment be referred to the legislature for consideration upon certification of the required number of signatures. This process allows the legislature to enact the proposed measure or a substitute before the question is placed before the voters.

In states requiring referral of certain initiatives to the legislature, failure of the body to approve the proposition within a stipulated period of time, ranging from 40 days in Michigan and Nevada to adjournment of the legislature in Maine, results in automatic placement of the proposal on the succeeding general election ballot. In Massachusetts, Ohio and Utah, additional signatures must be collected in order to place the proposition on the ballot if the legislature fails to approve the proposal.

Some states have adopted the direct initiative for certain proposals and the indirect initiative for other types of proposals. Table 2 shows which states have the initiative and referendum process and whether they allow the initiative to be used for constitutional amendments, statutes, or both. Table 3 shows whether the initiative process is direct or indirect.

TABLE 2

STATE INITIATIVE AND REFERENDUM PROVISIONS

<u>State</u>	<u>Constitutional Amendments</u>	<u>Initiative</u>	
		<u>Statute</u>	<u>Referendum</u>
Alaska	-	x	x
Arizona	x	x	x
Arkansas	x	x	x
California	x	x	x
Colorado	x	x	x
Florida	x	-	-
Illinois	x	-	x
Idaho	-	x	x
Kentucky	-	-	x
Maine	-	x	x
Maryland	-	-	x
Massachusetts	x	x	x
Michigan	x	x	x
Missouri	x	x	x
Montana	x	x	x
Nebraska	x	x	x
Nevada	x	x	x
New Mexico	-	-	x
North Dakota	x	x	x
Ohio	x	x	x
Oklahoma	x	x	x
Oregon	x	x	x
South Dakota	x	x	x
Utah	-	x	x
Washington	-	x	x
Wyoming	-	x	x

Source: The Book of the States 1988-89, The Council of  
State Governments, 1988.

TABLE 3

DIRECT/INDIRECT INITIATIVE PROCESS

<u>State</u>	<u>Constitutional Amendments</u>	<u>State Legislation</u>
Alaska	--	Direct
Arizona	Direct	Direct
Arkansas	Direct	Direct
California	Direct	Direct
Colorado	Direct	Direct
Florida	Direct	--
Illinois	Direct	--
Idaho	--	Direct
Maine	--	Indirect
Massachusetts	Indirect	Indirect
Michigan	Direct	Indirect
Missouri	Direct	Direct
Montana	Direct	Direct
Nebraska	Direct	Direct
Nevada	Direct	Indirect
North Dakota	Direct	Direct
Ohio	Direct	Indirect
Oklahoma	Direct	Direct
Oregon	Direct	Direct
South Dakota	Direct	Indirect
Utah	--	Direct/Indirect
Washington	--	Direct/Indirect
Wyoming	--	Direct

Footnote: Direct = Measures go directly on the ballot.

Indirect = Measures must be considered by the legislature before being placed on the ballot.

Source: The Book of the States, 1988-89, The Council of State Governments, 1988.

## B. INDIRECT INITIATIVES VERSUS DIRECT INITIATIVES

Many believe that adding the extra hurdle of requiring the Nevada legislature to review initiative petitions that propose to enact or amend statutes was a judicious decision on the part of those supporting the adoption of the initiative in 1912. Today, most observers find the "indirect" initiative clearly preferable to the direct initiative for a number of reasons.

First, the indirect initiative as practiced by Nevada warns a legislative body of widespread voter dissatisfaction with current policies and the possibility of direct citizen action if the legislature fails to take responsible action. It provides an opportunity for a proposition to be heard in an atmosphere of consideration and compromise. Proposals are discussed in committees and legislative chambers where the advantages, disadvantages, and possible effects of the proposal are weighed before a decision is rendered. If the electorate is not satisfied with legislature's action, a public vote can still be taken.

The indirect initiative also helps ensure that measures are properly drafted. All too often, citizen-drafted petitions are poorly worded, misleading, and contain errors that an experienced bill drafter would eliminate. The indirect initiative process provides an opportunity for such errors to be corrected.

Finally, the indirect initiative procedure forces legislatures to deal with controversial issues they might otherwise avoid. Faced with an indirect initiative proposal, legislators must take public stands on the issue and their constituents can then hold them accountable for their action or inaction.

## C. INCREASED USE

In spite of all the passion that was spent in getting states to adopt the initiative and referendum, in the years following their adoption relatively little use was made of them by the states, with the exceptions being North Dakota and Oregon. Table 4 shows the number of statutory initiatives placed on the ballot between 1898 and 1980 and the number of signatures need to qualify a measure for the ballot.

TABLE 4

Number of Statutory Initiatives on Ballot  
and Number of Signatures Required  
on Petitions

1898 - 1980

<u>State</u>	<u>Number of Initiatives</u>	<u>Required Signatures</u>
Oregon	125	6 percent total votes cast last election for governor
North Dakota	112	2 percent state's population
Washington	80	8 percent votes cast last election for governor
California	70	5 percent votes cast last election for governor
Arizona	67	10 percent qualified electors based on votes cast last election for governor
Colorado	50	5 percent votes cast last election for secretary of state
Montana	33	5 percent qualified electors in at least one-third legislative representative districts
Massachusetts	28	3 percent votes cast last election for governor
Oklahoma	27	8 percent votes cast last election for a state office receiving highest number of votes

TABLE 4  
(continued)

<u>State</u>	<u>Number of Initiatives</u>	<u>Required Signatures</u>
South Dakota	24	5 percent votes cast last election for governor
Arkansas	18	8 percent votes cast last election for governor
Missouri	16	5 percent voters in each of two-thirds congressional districts
Idaho	12	10 percent votes cast last election for governor
Maine	12	10 percent votes cast last election for governor
Nevada	11	10 percent votes cast in last election statewide and in at least 75 percent of counties
Alaska	10	10 percent votes in last general election in two-thirds of election districts
Nebraska	10	7 percent votes cast last election for governor
Utah	8	10 percent (direct) or 5 percent (indirect) of total votes last election for governor
Michigan	7	8 percent votes cast last election for governor
Ohio	7	3 percent of electors

TABLE 4  
(continued)

<u>State</u>	<u>Number of Initiatives</u>	<u>Required Signatures</u>
Wyoming	0	15 percent qualified voters based on last general election statewide and in at least two-thirds of counties

Source: The Book of the States, 1988-89, The Council of  
State Governments, and State Policy Reports,  
November 8, 1983, State Policy Research, Inc.

As Table 4 indicates, most states have not used initiatives extensively in order to enact or amend laws. Generally, there is a direct correlation between the percentage of voters required to sign an initiative petition and how frequently an initiative will be used. In states that require a relatively large number of signatures, the initiative has been used less often. For example, Wyoming, with its requirement for petition signing of at least 15 percent of those voting in the last general election statewide and in at least two-thirds of the counties, has not had a single initiative petition proposing legislation qualify for the ballot. Although Wyoming only has allowed the initiative since 1968, public interest presumably should have been high and resulted in use of this procedure.

Another factor that apparently limits the use of the initiative process is whether it is direct or indirect. States that require the legislature to consider an initiative proposal before it is placed on the ballot have had significantly fewer qualify than have states that permit initiative proposals to go directly on the ballot after the signatures have been certified. Only Massachusetts and South Dakota, among the states with the indirect initiative, had more than 20 initiative petitions qualify for the ballot during this period. The other four states, Maine, Michigan, Ohio and Nevada, all had 12 or less qualify. There are, of course, numerous other factors that play an important part

in determining how frequently initiative and referendum petitions are used. Examples include using paid versus volunteer circulators, precirculation provisions, petition form, financial disclosure requirements and restrictions on subject matter.

Recently, however, there has been a marked revival in the use of initiatives and referendums in the states. Many consider the increased use of direct democracy as one of the two major political developments in the last two decades, the other being the decline in voter turnout at elections. Most writers credit California's now-famous Proposition No. 13 of 1978, which limited property taxes of state residents, with propelling the initiative and referendum process to center-stage in virtually every state legislature. According to David Magleby, a professor of political science who has written extensively on the initiative process, of the 27 states without the initiative procedure, at least 21 have considered its adoption since 1980.

A number of theories have been offered to explain the recent growth in the use of initiative and referendum petitions. Some believe that this trend is the result of frustration people feel with "insensitive" and "ineffective" legislatures. Others argue that citizens want an opportunity to set their own political agenda and the initiative process offers an excellent avenue for them to express their views. Regardless of the cause, it seems apparent that, as Sue Thomas, executive director for the National Center for Initiative Review has written, there "is an unwillingness on the part of the electorate to tolerate prolonged battles in the legislature to come up with new approaches to solving problems." As a result, the use of the initiative and referendum is likely to continue to increase in the future.

#### IV

#### ARGUMENTS FOR AND AGAINST THE INITIATIVE PROCESS

##### A. ARGUMENTS AGAINST

Today, the conditions in many state capitols are significantly different than they were in the early part of this century when the initiative and referendum were adopted. For example, the development of "sunshine" laws, such as financial disclosure, access to public records, and open meetings laws, have opened up the legislative process to careful scrutiny. Other changes include the development



of professional staff, the decline of political "machines," the development of public interest and consumer advocacy groups, and increased investigative media reporting.

As a result, with all of the recent interest in the initiative and referendum, many people are beginning to wonder whether the increased use of the initiative and referendum is actually a threat to our representative form of government. Opponents believe that these tools of direct democracy weaken the legislative process and result in timidity, evasion of responsibility, and "buck-passing" in a legislature. They argue that the initiative process discharges the legislature from its responsibilities and ultimately will destroy representative government as we know it.

Opponents also contend that it is not the "people," but well-financed groups that resort to the initiative process when the legislature fails to meet its demands. In some states, special groups finance "paid circulations" to get measures on the ballot and conduct campaigns often harmful to the broader public interest. Such groups are concerned only with their individual propositions and do not understand the necessity of integrating the proposals into consistent policies for a governmental unit.

Another argument against the initiative and referendum is that their use has resulted in exceptionally "long" ballots that confuse and discourage the voters. One tactic for defeating a proposal at the polls is to put a competing proposal on the ballot. Many are concerned that the average voter does not have the ability to weigh the pros and cons of complex issues, especially when competing measures are on the ballot.

Finally, opponents argue that the initiative process oversimplifies issues and that voters are not subject to the same checks and balances as are legislatures. In addition, they believe that use of the initiative process inevitably results in faulty drafting and "tricky wording" of legislation as proponents of a measure attempt to woo the electorate.

#### **B. ARGUMENTS FOR**

Proponents of the initiative and referendum process counter by arguing that the American system of government was founded upon the premise that all sovereignty rests with the people. In turn, the people delegate certain powers to the government. Proponents believe that if a sovereign can grant a power - in this case the power of legislatures to

enact laws - it certainly has the right to exercise that power itself. As a result, the initiative and referendum process is a logical extension of representative government and is consistent with the ideal of a democracy in which everyone is encouraged to participate.

Another argument is favor of the initiative and referendum is that they constitute an important check on legislatures. Proponents believe the potential threat to take issues directly to the voters keeps legislatures "on their toes." They see these procedures as important weapons to combat legislative bodies which, in their opinion, have become insensitive to the wishes of a growing and changing population. Some see the initiative as the only tool available to deal with issues that politicians "sweep under a rug" and pretend do not exist.

Those favoring the use of the initiative also argue that this procedure helps to educate voters on public issues. Through this process many policies are brought to the public's attention and debate and voter interest in state government is aroused. In addition, some have argued that the initiative and referendum process results in increased voter participation at the polls.

Finally, proponents contend that the initiative and referendum help the people receive their fair share of representation and overcome legislatures that are malapportioned and neglectful of certain public interests. And, if properly restricted and used, the initiative and referendum actually can strengthen democratic government and popular sovereignty.

## V

### THE NEVADA EXPERIENCE

#### A. PROCEDURES IN NEVADA

Nevada is one of only four states (the other three are Michigan, Ohio and South Dakota) having the initiative and referendum which allow initiatives proposing constitutional amendments to go directly onto the ballot, but require initiatives proposing statutory changes to be submitted to the state legislature for its consideration before the proposal goes to the voters. As a result, the procedures for each are slightly different. The following is a brief description of these procedures as they pertain to constitutional amendments, statutory changes, and the referendum.

## 1. Constitutional Amendments

Under article 19, section 2, of the Nevada constitution, an initiative petition proposing a constitutional amendment must be signed by a number of registered voters equal to 10 percent or more of the number of votes cast in not less than 75 percent of the counties in the state at the last preceding general election in order to qualify for the ballot. In addition, the total number of registered voters signing the petition must be equal to at least 10 percent of the total votes cast statewide at the last preceding general election.

Proponents of a constitutional amendment may not begin circulation of the initiative petition until September 1 of the year immediately preceding the year of a general election. After circulation, petitions must be filed with the secretary of state at least 155 days prior to any regular general election. If the secretary of state determines that the requisite number of signatures have been obtained, the proposal is placed directly on the ballot at the next general election. In order for a constitutional amendment proposed by initiative to take effect, the constitution requires that the proposal be approved by the voters at two successive general elections.

The provision that the voters approve the proposed constitutional amendment twice went into effect in 1962 and is unique among the states that allow their citizens to initiate such amendments. In each of the other 16 states, the proposed amendment is considered and ratified after approval of the people at a single election. In effect, Nevada's system of approving constitutional amendments by initiative is an "indirect" system, in that, if the people approve a proposal once, the legislature has an opportunity to address the issue during the intervening legislative session. On two of three such occasions, thus far, the legislature has taken actions in intervening sessions that have generally addressed and corrected the issues proposed by initiative petition. As a result, these initiatives were defeated when reconsidered by the voters.

## 2. Statutory Changes

An initiative petition may also be used to enact a new statute or to amend an existing statute. In order to qualify, the same number of signatures must be obtained as in the case of constitutional amendments. Circulation of the petition must not begin earlier than January 1 of the year immediately preceding the year of a regular legislative session. After circulation, such petitions must

be filed with the secretary of state at least 95 days prior to the regular session of the legislature. However, rather than being placed directly on the ballot, the secretary of state is required to transmit the petitions to the legislature for its consideration.

Under the constitution, the legislature has 40 days to consider the initiative proposal which has precedence over all other measures except appropriation bills. If approved by the legislature and the governor, the initiative proposal becomes a state law. However, if the legislature rejects the proposal or no action is taken within 40 days, the initiative is placed on the ballot at the next general election. If approved by the voters, it shall become state law and cannot be amended or repealed by the legislature for at least 3 years.

If the legislature rejects an initiative petition proposing a statutory change, the legislature, with the approval of the governor, may offer a substitute measure on the same subject to the voters for their approval. In this case, both the original petition and the legislature's substitute are placed on the ballot at the next general election. If the conflicting measures are both approved, only the measure that receives the larger number of affirmative votes becomes state law.

### 3. Referendums

Under article 19, section 1, of the Nevada constitution, a petition seeking to refer a measure enacted by the legislature to a vote of the people must be signed by a number of registered voters equal to at least 10 percent of the total votes cast at the last preceding general election. Circulation of the petition must not begin earlier than August 1 of the year immediately preceding the year of a general election.

After circulation, petitions must be filed with the secretary of state not less than 185 days before the next general election. If the secretary of state determines that the requisite number of signatures have been obtained, the proposal is placed directly on ballot at the next general election. If approved by the voters, the law is not only upheld, but the state constitution grants such statutes or resolutions unique status in that they cannot be changed again without a vote of the people. If disapproved by the voters, the statute or resolution becomes void and of no effect.

## B. CHANGES TO THESE PROCEDURES

The procedures for using the initiative and referendum have been amended four times since their adoption.

In 1958, the first time the state constitution's initiative process was amended, voters toughened the signature requirements for an initiative petition by mandating that signatures be obtained in at least 75 percent of the state's counties (at least 13 counties). This requirement prevents the voters of the more populated counties, such as Clark and Washoe, from dominating the initiative process. The requirement that the total number of signatures must be equal to 10 percent of the number of all voters in the entire state who cast a ballot at the preceding general election prevents the voters in the 13 least populous counties from dominating the procedure.

The requirement that signatures must be obtained in at least 75 percent of the state's counties has been controversial. Some believe that this requirement grants too much authority to the state's least populous counties. For example, Eleanore Bushnell, editor of Sagebrush and Neon, has stated that residents of Clark and Washoe counties, who at the time made up more than 76 percent of the state's population, had less power in getting a petition on the ballot than do residents of the other 15 counties.

According to Ms. Bushnell and Don Driggs, writing in their book The Nevada Constitution, such a disproportionate weighting of strength in favor of small counties was held unconstitutional by the United States Supreme Court in Moore v. Ogilvie, 394 U.S. 814, (1969). In that case, the Court rejected a nearly identical system in Illinois and "ruled that requiring signatures from a specified number of counties dispersed political strength, discriminated against residents of populous areas, and unreasonably inflated the voting power of sparsely populated areas."

In Nevada, however, an attorney general's opinion in 1975 (AGO 188 [4-18-75]) held that "introducing legislation and enacting legislation are two different things." According to Ms. Bushnell and Dr. Driggs, the fact the Nevada's voters as a whole have an opportunity to enact or reject an initiative proposal that is placed on the ballot by a minority of the electorate overrides any discrimination that may have occurred in placing the petition on the ballot in the first place. To date, the Nevada supreme court has not ruled directly on this question.

Other less controversial changes to the initiative and referendum procedures were enacted in 1962, 1972, and in 1988. In 1962, the constitution was amended to require that an initiative petition proposing a constitutional amendment be placed directly on the ballot instead of being submitted to the legislature for consideration as was the previous practice. The requirement that such proposals be approved at two successive general elections also was added at this time.

In 1972, the deadline for filing initiative petitions proposing constitutional amendments was changed from 60 days to 90 days before the general election at which the proposal will be voted on by the people. At the same time, a new requirement was added prohibiting initiative petitions from proposing any statute that makes an appropriation or requires an expenditure of money, unless the same proposal contains a valid tax to raise the necessary revenue.

Finally, in 1988, the initiative and referendum provisions of the state constitution were amended to require specific time lines, averaging 9 months, for gathering signatures on petitions. Previously, there were no time limits for gathering signatures on such petitions. As a result, there was nothing to prevent persons or groups from circulating petitions for years before filing them with the secretary of state. During this time some persons who signed the petition may have died or moved out of state, making verification of the signatures extremely difficult.

Also added to the constitution in 1988 was a provision which allows the legislature to authorize the secretary of state to: (1) use "generally accepted statistical procedures" in verifying signatures submitted on the petitions, and (2) require the filing of petitions no more than 65 days earlier than otherwise required by the constitution to provide adequate time for signature verification.

### C. FREQUENCY OF USE

Unlike some of its neighboring states, Nevada has made relatively scant use of the initiative and referendum, particularly when compared to California, Oregon and Washington. Since their adoption, a total of 20 initiatives and six referendums have qualified for the Nevada ballot. Of these, only 12 have gained final passage (seven initiatives and five referendums). Table 5 lists the initiative and referendums considered by the people of Nevada since 1908.

TABLE 5

INITIATIVE AND REFERENDUM IN NEVADA

1908 - 1988

1908	Referendum	Police Bill	Passed
1918	Initiative	Prohibition	Passed
1922	Initiative	Divorce	Failed
1922	Legislative Substitute for Divorce Initiative	Divorce	Passed
1930	Referendum	Rabies	Failed
1934	Referendum	Fish and Game	Passed
1934	Initiative	Bounties	Passed
1936	Initiative	Old Age Pensions	Failed
1938	Initiative	Bounties	Failed
1944	Initiative	Old Age Pensions	Passed
1952	Initiative	Right-To-Work	Passed
1954	Initiative	Repeal Right-To-Work	Failed
1956	Initiative	Repeal Right-To-Work	Failed
1956	Initiative	Amend Constitution to Prohibit Right- To-Work	Failed
1956	Initiative	Public School Finance	Failed <sup>1</sup>
1956	Referendum	Sales Tax	Passed
1958	Initiative	Amend Constitution Regarding Initiative	Passed
1960	Initiative	Amend Constitution Repeal Annual Sessions	Passed
1968	Initiative	Amend Constitution Repeal Lottery Prohibition	Failed
1970	Referendum	Amend Sales Tax	Passed
1974	Referendum	Amend Sales Tax	Passed
1978	Initiative	Amend Constitution Limit Property Taxes	Passed
1980	Initiative	Amend Constitution Limit Property Taxes	Failed <sup>2</sup>
1980	Initiative	Amend Constitution Exempt Household Goods from Taxation	Passed
1980	Initiative	Amend Constitution Exempt Food (restaurant meals) from Taxation	Passed

1982	Initiative	Amend Constitution Exempt Household Goods from Taxation	Passed <sup>2</sup>
1982	Initiative	Amend Constitution Exempt Food (restaurant meals) from Taxation	Failed <sup>2</sup>
1982	Initiative	Consumer's Advocate Public Utilities	Failed
1982	Legislative Substitute for Con- sumer's Advocate Initiative	Consumer's Advocate Public Utilities	Passed
1984	Initiative	Amend Constitution Limit on Fees and Taxes	Failed
1988	Initiative	Amend Constitution to Prohibit Personal Income Tax	Passed <sup>3</sup>

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<sup>1</sup> In 1955, the legislature considered an initiative concerning the question of public school finance. Although the legislature did not adopt the initiative petition, salient provisions of the measure were included in a new school code enacted in the special session of 1956. However, the initiative petition had to be included on the 1956 General Election ballot, even though the issue was moot, because the constitution does not contain any provisions to remove it from the ballot.

<sup>2</sup> This measure appeared on the ballot a second time because, after 1962, affirmative votes of the people at two successive general elections are required to amend the constitution through the initiative process.

<sup>3</sup> This measure must be approved by the voters at the 1990 General Election in order to go into effect.



On two occasions, in 1921 and again in 1981, the legislature rejected an initiative petition and offered a substitute measure in its place. As Table 5 indicates, on both occasions the people approved the legislature's substitute and rejected the original initiative proposal at the general election of the following year. In addition, since 1962, three initiatives proposing constitutional amendments have been returned to the people for a final vote of adoption after having been approved at the previous election. However, only one of these proposals received subsequent approval by the people. The other two failed and were not adopted.

Currently, the status of two initiative petitions is still pending. In 1988, an initiative petition proposing a statute was sponsored by the Nevada State Education Association. This measure, which proposes to institute a corporate income tax, was successful in gathering the requisite number of signatures and will be considered by the 1989 Nevada legislature.

In response to this petition, two initiative petitions proposing constitutional amendments also were circulated in 1988. One, sponsored by the Nevada Retail Association, would have banned both corporate and personal income taxes and the other, sponsored by the Nevada Resort Association, proposes banning only personal income taxes while affirming the legislature's existing authority to enact a corporate income tax. The Nevada Retail Association's petition failed to gather the required signatures, but the Nevada Resort Association's petition qualified and was approved by the people at the 1988 general election by a vote of 276,976 in favor to 59,803 against. It must be reconsidered at the 1990 general election before it may be incorporated into the state constitution.

## VI

### CONCLUSION

It is clear that nationwide there is a still-growing surge in the use of the initiative and referendum that has been fueled primarily by citizen impatience with the workings of the regular legislative process. Many believe that the extensive use of the process by single-issue activists, big-businesses, and special interest groups to be an abuse of the system by the very influences the early progressive advocates sought to counter.

The system in Nevada, in spite of its built-in safeguards, has not been completely immune from these influences. In 1988, for example, there may not have been an excessive number of petitions circulated, but those that were were each sponsored by a special interest group promoting its own political agenda. In addition, two of the three initiative petitions were in direct response to one of the other petitions. This approach is in keeping with the national trend of opponents deciding to circulate their own competing initiative rather than concentrating their efforts to defeat a petition they oppose.

In summary, however, it appears that the system in Nevada works well and the procedures the state has adopted concerning the initiative and referendum prevent many of the problems experienced by other states in the West. Initiatives and referendums may not cure all the ills of government, but they do not destroy the democratic system either. And regardless of differences of opinion, it is evident that the initiative and referendum have become active elements within the political process in Nevada.

## VII

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## VIII

### APPENDIX

#### Article 19 Of The Constitution Of The State Of Nevada

##### ARTICLE 19.

##### Initiative and Referendum

- Sec. 1. Referendum for approval or disapproval of statute or resolution enacted by legislature.
2. Initiative petition for enactment or amendment of statute or amendment of constitution.
3. Referendum and initiative petitions: Contents and form; signatures; enacting clause; manner of verification of signatures.
4. Powers of initiative and referendum of registered voters of counties and municipalities.
5. Provisions of article self-executing; legislative procedures.
6. Limitation on initiative making appropriation or requiring expenditure of money.

##### -ANNOTATIONS-

##### Nevada Cases.

**No intent to curtail legislative power over initiative measures except as expressly stated.** In adopting Nev. Art. 19, relating to initiative and referendum, it was not intention of the people to curtail power of legislature over initiative measures except in such manner and to such extent as expressly stated in Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962), providing that initiative measure approved by qualified electors shall not be annulled, set aside or repealed by legislature within 3 years from date it takes effect. *Tesoriere v. District Court*, 50 Nev. 302, 258 Pac. 291 (1927)

**Provisions self-executing with reference to state matters, not county and municipal matters.** Initiative and referendum provisions of Nev. Art. 19 (cf. Nev. Art. 19, § 5, as amended 1962) are self-executing with reference to state matters, but not with reference to county and municipal matters. *Beebe v. Koontz*, 72 Nev. 247, 302 P.2d 486 (1956), cited, *Rea v. Mayor of Reno*, 76 Nev. 483, at 485, 357 P.2d 585 (1960)

##### Section 1. Referendum for approval or disapproval of statute or resolution enacted by legislature.

1. A person who intends to circulate a petition that a statute or resolution or part thereof enacted by the legislature be submitted to a vote of the people, before circulating the petition for signatures, shall file a copy thereof with the secretary of state. He shall file the copy not earlier than August 1 of the year before the year in which the election will be held.

2. Whenever a number of registered voters of this state equal to 10 percent or more of the number of voters who voted at the last preceding general election shall express their wish by filing with the secretary of state, not less than 120 days before the next general election, a petition in the form provided for in section 3 of this article that any statute or resolution or any part thereof enacted by the legislature be submitted to a vote of the people, the officers charged with the duties of announcing and proclaiming elections and of certifying nominations or questions to be voted upon shall

submit the question of approval or disapproval of such statute or resolution or any part thereof to a vote of the voters at the next succeeding election at which such question may be voted upon by the registered voters of the entire state. The circulation of the petition shall cease on the day the petition is filed with the secretary of state or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest.

3. If a majority of the voters voting upon the proposal submitted at such election votes approval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall stand as the law of the state and shall not be amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people. If a majority of such voters votes disapproval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall be void and of no effect.

[Added in 1904, amended in 1962 and 1988. The addition was proposed and passed by the 1901 legislature; agreed to and passed by the 1903 legislature; and approved and ratified by the people at the 1904 general election. See: Statutes of Nevada 1901, p. 139. The first amendment was proposed and passed by the 1960 legislature; agreed to and passed by the 1961 legislature; and approved and ratified by the people at the 1962 general election. See: Statutes of Nevada 1960, p. 512; Statutes of Nevada 1961, p. 813. The second amendment was proposed and passed by the 1985 legislature; agreed to and passed by the 1987 legislature; and approved and ratified by the people at the 1988 general election. See: Statutes of Nevada 1985, p. 2363; Statutes of Nevada 1987, p. 2347.]

#### --ANNOTATIONS--

##### **Nevada Cases.**

**Former provision of section applied to state elections.** Provision in Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 1, as amended 1962), that "the second power reserved by the people is the referendum, which shall be exercised in the manner provided in sections 1 and 2," applies to state elections. State ex rel. Dotta v. Brodigan, 37 Nev. 37, 138 Pac. 914 (1914)

**Before being compelled to file petition for submission of legislative act to voters, secretary of state must be derelict in performing duty imposed by initiative and referendum provisions.** Under RL § 5695 (cf. NRS 34.160), which provides that writ of mandamus may be issued to compel performance of act which law especially enjoins as duty resulting from office, trust or station, before secretary of state may be compelled to file petition asking for submission of act of legislature to voters of county at next general election, he must be derelict in performance of some duty imposed by Nev. Art. 19, §§ 1, 2 and 3 (cf. Nev. Art. 19, §§ 1-5, as amended 1962), which prescribes procedure for exercising powers of initiative and referendum. State ex rel. Dotta v. Brodigan, 37 Nev. 37, 138 Pac. 914 (1914)

**No requirement secretary of state certify nominations or questions to voters of county only.** Provision in Nev. Art. 19, § 1 (cf. Nev. Art. 19, § 1, as amended 1962), that "officers charged with the duty of announcing and proclaiming elections, and of certifying nominations or questions to be voted on, shall submit the question of the approval or disapproval of a law," does not require secretary of state to file referendum petition asking for submission of act of legislature to qualified voters of certain county, because provision relates to submission to voters of state, and no statute requires secretary to certify nominations or questions to voters of county only. State ex rel. Dotta v. Brodigan, 37 Nev. 37, 138 Pac. 914 (1914)

**Court may not read into constitution provision that filing of referendum petition suspends operation of law.** Because in Nev. Art. 19, §§ 1, 2 and 3 (cf. Nev. Art. 19, § 1, as amended 1962), which reserve to the people the power of referendum, and prescribe method of exercising such power, people did not see fit to provide that filing of referendum petition shall suspend operation of law, court is not authorized to read such provision into constitution. Ex rel. Morton v. Howard, 49 Nev. 405, 248 Pac. 44 (1926)

**Initiative not referendum measure.** Initiative measure, whether adopted by the people as originally proposed or in form of legislative substitute, is not referendum measure under Nev. Art. 19, § 1 (cf. Nev. Art. 19, § 1 as amended 1962). *Tesoriere v. District Court*, 50 Nev. 302, 258 Pac. 291 (1927)

**Provisions relating to referendum apply only to measures enacted by legislature and approved by governor.** Provisions of Nev. Art. 19, §§ 1 and 2 (cf. Nev. Art. 19, § 1 as amended 1962), relating to referendum, apply only to a law, act, item, section or part of a measure enacted by legislature and approved by governor in usual manner, and not to measures enacted by initiative procedures. *Tesoriere v. District Court*, 50 Nev. 302, 258 Pac. 291 (1927)

**Provisions concerning effect of referendum apply only to measures subjected to referendum proceedings.** Provisions of Nev. Art. 19, § 2 (cf. Nev. Art. 19, § 1 as amended 1962), concerning effect of referendum, apply only to measures which have been subjected to referendum proceedings pursuant to Nev. Art. 19, § 1 (cf. Nev. Art. 19, § 1 as amended 1962), and do not apply to measures approved by the people pursuant to initiative procedures. *Tesoriere v. District Court*, 50 Nev. 302, 258 Pac. 291 (1927)

**Content of verifying affidavit not satisfying constitutional requirements destroys validity of petition.** In mandamus proceeding to challenge legal sufficiency of initiative petition under Nev. Art. 19, §§ 1 and 2, to repeal prohibition of lotteries, where verifying affidavits, required by Nev. Art. 19, § 3, to be attached to petition, were untrue because affiant did not sign document to which affidavit was attached, validity of petition was destroyed for lack of required number of signatures. Content of verifying affidavit must satisfy constitutional requirements and must state the truth. *Lundberg v. Koontz*, 82 Nev. 360, 418 P.2d 808 (1966), cited, *Springer v. Mount*, 86 Nev. 806, at 809, 477 P.2d 159 (1970), dissenting opinion, distinguished, *Cirac v. Lander County*, 95 Nev. 723, at 728, 602 P.2d 1012 (1979)

**Prohibition of amendment of referred law without approval of voters narrowly construed.** In determining whether Nev. Art. 19, § 1, which prohibits amendment of referred law without approval of voters, had been violated where legislature enacted local

school support tax law and in effect increased rate of sales and use tax which had been authorized by referendum of voters, it was necessary to pay deference to Nev. Art. 4, § 1, which vests law-making power in legislature, and to Nev. Art. 11, which requires legislature to provide for public education, and prohibition of Nev. Art. 20, § 1, was narrowly construed to accommodate other constitutional provisions. *Matthews v. State ex rel. Nevada Tax Comm'n*, 83 Nev. 266, 428 P.2d 371 (1967), cited, *City of Las Vegas v. Mack*, 87 Nev. 105, at 109, 481 P.2d 396 (1971), *Westinghouse Beverage Group v. Department of Taxation*, 101 Nev. 184, at 190, 698 P.2d 866 (1985)

**Section does not preclude legislature from enacting separate but identical tax for different governmental purpose.** Where sales and use tax to provide revenue for state to be paid to general fund was authorized by referendum of voters, legislative enactment of local school support tax law which imposed sales tax of 1 percent to provide support for local schools did not violate Nev. Art. 19, § 1, which prohibited amendment of referred law without approval of voters, although both taxes bore upon same objects of taxation and method of collecting tax was same, because local school support tax law did not amend sales and use tax law in that its form and purpose were unchanged. Nev. Art. 19, § 1, does not preclude legislature from enacting separate but identical tax for different governmental purpose. *Matthews v. State ex rel. Nevada Tax Comm'n*, 83 Nev. 266, 428 P.2d 371 (1967), cited, *City of Las Vegas v. Mack*, 87 Nev. 105, at 109, 481 P.2d 396 (1971), *Westinghouse Beverage Group v. Department of Taxation*, 101 Nev. 184, at 190, 698 P.2d 866 (1985)

**Municipal zoning ordinance.** City zoning ordinance providing for land use change was not subject to referendum (see Nev. Art. 19, §§ 1 and 4) because ordinance was administrative rather than legislative in character. *Forman v. Eagle Thrifty Drugs & Mkts.*, 89 Nev. 533, 516 P.2d 1234 (1973)

**Attorney General's Opinions.**  
**Repeal of statute by referendum effective immediately upon canvass of vote.** Repeal of statute as result of referendum becomes effective immediately upon canvass of vote. AGO 382 (8-5-1930)

**Law not receiving necessary votes for approval or disapproval occupies same status as before referendum.** Where law submitted for referendum does not receive

required number of votes for approval or disapproval, it occupies same status it occupied prior to referendum. AGO 161 (5-1-1935)

**Law not receiving majority vote of approval or disapproval stands as regular statute.** Where law submitted to people as referendum measure does not receive majority vote of approval or disapproval, law stands as regular statute and can be amended or repealed by legislature. AGO 5 (2-8-1943)

**Sales and use tax law amended only by direct vote.** Sales and use tax law (NRS ch. 372) approved by referendum vote of people cannot be amended except by direct vote of people. AGO 228 (12-10-1956)

**Section applies only to referendum measures initiated by people.** Under Nev. Art. 4, § 1, legislature has authority to refer legislation to vote of people on its own initiative, and may subsequently amend or repeal statutes so approved without further reference to the people, because provisions of Nev. Art. 19, § 1, requiring vote of people to alter approved referendum measure, applies only to referendum measures initiated by the people. AGO 190 (5-15-1975)

## **Sec. 2. Initiative petition for enactment or amendment of statute or amendment of constitution.**

1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the limitations of section 6 of this article, the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls.

2. An initiative petition shall be in the form required by section 3 of this article and shall be proposed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last preceding general election in not less than 75 percent of the counties in the state, but the total number of registered voters signing the initiative petition shall be equal to 10 percent or more of the voters who voted in the entire state at the last preceding general election.

3. If the initiative petition proposes a statute or an amendment to a statute, the person who intends to circulate it shall file a copy with the secretary of state before beginning circulation and not earlier than January 1 of the year preceding the year in which a regular session of the legislature is held. After its circulation, it shall be filed with the secretary of state not less than 30 days prior to any regular session of the legislature. The circulation of the petition shall cease on the day the petition is filed with the secretary of state or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The secretary of state shall transmit such petition to the legislature as soon as the legislature convenes and organizes. The petition shall take precedence over all other measures except appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the legislature without change or amendment within 40 days. If the proposed statute or amendment to a statute is enacted by the legislature and approved by the governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in section 1 of this article. If the statute or amendment



to a statute is rejected by the legislature, or if no action is taken thereon within 40 days, the secretary of state shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election. If a majority of the voters voting on such question at such election votes approval of such statute or amendment to a statute, it shall become law and take effect upon completion of the canvass of votes by the supreme court. An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the legislature within 3 years from the date it takes effect. If a majority of such voters votes disapproval of such statute or amendment to a statute, no further action shall be taken on such petition. If the legislature reject such proposed statute or amendment, the governor may recommend to the legislature and the legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the governor, the question of approval or disapproval of each measure shall be submitted by the secretary of state to a vote of the voters at the next succeeding general election. If the conflicting provisions submitted to the voters are both approved by a majority of the voters voting on such measures, the measure which receives the largest number of affirmative votes shall thereupon become law.

4. If the initiative petition proposes an amendment to the constitution, the person who intends to circulate it shall file a copy with the secretary of state before beginning circulation and not earlier than September 1 of the year before the year in which the election is to be held. After its circulation it shall be filed with the secretary of state not less than 90 days before any regular general election at which the question of approval or disapproval of such amendment may be voted upon by the voters of the entire state. The circulation of the petition shall cease on the day the petition is filed with the secretary of state or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The secretary of state shall cause to be published in a newspaper of general circulation, on three separate occasions, in each county in the state, together with any explanatory matter which shall be placed upon the ballot, the entire text of the proposed amendment. If a majority of the voters voting on such question at such election votes disapproval of such amendment, no further action shall be taken on the petition. If a majority of such voters votes approval of such amendment, the secretary of state shall publish and resubmit the question of approval or disapproval to a vote of the voters at the next succeeding general election in the same manner as such question was originally submitted. If a majority of such voters votes disapproval of such amendment, no further action shall be taken on such petition. If a majority of such voters votes approval of such amendment, it shall become a part of this constitution upon completion of the canvass of votes by the supreme court.

[Added in 1912, amended in 1958, 1962, twice in 1972 and in 1988. The addition was proposed and passed by the 1909 legislature; agreed to and passed by the 1911 legislature; and

approved and ratified by the people at the 1912 general election. See: Statutes of Nevada 1909, p. 347; Statutes of Nevada 1911, p. 446. The first amendment was proposed by initiative petition and approved and ratified by the people at the general election of 1958. The second amendment was proposed and passed by the 1960 legislature; agreed to and passed by the 1961 legislature; and approved and ratified by the people at the 1962 general election. See: Statutes of Nevada 1960, p. 512; Statutes of Nevada 1961, p. 813. The third and fourth amendments were proposed and passed by the 1969 legislature; agreed to and passed by the 1971 legislature; and approved and ratified by the people at the 1972 general election. See: Statutes of Nevada 1969, pp. 1680, 1719; Statutes of Nevada 1971, pp. 2230, 2260. The fifth amendment was proposed and passed by the 1985 legislature; agreed to and passed by the 1987 legislature; and approved and ratified by the people at the 1988 general election. See: Statutes of Nevada 1985, p. 2364; Statutes of Nevada 1987, p. 2348.]

## --ANNOTATIONS--

### Nevada Cases.

**Before being compelled to file petition for submission of legislative act to voters, secretary of state must be derelict in performing duty imposed by initiative and referendum provisions.** Under RL § 5695 (cf. NRS 34.160), which provides that writ of mandamus may be issued to compel performance of act which law especially enjoins as duty resulting from office, trust or station, before secretary of state may be compelled to file petition asking for submission of act of legislature to voters of county at next general election, he must be derelict in performance of some duty imposed by Nev. Art. 19, §§ 1, 2 and 3 (cf. Nev. Art. 19, §§ 1-5, as amended 1962), which prescribe procedure for exercising powers of initiative and referendum. *State ex rel. Dotta v. Brodigan*, 37 Nev. 37, 138 Pac. 914 (1914)

**People approved legislative substitute for initiative measure is equivalent to initiative measure adopted without legislative action and subject to legislative amendment after 3 years.** Legislative substitute for proposed initiative measure, enacted by legislature, approved by governor, and adopted by the people in preference to original proposed initiative measure, in accordance with Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962), is equivalent of initiative measure adopted by people without legislative action, and is subject to amendment by legislature after 3 years from date it took effect. *Tesoriere v. District Court*, 50 Nev. 302, 258 Pac. 291 (1927), cited, *Lewis v. Lewis*, 50 Nev. 419, at 425, 264 Pac. 981 (1928)

**No intent to curtail legislative power over initiative measures except as expressly stated.** In adopting Nev. Art. 19, relating to initiative and referendum, it was not intention of the people to curtail power of legislature

over initiative measures except in such manner and to such extent as expressly stated in Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962), providing that initiative measure approved by qualified electors shall not be annulled, set aside or repealed by legislature within 3 years from date it takes effect. *Tesoriere v. District Court*, 50 Nev. 302, 258 Pac. 291 (1927)

**Intent to permit use of initiative process to enact unconstitutional measure not presumed.** It will not be presumed that under provisions of Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962), it was intended that electors be empowered to set in motion by initiative the legal machinery for enactment by the people of measure wholly void under constitution, with consequent injury to taxpayers. *Caine v. Robbins*, 61 Nev. 416, 131 P.2d 516 (1942)

**Not required entire petition be printed on ballot.** Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962), which provides that when initiative petition is not acted upon by legislature within 40 days, question shall be submitted to the people, does not require that entire petition be printed on ballots, but only enough to allow voters to identify measure and understand its character and purpose. *State ex rel. Doyle v. Koontz*, 69 Nev. 247, 248 P.2d 412 (1952)

**Not expressly or impliedly required to print full petition on ballot.** Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962), does not expressly require that initiative petition be printed in full on ballots, and because purpose of provision and statutes enacted under it is to submit question to electors, it cannot be said that constitution impliedly requires printing of full petition where purpose is served by adequate summary of question. *State ex rel. Doyle v. Koontz*, 69 Nev. 247, 248 P.2d 412 (1952)

**Purpose of 1958 amendment to require more signatures from diversified area, and to specify particular type of verification.** Purpose of 1958 amendment to Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962), relating to initiative petitions, which affected procedure only, was to require for initiative petitions more signatures from diversified area of state, and also to specify particular type of verification, and in determining whether constitution can be amended under Nev. Art. 19, § 3, original sec. 3 and sec. 3 as amended in 1958 (cf. Nev. Art. 19, § 2, as amended 1962) did not differ. *Wilson v. Koontz*, 76 Nev. 33, 348 P.2d 231 (1960)

**Section not so ambiguous as to make impossible a determination of number of signatures required.** Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962), which requires for initiative petition signatures amounting to more than 10 percent of qualified electors, with total number of votes cast at the general election last preceding the filing of any initiative petition as basis for determining number of qualified electors necessary, is not so ambiguous as to make impossible a determination of number of signatures required. Meaning intended by words "total number of votes cast," was total number of ballots cast. *Wilson v. Koontz*, 76 Nev. 33, 348 P.2d 231 (1960)

**Former language "total number of votes cast" meant ballots cast.** In original proceeding in mandamus to compel secretary of state to file initiative petition to amend constitution to provide for biennial rather than annual sessions of legislature, the petition, which contained signatures amounting to more than 10 percent of total ballots cast at preceding general election, was sufficient, "Total number of votes cast at the general election last preceding," as required by Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962), for initiative petitions, means total number of ballots cast. *Wilson v. Koontz*, 76 Nev. 33, 348 P.2d 231 (1960)

**Initiative power reserved to qualified electors of each municipality.** Initiative power provided for by Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962), is reserved to qualified electors of each municipality. Power is expressly defined as "the power to propose laws and to enact or reject the same at the polls." It is clear from such definition of power reserved that constitution does not contemplate use of initiative without ballot. *Rea v. Mayor of Reno*, 76 Nev. 483, 357 P.2d 585 (1960)

**Content of verifying affidavit not satisfying constitutional requirements destroys validity of petition.** In mandamus proceeding to challenge legal sufficiency of initiative petition under Nev. Art. 19, §§ 1 and 2, to repeal prohibition of lotteries, where verifying affidavits, required by Nev. Art. 19, § 3, to be attached to petition, were untrue because affiant did not sign document to which affidavit was attached, validity of petition was destroyed for lack of required number of signatures. Content of verifying affidavit must satisfy constitutional requirements and must state the truth. *Lundberg v. Koontz*, 82 Nev. 360, 418 P.2d 808 (1966), cited, *Springer v. Mount*, 86 Nev. 806, at 809, 477 P.2d 159 (1970), dissenting opinion, distinguished, *Cirac v. Lander County*, 95 Nev. 723, at 728, 602 P.2d 1012 (1979)

**Municipal zoning ordinances.** Initiative under Nev. Art. 19, §§ 2 and 4, was not available to voters of city to alter existing land use program because power to enact and enforce zoning laws and ordinances was inherent in state under police powers and had been delegated to governing body of city, pursuant to NRS ch. 278, to be exercised only in accordance with state statutes, including requirement of prior notice and hearing under NRS 278.260 necessary to afford due process and which could not be accomplished by initiative process. *Forman v. Eagle Thrifty Drugs & Mkts.*, 89 Nev. 533, 516 P.2d 1234 (1973)

#### Attorney General's Opinions.

**Secretary of state's duty to transmit petition to both houses.** Word "legislature" in that part of Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962), requiring secretary of state to transmit initiative petitions to legislature includes both assembly and senate, and it is secretary of state's duty to transmit petition to both houses. AGO 12 (2-6-1917)

**Approved initiative measure effective immediately upon canvass of vote.** Initiative measure approved by vote of electors becomes effective immediately upon canvass of vote. AGO 32 (4-18-1917)

**Initiative measure effective upon official declaration it received necessary votes.** It is from date of official declaration that initiative measure receiving majority of votes cast becomes law and takes effect. AGO 243 (11-23-1918)

**Presumed people know state of law on subject upon which it enacts initiative measure.** Rule that legislature is presumed to know state of law on subject upon which it legislates is applicable to people when enacting initiative measures. AGO 153 (12-21-1934)

requiring secretary of state to place initiative petition upon next general election ballot if legislature takes no action upon such petition, secretary of state is not required to place upon ballot initiative petition to amend statute which has been repealed. AGO 171 (7-27-1960)

**People enact initiative measures with same sovereignty as legislature and are bound by same constitutional restrictions.** People, in enacting initiative measures, are coordinate legislative body with same sovereignty as legislature and bound by same constitutional limitations and restrictions. AGO 153 (12-21-1934)

**Act imposing county sales tax in all counties unconstitutional unless submitted to direct vote of people.** Act to impose county sales tax in all counties of state, which would be in addition to tax imposed by NRS ch. 372, would be unconstitutional unless submitted to direct vote of people in accordance with initiative and referendum procedure under Nev. Art. 19, § 2. AGO 9 (2-21-1963)

**Legislature not required to act on initiative petition.** Legislature is not required to act on initiative petition. AGO 18 (2-19-1951)

**Provisions relating to number of signers required to propose initiative petition did not violate equal protection clause.**

**Initiative measures subject to same rules of statutory interpretation as legislative acts.** Statute enacted pursuant to initiative petition is subject to same rules of statutory interpretation as acts passed directly by legislature. AGO 407 (9-22-1958)

Provisions of Nev. Art. 19, § 2, relating to number of signers required to propose initiative petition, did not violate equal protection clauses of U.S. and Nevada constitutions because one-man, one-vote concept was inapplicable to initiative proceedings and rational basis existed for requirements. AGO 188 (4-18-1975)

**Initiative measure subject to legislative amendment despite unsuccessful attempts during 3-year period to repeal by initiative.** Under provisions of Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962), relating to the initiative, initiative measure approved by qualified electors may be amended by legislature after passage of 3 years from date such measure takes effect, notwithstanding unsuccessful attempts during such 3-year period to repeal such measure by initiative. AGO 22 (3-16-1959)

**Regulation providing time certain initiative and referendum petitions be presented to county clerks does not conflict with related constitutional or statutory provisions.** Section 295.010 of Nevada Administrative Code, which provides time within which certain initiative and referendum petitions must be presented to county clerks, does not conflict with Nev. Art. 19, § 2, concerning time within which initiative petition must be filed with secretary of state, or related provisions of NRS 295.056 et seq. AGO 84-7 (4-16-1984)

**Secretary of state not required to place upon ballot initiative petition to amend repealed statute.** Under Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 2, as amended 1962),

### **Sec. 3. Referendum and initiative petitions: Contents and form; signatures; enacting clause; manner of verification of signatures.**

1. Each referendum petition and initiative petition shall include the full text of the measure proposed. Each signer shall affix thereto his or her signature, residence address and the name of the county in which he or she is a registered voter. The petition may consist of more than one document, but each document shall have affixed thereto an affidavit made by one of the signers of such document to the effect that all of the signatures are genuine

and that each individual who signed such document was at the time of signing a registered voter in the county of his or her residence. The affidavit shall be executed before a person authorized by law to administer oaths in the State of Nevada. The enacting clause of all statutes or amendments proposed by initiative petition shall be: "The People of the State of Nevada do enact as follows:".

2. The legislature may authorize the secretary of state and the other public officers to use generally accepted statistical procedures in conducting a preliminary verification of the number of signatures submitted in connection with a referendum petition or an initiative petition, and for this purpose to require petitions to be filed no more than 65 days earlier than is otherwise required by this article.

[Added in 1912, amended in 1958, 1962, and 1988. The addition was proposed and passed by the 1909 legislature; agreed to and passed by the 1911 legislature; and approved and ratified by the people at the 1912 general election. See: Statutes of Nevada 1909, p. 347; Statutes of Nevada 1911, p. 446. The first amendment was proposed by initiative petition and approved and ratified by the people at the general election of 1958. The second amendment was proposed and passed by the 1960 legislature; agreed to and passed by the 1961 legislature; and approved and ratified by the people at the 1962 general election. See: Statutes of Nevada 1960, p. 512; Statutes of Nevada 1961, p. 813. The third amendment was proposed and passed by the 1985 legislature; agreed to and passed by the 1987 legislature; and approved and ratified by the people at the 1988 general election. See: Statutes of Nevada 1985, p. 2365; Statutes of Nevada 1987, p. 2349.]

## --ANNOTATIONS--

### Nevada Cases.

**Before being compelled to file petition for submission of legislative act to voters, secretary of state must be derelict in performing duty imposed by initiative and referendum provisions.** Under RL § 5695 (cf. NRS 34.160), which provides that writ of mandamus may be issued to compel performance of act which law especially enjoins as duty resulting from office, trust or station, before secretary of state may be compelled to file petition asking for submission of act of legislature to voters of county at next general election, he must be derelict in performance of some duty imposed by Nev. Art. 19, §§ 1, 2 and 3 (cf. Nev. Art. 19, §§ 1-5, as amended 1962), which prescribe procedure for exercising powers of initiative and referendum. *State ex rel. Dotta v. Brodigan*, 37 Nev. 37, 138 Pac. 914 (1914)

**If initiative petition contains no enacting clause, measure proposed thereby would, if enacted, be unconstitutional.** Provisions of Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 3, as amended 1962), and NCL § 2579 require that all bills proposed by initiative shall contain enacting clause. Where initiative petition contains no enacting clause, measure proposed by petition would, if enacted by

vote of electors, be unconstitutional. *Caine v. Robbins*, 61 Nev. 416, 131 P.2d 516 (1942)

**Supreme court may enjoin submission of initiative measure not containing enacting clause.** Where proposed initiative measure does not contain enacting clause, as required by Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 3, as amended 1962) and NCL § 2579, and would be invalid if adopted, supreme court has power to enjoin submission of measure to voters. *Caine v. Robbins*, 61 Nev. 416, 131 P.2d 516 (1942)

**Each separate document comprising initiative petition must have affidavit attached thereto.** Pursuant to Nev. Art. 19, § 3, each separate document comprising initiative petition must have attached thereto affidavit made by signer of that document. *Lundberg v. Koontz*, 82 Nev. 360, 418 P.2d 808 (1966), cited, *City of No. Las Vegas v. Cluff*, 85 Nev. 200, at 202, 452 P.2d 461 (1969)

**Content of verifying affidavit not satisfying constitutional requirements destroys validity of petition.** In mandamus proceeding to challenge legal sufficiency of initiative petition under Nev. Art. 19, §§ 1 and 2, to repeal prohibition of lotteries,

where verifying affidavits, required by Nev. Art. 19, § 3, to be attached to petition, were untrue because affiant did not sign document to which affidavit was attached, validity of petition was destroyed for lack of required number of signatures. Content of verifying affidavit must satisfy constitutional requirements and must state the truth. *Lundberg v. Koontz*, 82 Nev. 360, 418 P.2d 808 (1966), cited, *Springer v. Mount*, 86

Nev. 806, at 809, 477 P.2d 159 (1970), dissenting opinion, distinguished, *Cirac v. Lander County*, 95 Nev. 723, at 728, 602 P.2d 1012 (1979)

#### Attorney General's Opinions.

**Signer of referendum petition may not withdraw after filed.** Signer of referendum petition may not withdraw name after petition is filed. AGO 379 (7-14-1930)

**Sec. 4. Powers of initiative and referendum of registered voters of counties and municipalities.** The initiative and referendum powers provided for in this article are further reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind in or for such county or municipality. In counties and municipalities initiative petitions may be instituted by a number of registered voters equal to 15 percent or more of the voters who voted at the last preceding general county or municipal election. Referendum petitions may be instituted by 10 percent or more of such voters.

[Added in 1962. Proposed and passed by the 1960 legislature; agreed to and passed by the 1961 legislature; and approved and ratified by the people at the 1962 general election. See: Statutes of Nevada 1960, p. 512; Statutes of Nevada 1961, p. 813.]

#### --ANNOTATIONS--

##### Nevada Cases.

**Whether emanating from within or without county, referendum only applicable to legislation for its government and exercise.** Word "for" in Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 4, as amended 1962), defines and limits character of legislation to which referendum applies, whether emanating from within or without county. In either case it must be legislation for county, that is, "with respect to," with "regard to," legislation for its government and exercise. Such limitation necessarily excluded things not expressed, and the people of county had no right to referendum on statute which took portion of territory from such county and formed therefrom new county. *County of Pershing v. Sixth Judicial Dist. Court*, 43 Nev. 78, 181 Pac. 960, 183 Pac. 314 (1919)

**Words "in or for" refers to legislation for counties originating through lawmaking body within or without county.** Words "in or for" used in Nev. Art. 19, § 3, (cf. Nev. Art. 19, § 4, as amended 1962), which provides for referendum, indicate two sources of legislation for government of counties, that originating through lawmaking body within county and that originating through lawmaking body without county. *County of Pershing*

*v. Sixth Judicial Dist. Court*, 43 Nev. 78, 181 Pac. 960, 183 Pac. 314 (1919)

**People regard counties and municipalities as distinct and independent entities.** Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 4, as amended 1962), clearly shows that people regarded counties and municipalities as being distinct and independent entities, each performing its duty in scheme of government to people it serves. *County of Pershing v. Sixth Judicial Dist. Court*, 43 Nev. 78, 181 Pac. 960, 183 Pac. 314 (1919)

**Formation of Pershing County out of Humboldt County not legislation in and for Humboldt County and residents had no right to benefits of initiative and referendum.** Legislature, by enactment of sec. 1, ch. 62, Stats. 1919 (cf. NRS 243.325), intended that formation of Pershing County out of Humboldt County become effective immediately without regard to wishes of inhabitants of Humboldt County. Although such statute was local legislation, it was not legislation in and for Humboldt County and residents thereof had no right to benefits of initiative and referendum, Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 4, as amended 1962), sec. 1, ch. 137, Stats. 1915 (cf. NRS 295.140), and in prohibition and mandamus

proceedings, officials of Humboldt County were required to recognize valid formation of Pershing County. County of Pershing v. Sixth Judicial Dist. Court, 43 Nev. 78, 181 Pac. 960, 183 Pac. 314 (1919)

**Statute creating Pershing County out of Humboldt County not restricted by referendum provisions.** Sec. 1, ch. 62, Stats. 1919 (cf. NRS 243.325), creating Pershing County out of Humboldt County, is constitutional and is not abridged, limited or restricted by Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 4, as amended 1962), providing for referendum, and taking effect of such statute was not thereby suspended. Complete statute was not local, special and municipal legislation within such constitutional provision which reserved to voters of specified county the power to approve or reject at polls legis-

lation of every character in and for such county. County of Pershing v. Sixth Judicial Dist. Court, 43 Nev. 78, 181 Pac. 960, 183 Pac. 314 (1919)

**Referendum provisions not applicable to statute forming Pershing County out of Humboldt County.** In construing referendum provisions of constitution as applied to counties, supreme court applied usual rules of construction of statutes keeping in mind that thing sought was thought expressed. Duty of court, if possible, was to give sec. 1, ch. 62, Stats. 1919 (cf. NRS 243.325), forming Pershing County out of Humboldt County, such construction as would make effective the reservation of power on part of the people, but such statute was not of class intended by Nev. Art. 19, § 3 (cf. Nev. Art. 19, § 4, as