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# 4

## US States

*Dan Smith*

Of the three mechanisms of direct democracy – the initiative, the popular referendum, and the recall – the initiative is by far the most widely used form of direct democracy in the American states. Two dozen, mostly western American states currently permit their citizens to serve as Election Day lawmakers. With the initiative process, citizens participate directly in the making of public policy by drafting either statutory or constitutional amendments and collecting a specified number of valid signatures to qualify a measure for the ballot; fellow citizens then adopt or reject the initiative. More so than the popular referendum, which allows citizens to challenge state laws, the initiative is the most important mechanism of direct democracy in the United States, as virtually any public policy or governance issue may be addressed via the plebiscitary process.

This chapter focuses specifically on the campaign financing of ballot initiatives in the American states. Section 4.1 provides a brief historical backdrop covering the adoption and usage of the initiative in the American states. Section 4.2 examines state regulations and the precedent-setting legal decisions that have shaped the campaign financing of ballot initiatives. While some states have tried to regulate the financial contributions and expenditures of groups promoting and opposing initiatives, restrictions on the financing of ballot measures have been sharply curtailed by the federal courts. As a result, the financing of ballot initiatives operates in a relatively *laissez-faire* setting. Finally, in section 4.3, I assess the scholarly literature on the effect that money has on the outcome of ballot initiatives. While campaign financing does influence the success of ballot initiatives in the American states, contingencies abound.

#### **4.1 Background and history of ballot initiatives in the American states**

Imported from Switzerland in the late nineteenth century, the idea of direct democracy first became popular in the American states during the Populist movement (Goebel, 2002; Piott, 2003). Although the adoption of the initiative is generally understood as a phenomenon uniquely rooted in the Western region of the United States, inter-party legislative party competition and the relative weakness of state party organizations were two major factors in the initial decision of many state legislatures during the Progressive Era to devolve institutional power to citizens in the form of the initiative (Smith and Fridkin, 2008). In 1898, the citizens of South Dakota were the first in the Union to adopt the initiative, and in 1904 citizens in Oregon were the first to collect signatures and successfully qualify initiatives for the ballot. As Table 4.1 reveals, most of the 24 states that have adopted the initiative did so over a two-decade period (Smith and Tolbert, 2004). Between 1898 and 1918, voters in 20 states – through legislative referendums or the ratification of new constitutions – added the initiative to their constitutions (Smith and Fridkin, 2008). The contagion of adoption, as well as most of the early usage of the initiative, occurred west of the Mississippi River, although the impetus for reform was felt across the country.

In many of those states that make use of the initiative, citizens routinely expect to vote on an array of statutory or constitutional measures that have been petitioned on the ballot. Soon after its adoption in the early 1900s, for example, populists and progressive activists used ballot initiatives to call for numerous social justice reforms, including women's suffrage, the direct primary, the direct election of US Senators, the abolition of the poll tax, home rule for cities and towns, eight-hour working days for women and miners, and the regulation of public utility and railroad monopolies. But the expression of *vox populi* has not always been synonymous with a progressive vision as advanced by the earliest advocates of direct democracy. Even during the Progressive Era many corporate interests – from railroads to public utilities to mining operators to fishermen to ranchers to newspaper owners to morticians – tried to use the initiative to advance their narrow economic agendas (Ellis, 2002; Smith and Lubinski, 2002).

Today, ballot initiatives in the American states continue to reflect a rich mix of progressive and conservative issues. Recently, voters have passed progressive statewide ballot initiatives boosting the minimum wage, requiring utilities to invest in renewable energy, providing public dollars

*Table 4.1* Adoption of the initiative in the American states

State	Year Adopted
South Dakota	1898
Utah	1900
Oregon	1902
Montana	1906
Oklahoma	1907
Maine	1908
Michigan	1908
Missouri	1908
Arkansas	1910
Colorado	1910
Arizona	1911
California	1911
Idaho	1912
Nebraska	1912
Nevada	1912
Ohio	1912
Washington	1912
North Dakota	1914
Mississippi	1915 <sup>a</sup>
Massachusetts	1918
Alaska	1959
Florida	1968
Wyoming	1968
Illinois	1970

<sup>a</sup>Overtaken in 1922 by the state Supreme Court; re-adopted in 1992.

*Source:* Table adapted from Smith and Tolbert (2004).

for embryonic stem cell research, mandating environmental cleanup, financing candidate campaigns with public funds, creating nonpartisan electoral redistricting commissions and fusion voting, providing dedicated revenue streams for public education and class-size reduction, increasing land-use conservation and animal protection, legalizing medical marijuana, allowing euthanasia, and taxing tobacco for health education programmes. Many of these same voters, however, have also supported an array of conservative ballot measures, including bans on same-sex marriage, tax cuts and limits on governmental spending, private school vouchers, caps on medical malpractice lawsuits, prohibitions on affirmative action, the elimination of welfare benefits for illegal

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immigrants and their children, abortion restrictions, and English-only requirements. Some measures are highly controversial and hotly contested; others are barely noticed by the media and the voting public. Whatever their salience, though, ballot measures know no ideological bounds. And the success of measures depends solely on the majority sentiments of those turning out to vote (Matsusaka, 2004).

Institutionally, substantial procedural differences exist among the states when it comes to qualifying measures on the ballot (Bowler and Donovan, 2004). In practice, the initiative is quite different in California than it is in Massachusetts and all the states in between. State laws regulating the initiative process differ significantly with respect to how the ballot title and ballot language is set, how signature gathering may be conducted and whether petitioners must meet a geographical distribution of signatures, how stringent single-subject laws are enforced by the courts, and how direct the process is (as some states have an indirect initiative process, whereby the state legislature may intervene before the qualified initiative is submitted to citizens for a vote). Several states allow ballot measures to be offered during special, primary, and odd-year elections (Waters, 2003; Tolbert, Lowenstein and Donovan, 1998). Although campaign finance disclosure laws also vary across the states, what is not regulated is the unlimited sum of money that proponents and opponents may raise and spend on ballot issue campaigns.

Since the 1970s, the number of statewide initiatives on ballot has increased dramatically. In 2006, voters in 37 states faced 73 initiatives and five popular referendums on their ballots, 14 more initiatives than were on statewide ballots in 2004. In 2008, voters in the 24 initiative states considered more than 60 initiatives placed on the ballot by issue committees working outside of the traditional legislative process. Coloradoans voted on 14 initiatives in 2008, the most measures on a statewide ballot since 1912, when voters considered 20 initiatives as well as six popular referendums and six legislative referendums (Smith and Lubinski, 2002). In 2006, Arizona and Oregon led the pack, each with 10 initiatives on their November statewide ballots; several states – including California, Colorado, Nevada, and South Dakota – had at least six statewide initiatives on their ballots.

A century ago, as states initially adopted the process, the number of initiatives on statewide ballots increased rapidly during the 1910s, but they tapered off after the First World War. Use of the process regained popularity again in the 1970s, especially with the passage of Proposition 13, California's historic 1978 property tax limitation initiative (Magleby, 1984; Cronin, 1989; Tolbert, 2003; Smith, 1998). During the 1990s, an

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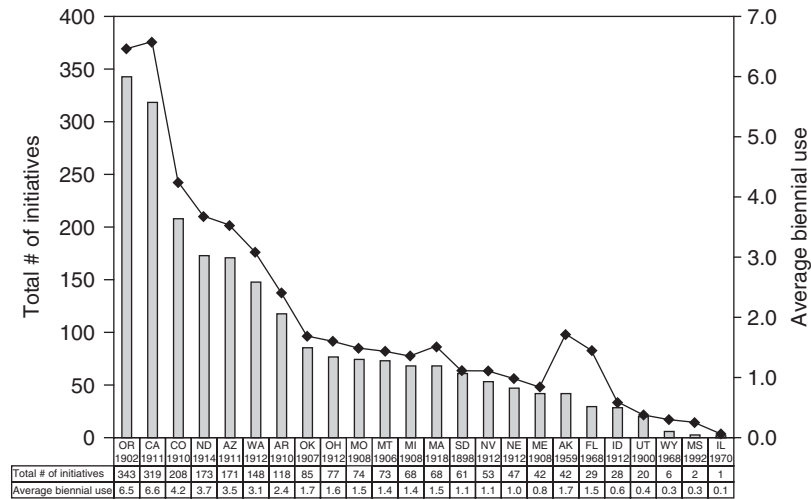


Figure 4.1 Historical statewide initiative use, year of adoption through 2008

average of more than 60 initiatives nationwide appeared on statewide ballots in a given general election. Indeed, the number of statewide initiatives on the ballot across the nation during the 1990s surpassed all other decades, even the previous high which was set during the 1910s. As Figure 4.1 reveals, some states have historically used the process much more than others. Oregon leads the pack, with more than 340 statewide initiatives on the ballot since it adopted the process in 1902, but California is close on its heels with nearly 320 statewide initiatives on the ballot since 1912. Historically, the two states have averaged over six statewide initiatives on the ballot every two years. During the 1990s alone, voters in the two Pacific coast states each cast ballots on more than 60 initiatives.

When reformers advanced the devices of direct democracy in the United States more than a century ago, one of their shared goals – in addition to promoting their educative value – was to limit, if not eliminate altogether, the corrosive effect of corporate money on the legislative process (Smith and Tolbert, 2004). Direct democracy reformers argued that by empowering ordinary citizens to participate in the making of public policy via the initiative, ‘the people’ would be able to circumvent state legislatures that were controlled by political bosses and entrenched special interests. Acting as election-day legislators, citizens could approve ballot measures and reclaim the right of ‘government by the people.’ By devolving policy-making decisions directly to the people, the leading

proponents of the process thought they could break the political stranglehold on state legislatures by party bosses and vested special interests (Schmidt, 1989; Goebel, 2002; Piott, 2003; Smith and Tolbert, 2004).

Yet far from eliminating money from the political process as early advocates of direct democracy reforms had hoped, money has played a central role in initiative campaigns in the American states for over a century (Allswang, 2000; Crouch, 1950; McCuan et al., 1998; Smith, 1998; Ellis, 2002; Smith and Lubinski, 2002). Critics of direct democracy, especially lawmakers, often argue that the process has spun out of control, with economic interests, rather than ordinary citizens and elected officials, having too much power to shape legislation and tinker with state constitutions (Broder, 2000; Ellis, 2002; Schrag, 1998). As was the case a century ago, ballot measures are susceptible to the same kind of financial pressures present in the legislative process (Goebel, 2002; Smith and Lubinski, 2002). As political scientist John Shockey (1985: 427–8) observed, ‘As long as wealth is as unequally distributed as it is in American society, and political interest groups are organized around private rather than public rewards, ballot proposition campaigns, like American politics generally, will reflect the power of the best organized and wealthiest groups in society.’ Reflecting on the past century, it becomes fairly clear that the initiative process in the American states has not been any more immune from the influence of money than our representative system of government. As documented in section 4.3, however, this is not to say that money can necessarily ‘buy’ success at the ballot box. Citizen interests can use the process to advance their causes and successfully triumph over economic interests (Gerber, 1999). Nevertheless, economic interests are able to set the agenda of initiative campaigns and often use the process to (re)assert their privileged position (Smith, 1998; Garrett, 1999; Garrett and Gerber, 2001; Smith, 2004).

Unlike federal and many state candidate elections in the United States, statewide ballot measures have virtually no campaign finance limitations. As such, there is a tremendous amount of unregulated money flowing in and out of many ballot issue committees. In 1998, ballot issue committees in 44 states spent nearly \$400 million promoting and opposing initiatives and legislative referendums (Smith, 2001a). In comparison, the national Republican and Democratic parties raised *only* \$193 million in ‘soft money’ during the 1997–98 election cycle, with congressional committees raising another \$92 million in soft money contributions. Spending on ballot measures by economic interests is much more significant than what is annually spent lobbying state legislatures. In California, for example, in 1976 interest groups lobbying

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the state legislature spent \$20 million, double the amount spent on ballot measures. Just twelve years later, ballot issue committees expended nearly \$130 million on ballot measures, a third more than the total amount spent on lobbying in the state in 1988 (California Commission, 1992: 264).

The amount of money spent on ballot initiative campaigns continues to increase. In the 2004 general election, more than \$398 million was spent on 59 initiatives on the ballots of 18 states. The total set a new national record for the most ever spent on initiatives in a single election. The most expensive initiative in 2004 was California's Proposition 68, which was placed on the ballot by a coalition of 14 casino and racetrack owners trying to expand their operations in the state and force American Indian tribes to renegotiate their tribal gaming compact with the state. Proponents of Prop. 68 spent \$25.4 million to qualify and promote the measure; 99 per cent of the total contributions came from 14 gaming-related interests. A coalition of Indian tribes opposed the constitutional amendment, spending \$47.4 million to defeat the measure (Smith, 2006b). But in 2006, issue committees once again broke the record for expenditures on statewide ballot measures. Proponents and opponents in 18 states spent over \$524 million on 73 initiatives on the November ballot. The \$524 million easily surpassed the previous high-water mark set in 2004. Expenditures in California accounted for nearly 60 per cent of total spending in 2006; issue committees spent more than \$300 million on eight initiatives in the November election, which was six times more than that spent in the next highest state.

Vast expenditures on ballot initiatives are not limited to general elections. In 2005, ballot issue committees in California spent more than \$200 million on ballot initiatives in a special election called by Governor Arnold Schwarzenegger. PhARMA, the national association of pharmaceutical corporations, spent nearly \$80 million to defeat a single ballot initiative (Proposition 79), which was backed by labour unions and consumer organizations and would have required companies to provide steep discounts on prescription drugs or not be allowed to participate in the state's Medicaid program. In a blatant effort to confuse the voters, PhARMA advanced its own counter-initiative, Proposition 78. Pharmaceutical companies spent over \$50 million on television ads alone. Four firms (Pfizer, Johnson and Johnson, Merck, and GlaxoSmithKline) each contributed nearly \$10 million in the effort, with several other companies anteing nearly \$5 million apiece. The consumer groups and union-backed proponents of Proposition 79 spent less than \$1 million in advancing their failed effort. As we shall see in the final section, big

money has always been part of the initiative process in the American states.

#### 4.2 Financial regulations

Decisions by the US Supreme Court have shaped the terrain of state campaign finance laws not only for candidate elections, but also for ballot measure campaigns. Both federal and state courts in the United States have been generally unsympathetic towards the notion that money can have a corrosive effect on the initiative process. As with the financing of candidate elections, the courts have played a major role in defining the parameters of the campaign finance regulation of ballot measures. While many states have made significant inroads in campaign finance reform with regard to candidates, the same cannot be said for the regulation of campaign contributions and expenditures on ballot measures.

With the exception of disclosure (Garrett and Smith, 2005), the federal courts have struck down a series of state campaign finance regulations of ballot measure campaign contributions or expenditures. In general, the courts have found there to be a fundamental conflict between First Amendment rights and restrictions on the contributions and expenditures of ballot measures, as the courts have essentially equated the campaign financing of ballot measures with 'speech', rather than 'conduct'. In its 1976 landmark decision *Buckley v. Valeo*, the US Supreme Court extended substantial First Amendment protections to spending in candidate campaigns, reasoning that this form of 'speech' should be afforded the highest level of protection. In *Buckley*, the Court outlined its views on campaign finance reform legislation in the context of candidate campaigns, striking down as unconstitutional portions of the 1974 Federal Election Campaign Act (FECA) that limited expenditures by candidates and independent campaign expenditures on behalf of candidates. The court argued that limits on expenditures could not be justified as a method of preventing 'corruption or the appearance of corruption'. The Court found no danger of *quid pro quo* corruption when individuals made independent expenditures on behalf of candidates because the absence of pre-arrangement or coordination with the candidate's campaign reduced the value of such expenditures to the candidate and the danger that such expenditures would be given for improper commitments from the candidate. The Court also found that limiting expenditures by the candidate could not be justified by the danger of corruption because such concerns were adequately addressed by the contribution limitations (Smith, 2001a).

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Two years after *Buckley*, in its decision *First National Bank of Boston v. Bellotti*, the Court ruled specifically against campaign finance restrictions in ballot measure campaigns. In *Bellotti*, the Court considered a Massachusetts state statute banning contributions and expenditures by corporations in initiative or referendum campaigns unless the issue materially affected the corporation's business. The statute further specified that no question concerning an income tax could be deemed to materially affect the business of a corporation. Corporate plaintiffs challenged the statute as a violation of their First Amendment right to make expenditures to defeat a ballot measure. The Court struck down the statute by extending First Amendment protection for the expenditure of funds by a corporation and by rejecting the state's assertion of legitimate interests in preventing corruption and protecting the interests of shareholders (Smith, 2001a).

Although the high court found expenditure limitations in ballot campaigns to be unconstitutional in *Bellotti*, it did not address the question of whether limits on contributions to ballot campaigns might also be unconstitutional. The court addressed this question in 1981 in its ruling, *Citizens Against Rent Control v. City of Berkeley (CARC)*. The Court found that a local ordinance limiting contributions to ballot campaigns was unconstitutional. Relying on *Bellotti*, the Court in *CARC* concluded that the state had no interest in preventing corruption in a ballot campaign since no danger of corruption existed in the setting of an initiative or referendum campaign. Winkler (1998) argues that the *Bellotti* Court may not have been serious when it claimed that evidence of corporate influence might justify a state's contribution limitation for ballot measures and that the findings of studies analyzing the effects of spending may not support restrictions on spending. In any event, the possibility of sustaining campaign finance reform legislation in the ballot measure context appeared bleak after *Bellotti*.

The series of decisions by the high court clearly separated candidate campaigns from ballot measure campaigns with regard to the regulation of campaign finance (Lowenstein, 1992; Briffault, 1996). In *Bellotti*, the Court had removed other possible justifications for regulations of ballot measures, such as a state's interest in equality and protecting shareholders (Tolbert et al., 1998). In *CARC*, the Court made the further distinction that contribution limitations could be allowed in the context of candidate campaigns, but not allowed in ballot measure campaigns, as the perceived danger of potential or actual *quid pro quo* corruption could only occur in candidate campaigns, not in ballot measure campaigns. As such, *quid pro quo* corruption has seemed to be the only state interest

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'compelling' enough to justify a limitation on campaign finances in ballot campaigns (Garrison, 1989). Yet a few legal scholars have argued that the *Bellotti* and *CARC* decisions may have left open the slight possibility that contribution and expenditure limitations could be regulated by a state interest (Winkler, 1998). In particular, four recent Supreme Court decisions dealing with the financing of candidate elections – what Hasen (2004, 2005) calls the 'New Deference Quartet' – have seemingly reduced the amount of evidence needed to defend campaign finance laws, accepted an equality rationale, and limited the level of corporate and union involvement in campaigns.

Despite this tempered optimism, at present no state has placed limits on campaign contributions or expenditures for ballot initiative campaigns. This was not always the case. At one time in the not too distant past, roughly half of the 24 states that permit the process had some regulations on ballot campaign finances (Shockley, 1980). Indeed, citizens have been more than willing when given the opportunity to impose campaign finance regulations on the initiative process. Following the Watergate crisis, for instance, voters in California overwhelmingly approved Proposition 9 in 1974, the Political Reform Act. The ballot initiative called for strict spending limits to be placed on ballot initiatives. Proponents and opponents were each limited to \$1.2 million in spending per ballot measure, and they were also prohibited from spending \$500,000 more than the other side. The act was short-lived, however. Following the lead of the United States Supreme Court's *Buckley* decision, the California Supreme Court struck down the PRA as unconstitutional (California Commission, 1992). Voters in November 2006 were afforded yet another chance to regulate ballot measures when they cast their lot on Proposition 89. The measure, which ended up receiving only 26 per cent of the vote, would have placed restrictions on contributions to statewide ballot measures if a statewide candidate was involved with a committee supporting or opposing a ballot measure; individuals, corporations, and other select groups would have been restricted to donating no more than \$10,000 to that committee. In addition, the measure would have prohibited corporations from donating to a ballot issue committee or spending more than \$10,000 in support or opposition of a ballot measure, although some non-profit corporations would have been exempt from the restriction (Moran, 2006).

California is not the only state that has made recent attempts to reintroduce regulations on the campaign financing of ballot measures. In 1996 Montana voters passed a statutory initiative banning corporate contributions to ballot measure campaigns. The measure, Initiative 125,

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was not the state's first ban on corporate spending on ballot initiatives in Montana. In 1975, the legislature had amended a statute that had been on the books since 1912 prohibiting corporate spending in candidate elections, and extended the ban to state ballot campaigns (Winkler, 1998). The 1975 statute, however, was found to be unconstitutional the following year in the Federal District Court. The 1996 ballot measure, sponsored by the Montana Public Interest Research Group, called for the strictest statewide campaign finance laws concerning ballot measures in the country. The measure stipulated that corporations could not make contributions or expenditures in connection with ballot measures, but included a provision exempting nonprofit corporations formed for the purpose of promoting political ideas that did not engage in business, did not have shareholders, and did not accept a substantial amount of contributions from business corporations. The statute added a provision allowing corporations to fund political speech through a segregated fund consisting only of voluntary contributions. Immediately following the passage of I-125, the Montana Chamber of Commerce, the Montana Mining Association, and several other business associations successfully challenged the measure in Federal District Court. The lower court's decision, *Montana Chamber of Commerce v. Argenbright*, was upheld by the 9th Circuit Court of Appeals. As with the effort in Montana, state laws trying to rein in campaign financing of ballot measures have been struck down as unconstitutional by the federal courts.

In terms of regulations on the campaign financing of ballot measures, then, disclosure is virtually all that remains, although the standards vary considerably across the states. Despite numerous legal challenges, the federal courts have consistently found state statutes requiring the disclosure of contributions and expenditures in ballot campaigns to be a compelling state interest (Garrett and Smith, 2005). In *Bellotti*, as part of its dictum, the Court noted that states could require public disclosure of ballot issue financing to allow citizens to better assess the arguments for and against the measures. In *CARC*, the Court similarly reasoned that the integrity of the political system would be sufficiently protected through the public filing of campaign contributions. Following the court's lead – that disclosure is permissible, perhaps even necessary – all states that permit the initiative require the mandatory disclosure of ballot measure contributions and expenditures. The detail, immediacy, and public availability of these disclosure regimes, however, vary considerably across the states. Several states, including Colorado, Florida, Oregon, and Washington, require regular reporting of financial activities by ballot issue committees; other states (including Michigan, Nevada,

North Dakota, Ohio, and South Dakota), however, do not require proponents and opponents of ballot measures to file disclosure reports until just prior to an election, making it nearly impossible for their campaign finance activities to be disseminated to the public. Although a handful of states (most notably Arizona, California, Massachusetts, and Washington) require electronic filing of campaign finance activities, several states (including Arkansas, Montana, Oklahoma, and Wyoming) do not require issue committees to electronically file their disclosure forms, slowing both the timeliness and accessibility of campaign finance information. As a result of the patchwork of disclosure requirements, 'Veiled Political Actors' are often able to obfuscate their contributions and expenditures in ballot measure campaigns (Garrett and Smith, 2005).

### 4.3 Effects of money and financial regulations

While there is undeniably a great deal of money involved in the initiative process, the empirical evidence amassed by scholars assessing whether or not campaign contributions and expenditures in ballot initiative campaigns affect their outcomes is mixed. Much of the research suggests that disproportionate campaign spending by opponents is effective in defeating ballot measures, but that it is not as effective in passing them. As such, money is a necessary, if not sufficient condition in ballot measure contests. Other scholars, though, suggest that ballot measure contributions and expenditures may have a more symmetric impact on the outcomes of ballot measures.

Few scholars have tried to assess the impact of campaign finance on ballot measure outcomes in early initiative campaigns. There is good reason for this, as public records of campaign contributions and expenditures made by ballot committees are either incomplete or never existed in the first place. In most states, no formal records were kept by state agencies on campaign contributions and expenditures until the second half of the twentieth century. In California, although full disclosure of campaign receipts and expenditures for every candidate and ballot committee were required after the passage of the Purity of Elections Act in 1907, the 'financial statement [was] only partly enforced' by the Secretary of State, making the California campaign disclosure law 'hopelessly inadequate' and 'wholly incomplete' (Crouch and McHenry, 1949: 63–4). In 1923, the state tightened its disclosure law by requiring any group receiving or spending more than \$1,000 on a ballot measure to file with the Secretary of State, but frequently no reports were filled out, even

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though ads on billboards and newspapers were ubiquitous (Crouch and McHenry, 1949).

Research on initiative campaign contributions and expenditures conducted contemporaneously by scholars during the first decades of the twentieth century is scant, but it does reveal that campaign financing of some ballot measures may have had an impact on whether measures passed or failed. In South Dakota in 1910, for example, 11 out of 12 ballot propositions were rejected by the voters. The defeat of the measures – which included a popular referendum invoked by the railroads to overturn a law requiring electric headlights for locomotives and a referendum regulating embalmers – was directly attributable to the ‘activity of certain parties, especially interested in the defeat of one or two propositions, who filled the newspapers with advertisements and plastered the fences with billboards advising the electors to “Vote No”’ (Beard and Schultz 1912: 49). Additionally, substantial expenditures were made by rival fishing interests in Oregon during the months leading up to the June 1908 election. Upstream and downstream fisherman each placed initiatives on the ballot to eradicate the other’s right to fish for salmon on the Columbia River; voters passed both measures (Cushman, 1916; Eaton, 1912; Bowler and Donovan, 1998). In Colorado, as in other states, official records of early ballot campaigns are in short supply. The City Club of Denver (1927), which assessed the initiative and referendum process, reported that the cost to groups submitting initiatives was ‘impossible to ascertain’. During the 1920s, legal talent was employed to draft petitions, solicitors were being paid to circulate petitions, and ‘substantial’ campaign funds were collected and disbursed for and against measures. In 1926, for example, proponents paid circulators upwards of 3 cents per name, and a ‘flat sum of \$1,000’ was paid to one circulator by a group of proponents to secure their petition on the ballot. During the 1920s, \$15,000 was spent by ‘friends’ of a ballot measure, and \$9,000 by those who opposed it; the measure passed (Smith, 2001a).

From the very first statewide initiative placed on the ballot in those states permitting the process, economic interests used the initiative to advance their vested interests (Beard and Schultz, 1912; Barnett, 1915). A California state Senate committee in the 1920s unearthed the ‘startlingly large expenditures in [ballot initiative] campaigns’ (McCuan et al., 1998: 57), reporting that more than \$1 million was spent on seven measures on the 1922 ballot. In one ballot campaign alone – the Pacific Gas and Electric Company’s successful effort to defeat the Water and Power Act – proponents and opponents combined to spend over \$660,000. The initiative became more centralized and capital-intensive

in the 1930s in California (Key, 1936; Crouch and McHenry, 1949; Kelley, 1956; McCuan et al., 1998). At the forefront of the industrialization of the initiative process was the husband and wife team, Clem Whitaker and Leone Baxter. This savvy public relations couple joined forces in 1933 to promote candidates as well as ballot initiatives. They pioneered numerous campaign techniques in California, including direct mail solicitation, television ads, 'building public attitudes,' and the use of 'gimmicks', all of which drove up the costs of ballot campaigns (Kelley, 1956; Smith, 1999). It was even common for Whitaker & Baxter's Campaigns, Inc. to run five or six ballot campaigns every election (McCuan et al., 1998). By 1936, over \$1.2 million was spent by proponents and opponents who were fighting over a ballot measure taxing chain stores, and nearly \$1 million was spent by groups battling for and against an initiative on a retirement life payment proposal (Crouch, 1950). During the 1940s and 1950s, the campaign financing of initiative and referenda campaigns would often cost millions of dollars (Heard, 1960), with the payment of circulators to qualify an initiative costing close to \$65,000 (Crouch, 1950). In 1956, Whitaker and Baxter represented four of the wealthiest corporations in California – Pacific Telegraph and Telephone, Standard Oil, Pacific Gas and Electric, and Southern Pacific Railroad – all of whom joined together to fight an oil conservation initiative, Proposition Four. Despite a war chest of \$3.45 million, which was more than double the \$1.42 million the proponents spent, Whitaker and Baxter suffered a rare defeat (Pritchell, 1958). Typically, though, during the first half of the century in California, scholars typically found 'the old adage of politics that "the side that spends the most wins" has been proven true' (Crouch 1950: 32).

Scholars, however, have failed to reach a consensus about whether spending on ballot measure campaigns has a definitive effect upon outcomes. One reason for the lack of scholarly consensus on this question is due to the tremendous variation among the 24 states that permit the initiative. It seems unrealistic, perhaps, to expect that ballot issue campaign contributions and expenditures to have the same impact on such dissimilar ballot measures across such disparate states. Much of the quantitative research examining the outcomes of ballot measures either ignores or fails to control for an array of variables affecting ballot campaigns.

In the late 1970s, scholars began to more systematically accumulate and analyze data on the effects of ballot issue expenditures (Lee, 1979; Lowenstein, 1982; Shockley, 1980, 1983, 1985). Their studies generally concluded that one-sided spending had little impact when done in support of a measure, but was almost always successful in defeating a ballot

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measure. Support for the asymmetric finding – that campaign expenditures are more effective in shaping ballot outcomes when it is spent by groups *opposing* ballot measures – has been supported by several other scholars (Magleby, 1984; Zisk, 1987; Ji, 1998). Magleby (1984: 146–8) examined 51 ballot measures in California between 1954 and 1982, finding that 16 of the measures (31 per cent) were adopted by the voters. Not all of the propositions had the same likelihood of success, though. Following Lowenstein (1982), Magleby separated the measures into three categories: (1) those in which the proponents had a two-to-one spending advantage; (2) those in which the opponents had a two-to-one spending advantage; and (3) those in which neither side had a two-to-one spending advantage. Magleby found that proponents with at least a two-to-one spending advantage over their opponents won on less than half of the occasions (48 per cent). In contrast, opposition groups with a two-to-one spending advantage could ‘virtually guarantee the defeat of an initiative’, winning 87 per cent of the time.

In her multi-state study of 50 ballot campaigns between 1976 and 1982 in four diverse states – California, Massachusetts, Michigan, and Oregon – Zisk (1987) shows that money matters, regardless of which side spends it. In 40 of the cases (80 per cent), the high-spending side prevailed on Election Day, regardless of the amount spent by the other side, the source of the money, or the type of issue (Zisk, 1987: 92–8). With few exceptions, she also finds that public opinion may change drastically when one side outspends the other by a substantial margin. Controlling for media and elite endorsements of the measures, Zisk (1987: 98–103) demonstrates that in 17 of the 32 campaigns in which polling data was available, the initial preferences of voters shifted toward the direction of the side spending more money.

Despite these findings, a few scholars contend that campaign expenditures have little impact on ballot measure outcomes (Price, 1975; Owens and Wade, 1986; Schmidt, 1989). Owens and Wade (1986) present the most compelling argument that higher campaign expenditures do not lead to ballot success. Surveying the initiative process in California, they examine a total of 708 referenda and initiatives placed on the ballot between 1924 and 1984. Using Lowenstein’s (1982) criteria for one-sided spending and a minimum \$250,000 spending threshold, they analyze the success rate of 85 one-sided ballot measures (68 initiatives; 17 legislative referenda) over the 60-year period. Like Lowenstein (1982), they find that one-sided negative spending is very successful, with the opponents winning 29 out of 32 times (91 per cent). But they also report that even when opponents had less than a two-to-one spending advantage,

they were able to defeat ballot measures 89 per cent of the time (17 out of the 19 measures). Owens and Wade (1986: 684–5) conclude that ‘the emphasis on one-sidedness found in the leading scholarly studies ... may simply be superfluous spending in terms of electoral outcomes,’ as ‘money has simply been overemphasized as a determinant of voting on direct legislation’.

All of these studies examining campaign expenditures and ballot measure outcomes use aggregate spending levels of the groups proposing and opposing initiatives. While convenient to analyze the total amount of money spent by initiative groups, it might not be the best measure of whether money really is a decisive factor in ballot outcomes. Aggregate spending levels do not always reflect the underlying mechanics of the initiative process. There are at least four limitations with using aggregate expenditures when explaining initiative outcomes. First, aggregate campaign expenditures fail to ‘disaggregate media spending from spending on petition efforts’ (Bowler and Donovan, 1998: 154). The costs to proponents in ensuring that their measures qualify for the ballot – most notably paying petitioners to collect signatures – can be substantial. Donovan et al. (1998: 97) call the difference in spending between proponents and opponents an ‘asymmetry of resource deployment’, since opponents do not have to bear any qualification costs. Procedurally, it costs opponents much less to ‘move second.’ At least 65 per cent of total expenditures by proponents can go towards qualification costs (Bowler and Donovan, 1998; Berg and Holman, 1989; Price, 1988; Smith, 2004). Secondly, an examination of aggregate expenditures tends to overlook the importance of the timing of campaign expenditures. Voters in ballot campaigns tend to ‘make their decisions during the last few days of the election – precisely when media blitzes take place’ (Cronin, 1989: 117). Smith and Herrington (2000) find that the timing (as well as the content) of the paid advertising by the opponents of the Parental Rights Amendment in Colorado in 1996 was crucial to the defeat of the measure. Finally, the reliance on aggregate spending data disregards non-monetary sources that may influence ballot outcomes. Cronin (1989: 113–16) notes that when the low-spending side wins it is usually because the victorious side has put together a well-organized, grassroots coalition with skillful campaign leadership who knows how to obtain free publicity. Gaining earned media coverage and elite endorsements can help to legitimate the arguments made by backers or detractors of ballot measures and provide citizens with voting cues (Cronin, 1989; Karp, 1998; Smith and Herrington, 2000; Zisk, 1987; Smith, 2004). Lupia (1994) cites this phenomenon with regard to the auto insurance industry’s massive campaign

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expenditures on five ballot measures in 1988, which may have 'signalled' to those going to the polls to vote against the industry's preferences.

Stratmann (2006) uses much more sophisticated data and statistical methods than previous research examining the effects of spending on ballot measure outcomes. Concerned about problems of endogeneity, Stratmann uses campaign finance data from 18 ballot measures in California to isolate the spending on television ads in five major media markets by proponents and opponents. Through disaggregating the total spending by proponents and opponents, he is able to omit expenditures by proponents (and opponents) during the pre-qualification phase. What he finds by looking solely at media buys is that as the level of spending by proponents on television ads increases, the likelihood of the ballot measure succeeding also increases. He also finds, consistent with his earlier research that campaign spending both for and against ballot measures affects their outcomes (Stratmann, 2005), and, that the more money spent on television by opponents' ads depresses support for ballot initiatives. The substantive magnitude of the findings, however, is fairly negligible.

Instead of examining the effects of campaign expenditures on initiative campaigns, a few scholars (Gerber, 1999; Braunstein, 2004) have examined the effect that campaign contributions may have on ballot measure outcomes. Since information costs for voters can often be high for ballot measures (Lupia, 1994; Bowler and Donovan, 1998; Magleby, 1994), knowing what interests support a measure can serve as an important cue to those voters who are looking for informational shortcuts (Garrett and Smith, 2005). Knowing which groups financially support or oppose ballot measures through their contributions to issue committees may be an important source of information to voters (Bowler and Donovan, 1998; Lupia, 1994). Campaign contributions may be a very important source of information for voters. In particular, voters might have the perception that measures receiving large amounts of out-of-state money might not reflect the sentiments of the voters in the state (Cronin, 1989: 115–16; Smith and Herrington, 2000; Garrett and Smith, 2005). Of course, the question of who is behind a measure is often a tricky one to answer (Smith, 1998, 2004). Frequently, the names of the groups sponsoring or opposing an initiative can be misleading, intentionally so or otherwise.

In her study of how campaign contributions might impact upon ballot measure outcomes, Gerber (1999) offers a bifurcated typology ('citizen' and 'economic') to classify ballot measure committees depending on whether the committee obtains a majority of its funding from 'economic

interests' or 'citizen interests'. She finds that ballot measures supported by citizen interests have higher passage rates, whereas those measures financed largely by economic interests have lower levels of success, although those backed by economic interests are able to block ballot initiatives. Gerber's binary typology is not without its limitations. First, measuring contributions made to ballot issue committees ignores independent expenditures made for and against ballot measures (Garrett and Smith, 2005). Second, and more problematic, the category of 'citizen' does not distinguish among contributions given by individuals, citizens' groups, and labour unions. By collapsing discrete actors under a broad classification, individual contributors – from those who contribute small amounts to millionaires – are all treated equivalently (Smith, 2004). As Gerber (1999: 93) herself acknowledges, a large portion of contributions to initiative campaigns flows from wealthy individuals who can be 'motivated as either autonomous individuals or as quasi-economic actors making contributions on behalf of their economic/ professional/ business interests'. Finally, the placement of organized labour within this category raises some concerns about the utility of the typology. Unions might just as easily be considered economic interests, as individual union members have little opportunity to voice how their dues will be spent on ballot campaigns. Furthermore, unions tend to become engaged in ballot measure campaigns either to promote their own economic well-being or to fend off threats to their economic strength.

#### 4.4 Conclusion

Big money in ballot initiative campaigns in the American states is here to stay. For strategic reasons, ballot measures are increasingly being tied to candidate elections (Smith and Tolbert, 2004; Nicholson, 2005; Smith, 2006a; Smith, DeSantis, and Kassel, 2006; Donovan, Tolbert, and Smith, 2008). Yet it is unlikely that the United States Supreme Court will reverse course and start to uphold campaign finance regulations on either ballot measure contributions or expenditures. Because there are no limits on what groups sponsoring and opposing ballot measures can raise or spend, direct democracy will continue to attract large sums of money.

The scholarly debate over the consequences of money in ballot initiative campaigns is also not likely to be over. While the study of the impact of money on ballot measure outcomes is not conclusive, it is safe to say that ballot initiative campaigns in the American states are a far cry from what early twentieth century social reformers had originally envisioned. Contrary to the expectations of the Populists and Progressives who

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saw direct democracy as a means to eradicate the dominance of interest groups in state legislatures, vested economic interests and wealthy 'populist entrepreneurs' (Smith, 1998) have embraced the initiative to advance their goals as well as protect their turf (Smith and Tolbert, 2004). Citizen groups, of course, have not been wholly displaced from the process, but without adequate financing, most ballot measures do not stand a chance of prevailing on Election Day.

Unfortunately, innovative research strategies, such as isolating ballot measure expenditures on media buys (Stratmann, 2006), mask the sizeable sums spent by proponents and opponents prior to a measure's qualification. Much of this spending is not a matter of public record, as backers of ballot initiatives can shield their efforts by funneling money through nonprofit groups that do not have to report their pre-qualification involvement. From hiring lawyers to write and consultants to run focus groups to test the language of a ballot measure, wealthy proponents are able to carefully craft ballot measures well before they begin circulating their petitions. Similarly, opponents of potential ballot measures do not have to report their expenditures when figuring out how to frame and attack issues in focus groups and public opinion surveys. Opponents are also not required to report pre-election single-subject challenges regarding the language and summary of a potential initiative, their public education efforts to dissuade citizens from signing petitions, or their efforts to challenge the validity of signatures submitted by petitioners. All of these expenditures, which can amount to millions of dollars every election cycle but are not reported, fall well below the radar screen of most political scientists studying the campaign financing of ballot measures. Yet all of these activities can have a major impact on which measures actually qualify for the ballot and how they are eventually perceived by the public.

In the future, scholars should continue to devise new research designs to examine the role of money in initiative campaigns. At a minimum, more comparative state analyses are needed. Initiative campaigns in California are over-studied and they are not necessarily representative of how ballot issue campaigns in other states are conducted. Launching new research designs, of course, is no easy task, even if campaign finance data in some states are becoming considerably easier to compile due to electronic filing. As Cronin (1989: 110) wisely cautioned, '[e]xplaining outcomes over a broad range of issues and in diverse states is a challenge that defies tidy causal analysis'. Difficulties with causal analysis remain true today. Scholars interested in the campaign financing of ballot initiatives in the American states, though, should nevertheless

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continue to try new approaches to the study of money in ballot measure campaigns.

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