

2009 Ballot Propositions

By John G. Matsusaka

Voters decided 32 ballot propositions in seven states in 2009, approving 22 of them. The highest profile measures concerned same-sex marriage and taxes. The number of measures and the approval rate was down modestly from recent odd-year elections. For the decade as a whole, initiative activity remained high in the 2000s, at about the same level as the historical peak of the 1990s.

Overview

Voters decided 32 state-level ballot propositions in 2009, 26 propositions Nov. 3 and six propositions from a May 19 special election in California (see Table A, B). Ballot proposition activity was down significantly from November 2008, when 153 measures went before the voters, but a dip is typical for odd-year elections. There were 34 measures in November 2007, 39 in November 2005 and 22 in November 2003

The propositions reached the ballot in several ways. Five were initiatives, new laws proposed by citizen groups and qualified for the ballot by petition. Three were referendums, proposals to repeal existing laws, also qualified by petition.¹ Initiatives and referendums come to the ballot when citizen groups become dissatisfied with a state's laws and seek to change them by a direct appeal to voters. The other 24 propositions were legislative measures placed on the ballot by a state's legislature. As usual, most of the measures that went before the voters originated in the legislature. Most legislative measures are constitutional amendments—every state but Delaware requires voter approval to amend the constitution.

Initiatives are the most visible ballot propositions and have had the biggest impact on state policy historically. The initiative process allows ordinary citizens to propose new laws directly to their fellow citizens, without needing the approval of the legislature. South Dakota in 1898 was the first state to adopt the process, followed by Utah in 1900 and Oregon in 1902. By 1918, a total of 19 states had adopted the process and adoption has continued at the rate of about one state every 20 years since then. Mississippi was the latest adopter in 1992, bringing the total number of states that allow initiatives to 24.²

Initiative use has waxed and waned over time. With the closure of the decade of the 2000s, we can assess how initiative use in this decade compared

to historical levels, and speculate about future trends. Figure A shows the number of initiatives by decade, beginning with the first initiatives in Oregon in 1904. Initiatives were used extensively in the second, third and fourth decades of the 20th century. Much of that activity arose from tensions between the new urban majorities in many states and the rural interests that controlled the legislature.³ The initiative process fell out of use in the middle decades of the century, with only 98 measures in the 1960s. Beginning in the 1970s, initiative use picked up again, triggered by California's property tax-cutting Proposition 13 in 1978 that set off a national tax revolt. At first it was not clear if the burst of initiatives would be a passing fad, but with initiative use growing in each subsequent decade, it seems that something more fundamental is transpiring.

The total number of initiatives for the first decade of the 21st century was 374. This is slightly below the record number of 377 for the decade of the 1990s and represents the first decline in initiative use since the 1960s. Given the continued popularity of direct democracy worldwide, it seems unlikely that the process will significantly dwindle, but it may stabilize. Ballot initiatives are not going to replace representative government, but especially in the main initiative states (Arizona, California, Colorado, Oregon and Washington), citizen lawmaking is likely to remain a central part of the policy process.

Key Issue: Gay Rights

Gay rights remained the most visible issue on ballot propositions in 2009, with measures in Maine and Washington. The year's highest-profile issue was Maine's Question 1 that asked voters to repeal a May 2009 law legalizing same-sex marriage.

Traditional marriage supporters were victorious, by a 53-47 margin. Following California's

Table A
State-by-State Totals for 2009

State	Initiatives	Referendums	Legislative measures	Notable issues
California .....	...	...	6 (1)	Package of measures to address budget crisis
Maine.....	3 (1)	2 (1)	2 (1)	Same-sex marriage, TABOR tax limit, medical marijuana
New Jersey .....	...	...	1 (1)	Bonds for land conservation
New York.....	...	...	2 (2)	Power lines in state forests
Ohio.....	1 (1)	...	2 (2)	Casino authorization
Texas.....	...	...	11 (11)	Eminent domain
Washington.....	1 (0)	1 (1)	...	Rights for same-sex domestic partners, TABOR tax limit
Total.....	5 (2)	3 (2)	24 (18)	

Source: Initiative & Referendum Institute (www.iandrinstitute.org).
 Note: The table reports the total number of propositions during 2009. California's propositions were on the ballot in a May 19 special election; all other propositions were on the ballot in November 3. The

number of measures that were approved is reported in parentheses. A referendum in which the original law is retained is considered to have been "approved." (Maine reports in the opposite way on its Web site.)

Proposition 8 in 2008, this marks the second successive repeal of a same-sex marriage law by the voters. Campaign spending on Question 1 exceeded an estimated \$6.5 million, a large sum for the Pine Tree State.

Gay marriage first emerged as a controversial issue in the states in 1993 when the Hawaii Supreme Court ruled in *Baehr v. Lewin* that a refusal to grant same-sex marriage licenses was sex discrimination under the state constitution. The state's legislators responded by placing a constitutional amendment on the ballot in 1998, authorizing the legislature to define marriage as solely between one man and one woman, and the voters approved the measure with 68 percent in favor. At about the same time, fearing similar judicial developments in their states, conservative activists placed "defense of marriage" measures on the ballot in Alaska (1998), California (2000), Nebraska (2000) and Nevada (2000), all of which were approved.

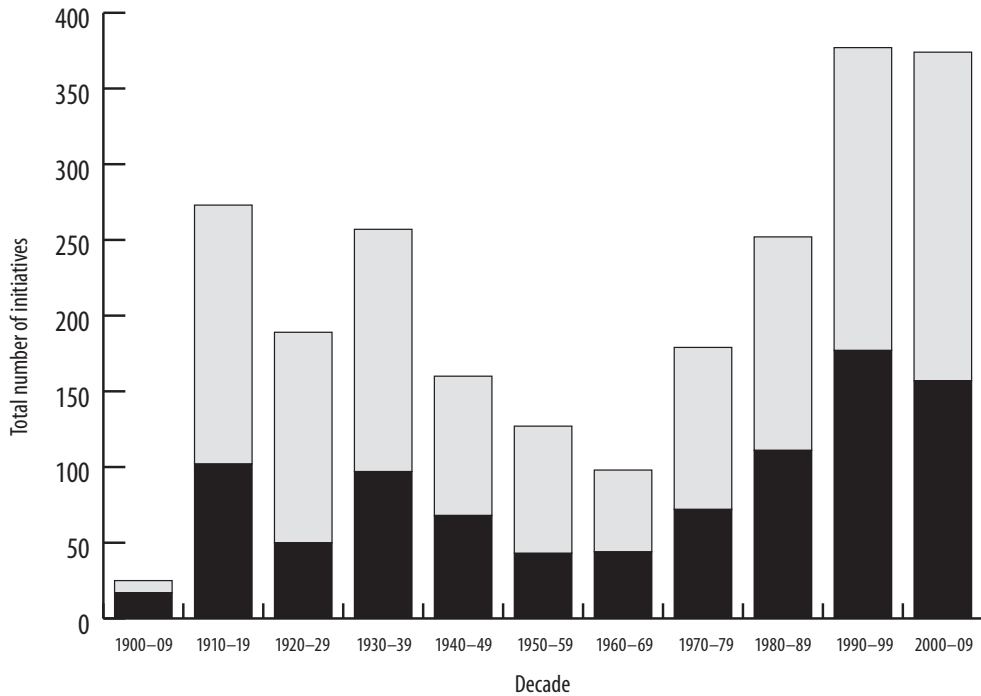
The issue seemed to be fading away until May 2004, when the Massachusetts Supreme Judicial Court ruled in *Goodridge v. Department of Public Health* that the state constitution contained a right to gay marriage. This ruling set off a pitched battle across the nation as marriage traditionalists in 24 states rushed to make gay marriage unconstitutional to head off similar rulings in their states. A little more than half of these amendments were proposed and placed on the ballot by state legislatures; the rest were proposed and qualified by citizen groups using the initiative process. So far the battle has been a rout, with 33 of 34 propositions banning gay

marriage passing (Table C), including California's high-profile Proposition 8 in 2008. The only ban that failed, in Arizona in 2006, was approved in slightly modified form two years later. So far, the only victories for gay marriage supporters have come from courts and legislatures—same-sex marriage proponents have yet to achieve a breakthrough victory in a popular election.

The bad news for gay marriage supporters was partially offset by election results in the state of Washington. There, marriage traditionalists petitioned to repeal a state law granting same-sex domestic partners essentially the same rights as married spouses, but voters rejected the repeal (R-71), supporting the existing law by a 53-47 margin. Supporters of the new law spent about \$2 million during the campaign, compared to about \$500,000 by opponents.

An interesting side skirmish in the campaign developed over the issue of whether the names of people who signed petitions calling for a vote were confidential. Proponents of the referendum argued that those who signed might be exposed to harassment, giving as example the experience of some contributors who supported California's Proposition 8. Opponents of the referendum argued that the names should be released as part of the state's public records disclosure laws. This case and an ongoing case in California concerning Proposition 8 raise issues about the trade-off between confidentiality and the public's right to know. Those issues are headed for the U.S. Supreme Court and could have important ramifications on the conduct of ballot propositions campaigns.

Figure A
Number of Initiatives by Decade (number approved shaded)



Source: Initiative & Referendum Institute. The shaded bar is the number approved.

Key Issue: Tax limits

Tax limits have been a mainstay of ballot propositions throughout the century-long history of citizen law-making, with some prominent victories for limits as well as some prominent losses. In 2009, voters in Maine and Washington decisively rejected propositions that would have limited the growth of taxes and government spending by state and local governments, and would have required voter approval of future tax increases.

Maine’s Question 4, dubbed TABOR II, was rejected 40-60. The proposition was modeled after Colorado’s controversial Taxpayer Bill of Rights measure approved in 1992. Question 4 would have restricted the growth of government spending to the rate of inflation plus the growth

rate of population (the state’s current spending limit is linked to income growth, which typically allows a faster growth of spending). Revenue collected in excess of the limit would have been channeled to a rainy day fund (20 percent) and returned to citizens in the form of tax relief (80 percent). Maine voters rejected a similar measure in 2006 with 54 percent against.

Washington’s I-1033, also a TABOR-type measure, was rejected by a lopsided margin, 42-58. It would have limited the growth of state and local government spending to the rate of inflation plus population growth, and required voter approval for tax increases. Revenue collected in excess of the limit was to have been returned in the form of property tax relief. Opposition to I-1033 was

Table B
Complete List of Statewide Ballot Propositions in 2009

<i>State</i>	<i>Type</i>	<i>Description</i>	<i>Result</i>
California			
Prop. 1A (May 19)	L/CA	Increased "rainy day fund", possible limits on spending, would have extended certain taxes.	Failed 35–65
Prop. 1B (May 19)	L/CA	Supplemented state payments to schools.	Failed 38–62
Prop. 1C (May 19)	L/CA+ST	Allowed state to borrow against future lottery revenues.	Failed 36–64
Prop. 1D (May 19)	L/ST	Allowed state to divert money from California Children and Families Fund.	Failed 34–66
Prop. 1E (May 19)	L/ST	Allowed state to divert money from mental health services.	Failed 34–66
Prop. 1F (May 19)	L/CA	Prohibited increase in legislator salaries in deficit years.	Approved 74–26
Maine			
Question 1	R/ST	Asked voters to repeal law permitting same sex marriage (approved = repealed)	Approved 53–47
Question 2	I/ST	Reduced excise taxes on energy efficient cars	Failed 26–74
Question 3	R/ST	Asked voters to repeal 2007 school consolidation law (failed = not repealed)	Failed 42–58
Question 4	I/ST	TABOR II. Limited growth of government spending, required voter approval for tax increases.	Failed 40–60
Question 5	I/ST	Expanded law allowing use of marijuana for medical purposes	Approved 59–41
Question 6	L/ST	\$71.25 million bonds for transportation projects	Approved 65–35
Question 7	L/CA	Allowed local officials more time to certify petitions	Failed 48–52
New Jersey			
Public Question	L/ST	\$400 million bonds to acquire land for conservation and recreation	Approved 53–47
New York			
Proposal No. 1	L/CA	Allowed power lines in state forest preserve	Approved 67–33
Proposal No. 2	L/CA	Allowed prison inmates to work for nonprofit organizations	Approved 68–32
Ohio			
Issue 1	L/CA	\$200 million bonds to pay stipends to veterans	Approved 72–28
Issue 2	L/CA	Created a board to regulate treatment of farm animals	Approved 64–36
Issue 3	I/CA	Authorized casinos in Cincinnati, Cleveland, Columbus, and Toledo	Approved 53–47
Texas			
Prop. 1	L/CA	Allowed cities and counties to finance purchase of open areas near military bases	Approved 55–45
Prop. 2	L/CA	Allowed property taxes based only on value of residence as a residence	Approved 68–32
Prop. 3	L/CA	Provided uniform standards and procedures for property tax appraisals	Approved 66–34
Prop. 4	L/CA	Established fund to support research at state universities	Approved 57–43
Prop. 5	L/CA	Authorized single board of equalization for adjoining appraisal entities	Approved 62–38
Prop. 6	L/CA	Allowed new bonds for Texas Veterans Land Board without voter approval.	Approved 66–34
Prop. 7	L/CA	Permitted state militia to hold other civil offices	Approved 73–27
Prop. 8	L/CA	Allowed state to contribute money and property for veterans' hospitals	Approved 75–25
Prop. 9	L/CA	Guaranteed public access to beaches on seaward shore of Gulf of Mexico.	Approved 77–23
Prop. 10	L/CA	Increased terms from 2 to 4 years for board members of emergency service districts	Approved 73–27
Prop. 11	L/CA	Prohibited public taking of property for transfer to private entities or economic development	Approved 81–19
Washington			
I-1033	I/ST	Limited growth of government spending, required voter approval of tax increases	Failed 42-58
R-71	R/ST	Asked voters to approve a law granting same-sex couples same rights as married couples (approved = not repealed)	Approved 53–47

Source: Initiative & Referendum Institute

Note: Unless another date is given, a proposition appeared on the November 3 ballot.

Key:

CA — Constitutional amendment

I — Initiative

L — Legislative measure

R — Referendum

ST — Statute

led by public employee groups, but also included Microsoft Corporation and the Seattle Chamber of Commerce. The initiative's supporters were heavily outspent by opponents, with \$3.5 million spent in the no campaign compared to \$600,000 in the yes campaign.

Rejection of spending limits in Maine and Washington hint that voters are willing to pay

more taxes and may not be extremely concerned with growth in government spending, despite a huge expansion in federal spending over the past year. Voters in Maine, New Jersey and Ohio also approved bond propositions, which were also popular in November 2008. The electorate continues to be willing to borrow despite the ongoing economic recession.

Table C
Complete List of Propositions Banning Same-Sex Marriage

<i>State</i>	<i>Year</i>	<i>Measure</i>	<i>Vote</i>	<i>Source</i>
Alaska.....	1998	Ballot Measure 2	68–32	Legislature
Hawaii.....	1998	Amendment 2	69–31	Legislature
California.....	2000	Proposition 22	61–39	Initiative
Nebraska.....	2000	Initiative 416	70–30	Initiative
Nevada.....	2000	Question 2	70–30	Initiative
Nevada.....	2002	Question 2	67–33	Initiative
Arkansas.....	2004	Amendment 3	75–25	Initiative
Georgia.....	2004	Amendment 1	77–23	Legislature
Kentucky.....	2004	Amendment 1	75–25	Legislature
Louisiana.....	2004	Amendment 1	78–22	Legislature
Michigan.....	2004	Proposal 04-2	59–41	Initiative
Mississippi.....	2004	Amendment 1	86–14	Legislature
Missouri.....	2004	Amendment 2	71–29	Legislature
Montana.....	2004	CI-96	67–33	Initiative
North Dakota.....	2004	Amendment 1	68–32	Initiative
Ohio.....	2004	Issue 1	62–38	Initiative
Oklahoma.....	2004	Question 711	76–24	Legislature
Oregon.....	2004	Measure 36	57–43	Initiative
Utah.....	2004	Amendment 3	66–34	Legislature
Kansas.....	2005	Amendment	70–30	Legislature
Texas.....	2005	Proposition 2	76–24	Legislature
Alabama.....	2006	Amendment	81–19	Legislature
Arizona.....	2006	Proposition 107	48–52	Initiative
Colorado.....	2006	Amendment 43	55–45	Initiative
Idaho.....	2006	HJR 2	63–37	Legislature
South Carolina.....	2006	Amendment 1	78–22	Legislature
South Dakota.....	2006	Amendment C	52–48	Legislature
Tennessee.....	2006	Amendment 1	81–19	Legislature
Virginia.....	2006	Ballot Question 1	57–43	Legislature
Wisconsin.....	2006	NA	59–41	Legislature
Arizona.....	2008	Proposition 102	56–44	Legislature
California.....	2008	Proposition 8	52–48	Initiative
Florida.....	2008	Amendment 2	62–38	Initiative
Maine.....	2009	Question 1	53–47	Referendum

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

Notes

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

²For detailed information on initiative adoption and provisions, see the appendixes of John G. Matsusaka, *For the Many or the Few: The Initiative, Public Policy, and American Democracy* (University of Chicago Press, 2004) and M. Dane Waters, *Initiative and Referendum Almanac* (Carolina Academic Press, 2003).

³See Chapter 7 in Matsusaka, *For the Many or the Few* (2004).

About the author

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