

2005 Initiatives and Referendums¹

By John G. Matsusaka

Ballot proposition activity was muted in 2005, as usual for odd-year elections, but several high-profile campaigns emerged across the country. The number of citizen-initiated measures, 19, was a record high for an odd-year election, but only two of the initiatives were approved. All eight measures were defeated in California's special election, and Colorado voters approved a partial TABOR suspension.

Ballot proposition activity was muted in 2005, as usual for odd-year elections. A total of 45 statewide measures went before the voters in 12 states, compared to 174 in 35 states in 2004. Just over half—23 of 45—of the propositions were approved, well below the 67 percent approval rate in 2004. Table A summarizes the number of propositions by state, and the number that were approved. Table B lists the individual measures.²

Even though overall activity was modest, the number of citizen-initiated measures, 19, was a record high for an off-year election, eclipsing the previous high of seven. This continues the almost 30-year trend of growing initiative use that began with California's Proposition 13 in 1978. Of the 19 measures, 18 were initiatives and one was a referendum (a proposal to repeal a law passed by the legislature). Also remarkable, voters approved only two of the 19 measures, far below the historical passage rate for initiatives of 41 percent. The high rejection rate does not seem to signal a rejection of the idea of citizen lawmaking so much as distaste for the particular issues on the ballot. Opinion polls continue to show strong public support for direct democracy. For example, even as California voters rejected all eight initiatives that came before them, 78 percent agreed that initiatives brought up important issues that the governor and legislature did not adequately address, and 39 percent thought initiatives should have the most influence on policy, compared to 32 percent that chose the legislature and 18 percent that chose the governor.³

California's Special Election

Republican Gov. Arnold Schwarzenegger called a special election to advance his "reform agenda." His allies qualified four initiatives for the ballot: Proposition 74, which would have required public school teachers to wait longer before receiving tenure; Proposition 75, which would have made it more difficult for public employee unions to spend dues for

political purposes; Proposition 76, which would have limited state spending growth and given the governor more power to cut spending in a fiscal emergency; and Proposition 77, which would have taken redistricting out of the hands of the legislature and given it to a panel of judges and then voters in a referendum.

Public employee unions spent more than \$100 million campaigning against the governor's measures, beginning in the summer. Union spending overwhelmed the \$50 million spent by Schwarzenegger, including \$7 million from his own pocket, and the governor's campaign seemed to start late and never got rolling. The advertising by opponents of Propositions 74–77 was considered by some observers to be among the most deceptive in memory,⁴ but it had its desired effect, and all the governor's measures were rejected by voters. Four other initiatives on the ballot also went down to defeat, including two prescription drug measures that attracted \$80 million from the pharmaceutical industry, and a law requiring parental notification before a minor could receive an abortion. Overall spending topped \$250 million, apparently a record.

TABOR Suspension in Colorado

In 1992, Colorado voters approved, by a 54-46 margin, the Taxpayer Bill of Rights Act (TABOR), an amendment to the state constitution. TABOR is the toughest tax and expenditure limitation law in the country, restricting government revenue to the previous year's total plus an adjustment for inflation and population growth, requiring excess funds to be rebated to taxpayers, and requiring voter approval of any state or local tax increase. With the 2000–01 recession, state revenues plunged, requiring spending cuts. But when revenues began to recover recently, spending was held to the historically low recession level, the so-called "ratchet effect." At the same time, pressure for public spending was increased by passage of Amendment 23 in 2000 that required increases in education spending every year through

Table A: State-by-State Totals, 2005

State	Number of initiatives and referendums	Number of legislative measures	Notable issues
California	8 (0)	...	Union dues, redistricting, abortion, budget
Colorado .....	...	2 (1)	TABOR tax rebates
Kansas .....	...	1 (1)	Marriage
Maine	1 (0)	6 (5)	Gay rights, bonds
New Jersey .....	...	2 (2)	Hazardous waste
New York .....	...	2 (1)	Bonds, budget procedures
Ohio	4 (0)	1 (1)	Bonds, redistricting, campaign finance
Oklahoma	1 (0)	...	Gas tax
Texas .....	...	9 (8)	Marriage, term limits
Washington	5 (2)	1 (1)	Medical malpractice, gas tax, smoking
West Virginia .....	...	1 (0)	Pension bonds
Wisconsin .....	...	1 (1)	Term limits
Total	19 (2)	26 (21)	

Source: Initiative & Referendum Institute (www.iandrinstitute.org).

Note: The number of measures that were approved is reported in the parentheses. All entries under “initiatives and referendums” were initiatives, except for a single popular referendum in Maine.

Key:

... — None

2010, and by growing medical costs. Republican Gov. Bill Owens and the Democratic-controlled legislature placed on the ballot Referendum C, which asked voters to forego the tax rebates they were due over the next five years, an amount expected to be about \$3.7 billion, and to eliminate the ratchet effect. Proponents argued that a yes vote was not a repeal of TABOR (indeed, some lauded TABOR’s role in helping the state avoid the fiscal crises that afflicted other states), but a “tweaking” of the measure in light of new information. Opponents, including TABOR sponsor Douglas Bruce, argued that existing revenue would be adequate if the state cut back on wasteful spending. National anti-tax figures, including Dick Arney, former U.S. House majority leader from Texas, and Grover Norquist, president of Washington-based Americans for Tax Reform, joined the fray as well, arguing that a weakening of TABOR would undermine tax limitation efforts across the nation. Many state officials from both parties ended up campaigning for Referendum C. In the end, voters narrowly approved the TABOR suspension, 52-48 percent.

Election Reform in Ohio

Ohio was a pivotal state in the 2004 presidential election, and the spotlight on the state cast a harsh light on the state’s election processes. Reform Ohio Now, a coalition of Democratic activists, placed four initiatives on the 2005 ballot that sought to remove what they saw as a corruption of the state’s

elections politics. The initiatives would have made it easier for citizens to vote with absentee ballots, limited campaign contributions, created a nonpartisan commission to redistrict, and taken oversight of elections from the Secretary of State and given it to an independent commission. An ethics scandal involving Republican Gov. Bob Taft gave hope to the reform campaign even though it did not involve the issues on the ballot. The Ohio measures attracted national attention from Democratic groups and an e-mail campaign by *moveon.org* caused significant funds to pour into Ohio from John Kerry supporters across the nation. The \$2 million raised by supporters included 3,300 contributions of less than \$500 from citizens in 50 states. Opposition groups raised \$2.2 million, mostly from business groups. Voters soundly rejected all four measures on Nov. 8.⁵

Emerging and Ongoing Trends

Due to the limited number of issue campaigns in 2005, there is a need for some caution in discussing trends. The critical issues tended to vary by state, and the politics often revolved around state-specific issues, but there were a few noticeable trends:

- **Failure of Election Reform.** Thoughtful observers continue to be concerned about the nature of elections in the country. In addition to the issue of campaign finance, attention has recently turned to the lack of competitiveness in legislative elections. In some states, reformers have attempted to increase competition by taking redistricting out

**Table B:
Complete List of Statewide Ballot Propositions in 2005**

<i>State</i>	<i>Measure</i>	<i>Date</i>	<i>Type (a)</i>	<i>Description</i>	<i>Result</i>
California	Prop. 73	Nov. 8	I, A	Required parental notification before minor receives abortion.	Failed 47-53
	Prop. 74	Nov. 8	I, S	Extended the period before teachers receive tenure from two to five years.	Failed 45-55
	Prop. 75	Nov. 8	I, S	Required member approval to use public employee union dues for politics.	Failed 47-53
	Prop. 76	Nov. 8	I, A	Capped spending growth, relaxed spending requirements for education.	Failed 38-62
	Prop. 77	Nov. 8	I, A	Nonpartisan redistricting with voter approval by referendum.	Failed 41-59
	Prop. 78	Nov. 8	I, S	Created voluntary state prescription drug discount program.	Failed 42-58
	Prop. 79	Nov. 8	I, S	Created mandatory state prescription drug discount program.	Failed 39-61
	Prop. 80	Nov. 8	I, S	Restricted competition among electricity suppliers.	Failed 34-66
Colorado	Referendum C	Nov. 1	L, S	Suspended TABOR provision requiring tax rebates.	Passed 52-48
	Referendum C	Nov. 1	L, S	\$2.1 billion bonds for roads.	Failed 49-51
Kansas	Amendment	Apr. 5	L, A	Defined marriage as only between a man and a woman.	Passed 70-30
Maine	Question 1	Nov. 8	I, R	Repealed state law prohibiting discrimination against gays and lesbians.	Failed 45-55
	Question 2	Nov. 8	L, S	\$33.1 million bonds for transportation.	Passed 67-33
	Question 3	Nov. 8	L, S	\$8.9 million bonds for water systems.	Passed 58-42
	Question 4	Nov. 8	L, S	\$20 million bonds to promote research.	Passed 58-42
	Question 5	Nov. 8	L, S	\$12 million bonds for land conservation.	Passed 65-35
	Question 6	Nov. 8	L, S	\$9 million bonds for higher education buildings.	Failed 49.7-50.3
	Question 7	Nov. 8	L, S	Lowered assessment of waterfront property used for fishing.	Passed 72-28
New Jersey	Public Question 1	Nov. 8	L, A	Created the office of lieutenant governor.	Passed 56-44
	Public Question 2	Nov. 8	L, A	Allowed hazardous waste funds to be used for air pollution.	Passed 56-44
New York	Proposal 1	Nov. 8	L, A	Appropriated funds at previous year's level is state budget late.	Failed 35-65
	Proposal 2	Nov. 8	L, S	\$2.9 billion bonds for transportation.	Passed 55-45
Ohio	Issue 1	Nov. 8	L, S	\$1.85 billion bonds for infrastructure and R&D.	Passed 54-46
	Issue 2	Nov. 8	I, A	Allowed absentee ballots for any reason.	Failed 37-63
	Issue 3	Nov. 8	I, A	Limited campaign contributions.	Failed 33-67
	Issue 4	Nov. 8	I, A	Created a nonpartisan redistricting commission.	Failed 30-70
	Issue 5	Nov. 8	I, A	Created an independent board to oversee elections.	Failed 30-70
Oklahoma	Question 723	Sep. 13	I, A	Raised gas tax for highways and bridges.	Failed 13-83
Texas	Prop. 1	Nov. 8	L, A	Established state fund for railway projects.	Passed 54-46
	Prop. 2	Nov. 8	L, A	Defined marriage as only between a man and a woman.	Passed 76-24
	Prop. 3	Nov. 8	L, A	Allowed local governments to borrow without voter approval.	Passed 52-48
	Prop. 4	Nov. 8	L, A	Gave judges more freedom to deny bail to criminal defendants.	Passed 85-15
	Prop. 5	Nov. 8	L, A	Removed interest rate limits on commercial loans.	Failed 43-57
	Prop. 6	Nov. 8	L, A	Expanded Judicial Conduct Commission.	Passed 63-37
	Prop. 7	Nov. 8	L, A	Allowed a variety of reverse mortgages.	Passed 60-40
	Prop. 8	Nov. 8	L, A	Relinquished state claim to certain land in two counties.	Passed 61-39
	Prop. 9	Nov. 8	L, A	Established term limits for local transportation boards.	Failed 47-53
Washington	I-330	Nov. 8	I, S	Limited pain and suffering awards.	Failed 48-52
	I-336	Nov. 8	I, S	Established state medical malpractice insurance program.	Failed 42-58
	I-900	Nov. 8	I, S	Required performance audits for state and local governments.	Passed 57-43
	I-901	Nov. 8	I, S	Banned indoor smoking in public places.	Passed 63-37
	I-912	Nov. 8	I, S	Repealed 9.5 gas tax increase enacted by legislature in 2005.	Failed 49-51
	SJR-8207	Nov. 8	L, A	Allowed municipal court judges on Judicial Conduct Commission.	Passed 66-34
West Virginia....	Amendment 1	Jun. 25	L, A	\$5.5 billion bonds for public employee pensions.	Failed 46-54
Wisconsin.....	Referendum	Apr. 5	L, A	Term limits for certain county offices.	Passed 75-25

Source: Initiative & Referendum Institute (www.iandrinstute.org).
Key:
(a) Types are indicated as I = initiative (new law placed on ballot by citi-

zen petition), R = referendum (proposal to repeal existing law, placed on ballot by petition), L = legislative measure (placed on ballot by legislature), S = statute or bond authorization, A = constitutional amendment.

of the hands of elected officials who tend to draw safe districts for themselves, and place it in the hands of nonpartisan commissions. California and

Ohio were the latest states to consider nonpartisan redistricting commissions, but both measures went down to defeat. Interestingly, the political parties

took opposite positions in the two states, reflecting the partisan balance in the legislature: Democrats, the majority party in California, opposed reform, while Republicans, the majority party in Ohio, were the opponents. Ohio voters also rejected three other election reform measures. Despite the defeat of both measures, redistricting reform does not appear to be dead; California legislators began talking of reform as soon as the votes were counted.

- **Fiscal Liberalism.** As states put the fiscal crises of the recession behind them, voters were more willing to support government spending programs than in past years. Huge transportation bond issues were approved in New York (\$2.9 billion) and Ohio (\$1.85 billion), while Maine voters approved four of five bond issues (totaling \$74 million). A \$2.1 billion bond issue in Colorado narrowly failed. On the tax front, Washington voters declined to roll back the state gas tax; California voters rejected a proposal to limit the growth of state spending to the growth of state revenue; and in a Nov. 1 election, Colorado voters agreed to forego \$3.7 billion of promised tax rebates over the next five years. However, there were also some notable reverses for bond and tax measures. West Virginia voters refused to authorize \$5.5 billion in bonds for public employee pensions in a June election; and Oklahoma voters decisively rejected (with 83 percent against) a gas tax increase with funds dedicated for highways and bridges. Voters do not seem to want states to return to the free-spending ways of the late 1990s, but seem willing to let out the budget belt a few notches.
- **Gay Rights.** Gay marriage was one of the big stories of 2004. In February 2004, the Massachusetts Supreme Court ruled that the state's constitution contained a right to gay marriage. Shortly thereafter, the mayor of San Francisco authorized the city to issue marriage licenses to gay and lesbian couples, in defiance of a state initiative approved in 2000. Legislatures and citizens in 13 states responded by placing measures on the ballot amending their constitutions to define marriage as solely between a man and a woman. All 13 marriage amendments were approved in 2004, even in the "blue" states of Michigan and Oregon. Gay rights continued to be worked out in 2005. Kansas adopted a marriage amendment in April 2005, and Texas followed suit on Nov. 8. In better news for gay rights supporters, Maine voters declined to repeal a state law that prohibits discrimination on the basis of sexual orientation.

Notes

¹This article uses *referendums* instead of *referenda* as the plural of referendum following the *Oxford English Dictionary* and common practice.

²All current data provided by the Initiative and Referendum Institute at USC and available at www.iandrinstitute.org. Historical and legal information taken from *Initiative and Referendum Almanac*, by M. Dane Waters (Carolina Academic Publishers, 2003) and *For the Many or the Few: The Initiative, Public Policy, and American Democracy*, by John G. Matusaka (University of Chicago Press, 2004).

³*PPIC Statewide Survey: Special Survey on Californians and the Initiative Process*, by Mark Baldassare, Public Policy Institute of California, San Francisco, September 2005, available at www.ppic.org.

⁴Daniel Weintraub, "The politicians are lying to you about Prop. 77," *Sacramento Bee*, November 3, 2005, page b7; *Union-Tribune* editorial, "Beyond shameless: Ad attacks on Prop. 76 are utterly dishonest," *San Diego Union-Tribune*, November 3, 2005.

⁵Contribution information from "Kerry supporters donate to Ohio law-change effort: Moveon.org helps promote Issues 2-5," by Carrie Spencer Ghose, *The Enquirer* (Cincinnati), November 4, 2005.

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