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LEGISLATIVE REFORM OF CALIFORNIA'S DIRECT DEMOCRACY: A FIELD GUIDE TO RECENT EFFORTS

GLENN SMITH* AND BRENDAN BAILEY**

Savvy reformers know they should learn from the past. Being aware of what worked, and what did not work, can help reformers avoid errors and position themselves for maximum success. Especially useful is an awareness of the political dynamics and opposing arguments contributing to past failures.

This Article seeks to enhance the ability of California-initiative-process reformers to gain wisdom from the past by briefly, yet comprehensively, reviewing recent proposals considered in the California legislature. Specifically, this “field guide” to initiative-reform seeks to orient interested travelers to relevant California legislative exertions from 1997 to the present.¹ Although our orientation is informed by the entire range of legislative proposals within the dataset, we give special focus to bills proposing to enhance initiative-process deliberation—the ability of voters to understand and meaningfully deliberate about initiative proposals. We also concentrate on two categories of initiative-reform legislation during the period: the five reform proposals actually enacted into law, and the

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1. The basis for this time frame and the rationale for this article's focus are explained in Part I.A-B, *infra*.

twenty-five initiative-reform proposals passing both legislative houses, only to fall prey to gubernatorial veto.

Part I of this Article makes some initial observations about our focus and methodology. In particular, Part I explains the criteria developed to categorize initiative-reform proposals in terms of the phase(s) of the initiative process they sought to impact, the effect (if any) they would have on initiative-process deliberation, and the basis on which governors vetoed them. Part II analyzes initiative-reform proposals generally, and by specialized subsets, in terms of our categorization system. Part III provides an update on the prospects for initiative reform in the 2011-2012 legislative session and concludes by underlining two main lessons reformers can learn from the last 14 years of efforts to improve California's direct democracy.

I. FOCUS AND METHODOLOGY

A. *Legislative Route for Reforms*

Many interesting initiative-reform proposals have been proposed by think tanks and interest groups. (Indeed, the proposals of a leading research and advocacy center, the Los-Angeles-based Center for Governmental Studies, are addressed specifically in another collection article.²) Initiative-reform proposals also appear periodically on the ballot as provisions on proposed initiatives.³

2. Nora H. Kashani & Robert M. Stern, *Making California's Initiative Process More Deliberative*, 47 CAL. W. L. REV. 311 (2011)

3. See Cal. Proposition 219: Ballot Measures. Application. Legislative Constitutional Amendment, *reprinted in* California Ballot Pamphlet 65 (1998), *available at* http://traynor.uchastings.edu/ballot_pdf/1998p.pdf, (amended the California Constitution to prohibit initiative measures from excluding political subdivisions from their provisions) (codified at CAL. CONST. art. II, § 8); Cal. Proposition 137: Initiative and Referendum Process. Initiative Constitutional Amendment, *reprinted in* California Ballot Pamphlet 130 (1990) *available at* http://traynor.uchastings.edu/ballot_pdf/1990g.pdf (proposed to prohibit the Legislature from enacting without voter approval any statute regulating the manner in which initiative or referendum petitions are circulated, presented, certified or submitted to voters); Cal. Proposition 9: Financial Disclosures and Limitations Affecting Political Campaigns, Public Officials and Lobbyists—Other Matters. Initiative, *reprinted in* California Ballot Pamphlet 35 (1974), *available at* http://traynor.uchastings.edu/ballot_pdf/1974p.pdf (required reports of receipts and expenditures in campaigns for ballot measures, revising ballot pamphlet

This Article focuses on legislative reform proposals, however, for several reasons. First, although very minor initiative-process improvements might be accomplished administratively, political and legal considerations will likely mean that any significant reform would amend or add to existing statutes on constitutional provisions. Second, the fact that a reform proposal was officially introduced into a legislative session is a measure of its political salience and visibility.

Further, a host of practical reasons suggest that, in the short term at least, meaningful initiative reform will likely come from the California legislature, as opposed to direct democracy itself. Whereas voters generally support the initiative process, even as they have specific complaints about it,⁴ the California State Legislature has an additional incentive to reform the initiative process. Prime among these reasons is that the Legislature may perceive the initiative process as a threat to its authority. Direct democracy offers voters an opportunity to participate in a competing process for enacting laws (many of which are not amendable by the Legislature) and to limit budgetary options by dictating spending and taxing policies.⁵

requirements, and providing sanctions for violations) (codified at CAL. GOV. CODE §§ 8100-91014); Cal. Proposition 12: Amendment of Laws Adopted by Initiative, *reprinted in* California Ballot Pamphlet 12-13 (1946), *available at* http://traynor.uchastings.edu/ballot_pdf/1946g.pdf (codified at CAL. CONST. art. IV, § 1b); Cal. Proposition 17: Initiative, *reprinted in* California Ballot Pamphlet 34-35 (1938), *available at* http://traynor.uchastings.edu/ballot_pdf/1938g.pdf (codified as CAL. CONST. art. IV, § 1); Cal. Proposition 4: Initiative, *reprinted in* California Ballot Pamphlet 11-15 (1920), *available at* http://traynor.uchastings.edu/ballot_pdf/1920g.pdf (proposed to increase the number of signatures of qualified electors necessary for presenting an initiative petition to the Secretary of State) (failed).

4. PUB. POLICY INST. OF CAL, CALIFORNIANS AND THE INITIATIVE PROCESS 1 (2008), http://www.ppic.org/content/pubs/jtf/JTF_InitiativeJTF.pdf (reporting 2008 survey in which 60% of Californians were “very satisfied” or “somewhat satisfied” with “the way the initiative process is working in California today” and 62% believe that the process is in need of major or minor changes).

5. *See, e.g.*, Cal. Proposition 42: Transportation Congestion Improvement Act. Allocation of Existing Motor Vehicle Fuel Sales and Use Tax Revenues for Transportation Purposes Only. Legislative Constitutional Amendment, *reprinted in* California Ballot Pamphlet 66 (2002), *available at* http://traynor.uchastings.edu/ballot_pdf/2002p.pdf (required tax revenues from gasoline sales be used for public transportation and road repair and improvement, unless the Legislature suspended by a two-thirds vote) (codified at CAL. CONST. art. XIX, § B); Cal. Proposition 218:

Finally, the Legislature appears to be a superior forum for producing meaningful and practical initiative-process reform. Indeed, there is an irony at play: some of the dynamics making the initiative process less than meaningfully deliberative—that is, some of the very problems initiative-process reforms might legitimately seek to solve—make it a less than desirable forum for considering and approving such reforms. California’s direct democracy lacks a structure allowing reform proponents to engage in meaningful deliberations with interested parties, to alter their proposals in response to informed feedback, or to compromise their proposals to achieve majority approval. Further, initiative voters face significant difficulties in transcending simplistic slogans and acquiring useful, nuanced information about the merits of initiative proposals. This means that the election debate on initiatives proposing initiative reform is unlikely to go beyond simple attacks characterizing proponents as trying to rob Californians of a cherished democratic option.⁶

Voter Approval for Local Government Taxes. Limitations on Fees, Assessments and Charges. Initiative Constitutional Amendment, *reprinted in* California Ballot Pamphlet 108-09 (1996), *available at* http://traynor.uchastings.edu/ballot_pdf/1996g.pdf (limited authority of local government to impose taxes and property-related charges by requiring majority of voters approve increases and two-thirds majority approve special taxes) (codified at CAL. CONST. arts. XIIC & XIID); Cal. Proposition 98: School Funding. Initiative Constitutional Amendment and Statute, *reprinted in* California Ballot Pamphlet 79, 127-28 (1988), *available at* http://traynor.uchastings.edu/ballot_pdf/1988g.pdf (mandated that, during normal economic times, 40% of the state general fund be spent on kindergarten through community-college education).

6. Another advantageous byproduct of focusing on legislative reform proposals is that the legislative process has multiple stages of deliberation, which are recorded. Most bills receive several hearings in both houses, and are amended several times. The history of each bill is conveniently logged within the Official California Legislative Database. This makes it academically practical to study the deliberation process that influences a bill along the way, rather than studying ballot measures or other initiative proposals whose drafting and amendments are hidden from public record.

B. Methodology

1. Relevant Legislative Proposals

Most of the research presented in this Article began in 2007 as background research for a broader effort to study deliberative deficiencies in the California initiative process and develop an innovative reform proposal.⁷ Through a keyword search in the Official California Legislative Information database,⁸ all bills containing terms relevant to the initiative process, including “initiative,” “ballot measure,” “proposition,” and “election” were located. We assumed that the most recent dozen years of legislative activity would be the most useful (and sufficiently representative) frame of reference;⁹ as a result, all legislative proposals from the 1997-1998 legislative session until the first year of the 2007-2008 legislative session were examined.

When the “More Deliberation?” collection offered an opportunity to systematically analyze and write about this legislative-proposal background research, the database was double-checked to ensure the accuracy of the original research¹⁰ and to include bills considered in the 2009-2010 legislative session.

7. See Glenn C. Smith, *Bringing More D (Deliberation!) to California's DD (Direct Democracy): Enhancing Voter Understanding and Promoting Deliberation through Informal Notice and Comment Procedures*, 48 CAL. W. L. REV. (2011) (forthcoming) (attaching as Appendix I, and commenting upon, Report of the Initiative Reform Working Group (2008)).

8. OFFICIAL CAL. LEGISLATIVE INFO. DATABASE, <http://www.leginfo.ca.gov> (follow “Bill Information” hyperlink at bottom of page) (last visited June 6, 2011). This is the most convenient source for systematically searching legislative proposals. The website is organized by the two-year period of each legislative session, and proposals can be searched by bill number, author, or key word. Unless otherwise indicated, California Assembly Bills (A.B.), California Senate Bills (S.B.), or proposed constitutional amendments originating in the Assembly (A.C.A.) or the Senate (S.C.A.) can be accessed by bill number and legislative session from the “Bill Information” link. Legislative Reports and Governorial Veto Messages pertaining to particular legislative proposals can be accessed in the same way.

9. This period reflects a variety of political, budgetary, and other dynamics affecting initiative reform. Governors of both political parties and varying ideologies held office during this period and diverse individual legislators and legislative coalitions dealt with varying economic and social concerns.

10. This double-check was conducted through an additional search using the

2. *Categorization*

As shown in the comprehensive listings of legislative proposals presented in Appendices A through D, we categorized each relevant proposal¹¹ through a variety of criteria. Some criteria are self-evident; however the methodology behind several needs additional elaboration.

a. Initiative-Process Phase

The phase-affected variable identifies which phase or phases of the initiative process a reform proposal would have affected (whether by deliberate design or as an inevitable byproduct). Tracking this variable shows which components of California's direct democracy have seemed especially problematic to reformers. Distinguishing proposals on this basis also permits a comparative analysis of whether the success of reform efforts correlates to the initiative phase at issue. If so, given the lack of success of recent efforts, this correlation might suggest the strategic and substantive wisdom of shifting focus in the future.

In coding the phase(s) of the initiative process to which proposals applied, we employed four time frames: (1) the "pre-circulation" phase when initiative proposals are drafted and presented to relevant state officials for preliminary work, including circulating them to voters via initiative petitions,¹² (2) the "circulation" phase during

names of legislators on the California Assembly Committee on Elections and Redistricting and the Elections, Reapportionment and Constitutional Amendments Senate Committee.

11. Most initiative-reform bills contained one focus and one main proposal. Some reform bills, however, contained two or more separate proposals, each intending to affect different aspects and phases of the initiative process. Accordingly, the basic unit of analysis of most of this Article is the "initiative-reform proposal," rather than the "bill."

Further, as with all legislative proposals, many of the initiative-process-reform proposals introduced during the study period went through a variety of changes as they wended their way through the legislative process. In order to account for the main dynamics of this evolution, the original and final versions of these bills were tracked as separate proposals. To keep the process manageable and the bill count meaningful, however, legislative permutations between the initial and final phases were generally ignored.

12. See *Initiative Guide*, CAL. SEC'Y OF STATE (last revised Apr. 2011),

which voters interact with initiative petitions and petition gatherers; (3) the “election” phase in which voters learn about ballot-qualified initiative proposals from the official ballot pamphlet, proponents and opponents argue about the proposals, and public officials and media outlets weigh in; and (4) the “post-election” phase, when voter-approved initiatives may be subject to judicial challenge or further legislative action. One complication was that a reform could apply to more than one phase. For example, a vetoed 1998 reform bill (A.B. 188) sought to prevent funds solicited or received for one initiative from being used to promote or defeat another initiative.¹³ A.B. 188 would have restricted the operations of the proponents of a subsequent initiative in the “pre-circulation” (i.e. drafting), “circulation,” and “election” phases.¹⁴

b. The Impact of Proposals on Initiative-Process Deliberation

In keeping with the theme of the “More Deliberation?” collection, and this Article’s own reform interests, we characterized reform proposals based on whether they sought to enhance, or would have the

<http://www.sos.ca.gov/elections/ballot-measures/initiative-guide.htm> (describing details of pre-circulation phase from initial drafting of proposal, through submission of draft to Attorney General for title, and summary, and fiscal impact analysis).

13. A.B. 188, 1998-1999 Leg., Reg. Sess. (Cal. 1998) (passed the second house on Aug. 28, 2008).

14. Another example is S.B. 1208, 2007-2008 Leg., Reg. Sess. (Cal. 2008). S.B. 1208 passed the legislature in August 2008, but fell victim to gubernatorial veto a month later. *See* Gov. Arnold Schwarzenegger’s Veto Message to S.B. 1208 (Sept. 28, 2008), *available at* http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_1201-1250/sb_1208_vt_20080928.html. S.B. 1208 would have made the Legislative Analyst’s Office (LAO) solely responsible for preparing estimates of the fiscal implications of proposed initiatives. S.B. 1208. This would have departed from existing law, which requires the LAO to share authority with a Joint Legislative Budget Committee and the executive-branch Department of Finance. Veto Message to S.B. 1208, *supra*; *see also* CAL. ELEC. CODE § 9005(a)–(c) (West 2011). S.B. 1208 technically applied in the “pre-circulation” phase, because fiscal estimates are prepared after draft initiative proposals are submitted and before they are circulated for voter-petition signatures. But initiative fiscal estimates are included both on the circulation petition and in the information provided in the voter pamphlet for initiatives receiving the requisite signatures. ELEC. CODE § 9005(b). Thus, S.B. 1208’s main effect would have been on information available to voters in the “circulation” and “election” phases.

effect of enhancing, public deliberation about initiative proposals. This Article uses a basic three-tiered approach, erring on the side of finding a deliberative impact when it was plausible to do so.

First, we classified proposals as having a *primary effect* on deliberation if their purpose or effect was to (1) prompt more deliberation between interested parties about initiative proposals,¹⁵ (2) provide additional information to voters (or opinion leaders in a position to provide information or “cues” to voters),¹⁶ or (3) enhance the quality of information already provided.¹⁷ Next, we classified proposals as having a *secondary relationship* to deliberation when they enhanced the ability of voters to better use *existing* information,

15. An example is A.B. 1245, 2003-2004 Leg., Reg. Sess. (Cal. 2003). The California Legislature passed A.B. 1245, but Governor Davis vetoed it in October 2003. See Gov. Gray Davis’s Veto Message to A.B. 1245 (Oct. 14, 2003), available at http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_1201-1250/ab_1245_vt_20031014.html. As explained more fully in Former Assembly Member John Laird’s essay in this collection, John Laird & Clyde Macdonald, *AB 1245 of 2003 – An Attempt at Modest Reform of California’s Initiative Process*, 47 CAL. W. L. REV. 301 (2011), the proposal would have required the pre-circulation posting of a draft initiative measure “for a period of 30 days, during which the public would be permitted to post comments concerning the measure.” CAL. OFFICE LEG. COUNSEL, LEGISLATIVE COUNSEL’S DIGEST FOR A.B. 1245 (Feb. 21, 2003), available at http://leginfo.ca.gov/pub/03-04/bill/asm/ab_1201-1250/ab_1245_bill_20030221_introduced.html.

16. Although perhaps not its primary purpose, A.B. 1245 would have generated a “paper trail” of public comments on initiative drafts. This written public commentary would have expanded the record available to voters and cue-givers about the pros and cons of the draft proposal and given voters the opportunity to take action to respond to objections and provide other useful clarifications. So, A.B. 1245 also qualifies as having a “primary effect” on deliberation by generating new information.

17. An example is S.B. 1208, 2007-2008 Leg., Reg. Sess. (Cal. 2008). State Senator Denise Ducheny, S.B. 1208’s proponent, defended S.B. 1208 on the ground that existing law’s joint responsibility for fiscal estimates “can cause problems as it may be difficult to resolve differences between the agencies, especially given the relatively short time period to perform [the estimates].” Cal. Bill Analysis, S.B. 1208, Assemb. Comm. on Elections and Redistricting, 2007-2008 Leg., Reg. Sess., at 2 (June 24, 2008), available at http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_1201-1250/sb_1208_cfa_20080623_114310_asm_comm.html. Whatever the internecine dynamics involved in joint versus sole authority, S.B. 1208 could have altered the substance of fiscal information available as voters deliberate about initiatives.

including proposals to make information more accessible or proposals enhancing the ability of voters to evaluate the credibility of information provided by proponents or other opinion leaders during circulation or election phases.¹⁸

Finally, we deemed other proposals to have *no meaningful connection* to deliberation—even if, by improving the integrity of an initiative phase or the process generally they might *in some diffuse way* enhance deliberation. For example, an attenuated causation chain could connect the popular reform goal of requiring initiative-petition circulators to disclose that they are paid signature-gatherers¹⁹ to improved deliberation during the “circulation” phase. Arguably, voters wary of paid gatherers might discount the gatherer’s statements about a proposed initiative or be more interested in independently reading the information on the petition or seeking additional information. This could lead to better voter deliberation, or at least withholding non-deliberative, knee-jerk assent.²⁰ However, counting

18. See, e.g., S.B. 1202, 2009-2010 Leg., Reg. Sess. (Cal. 2010) (passed by legislature on Aug. 30, 2010; vetoed by Governor Sept. 23, 2010) (requiring top five contributors of \$50,000 or more to initiative campaign to be listed in voter pamphlet); S.B. 1598, 2005-2006 Leg., Reg. Sess. (Cal. 2005) (passed by legislature on Aug. 29, 2006; vetoed by Governor Sept. 29, 2006) (requiring voter petition to state top five contributors to initiative campaign); S.B. 469, 2005-2006 Leg., Reg. Sess. (Cal. 2005) (passed by legislature on Sept. 7, 2005; vetoed by Governor Oct. 7, 2005) (requiring voter petition to reflect whether it is being circulated by a “paid circulator”).

19. See *infra* text accompanying note 48.

20. *But see* Gov. Arnold Schwarzenegger’s Veto Message to S.B. 469 (Oct. 7, 2005), available at http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_0451-0500/sb_469_vt_20051007.html (expressing the view that whether signature gatherers are paid has “no bearing on the merits of the petition being presented” to voters); Gov. Pete Wilson’s Veto Message to S.B. 1979 (Sept. 22, 1998), available at http://www.leginfo.ca.gov/pub/97-98/bill/sen/sb_1951-2000/sb_1979_vt_19980922.html (stating that most people being solicited do not exercise their right to inquire into whether or not a signature gatherer is being paid, because it is irrelevant). (Both Governors Davis and Schwarzenegger have also vetoed proposals requiring disclosure of a paid signature-gatherer’s status on the basis that these proposals are “unnecessary” because existing law required every voter petition contain a notice indicating voters have the right to inquire as to the signature gatherer’s paid status. See Gov. Arnold Schwarzenegger’s Veto Message to A.B. 738 (Sept. 6, 2005), available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0701-0750/ab_738_vt_20050906.html; Gov. Gray Davis’s Veto Message to S.B. 725 (July 30, 2001), available at http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_0701-0750/sb_725_vt_20010730).

this reform proposal as deliberation-enhancing, when it clearly seemed aimed at a far different process/integrity concern, would likely “prove too much” and obscure the effort of this Article—and the broader collection—to focus on significant deliberation-enhancing reform proposals as a discrete and generally under-examined subset.

c. Veto Rationales

As noted in the introduction, five times as many initiative-reform proposals passing both houses of the California Legislature during our study period were vetoed as were signed into law. It is important to understand, therefore, where recent reform efforts were derailed and the reasons governors cited for refusing to sign these proposals into law.²¹

In classifying gubernatorial-veto rationales, two of the three main categories merited further subdivision. Some rationales were *initiative-process-reinforcing*; they sought to protect the existing process explicitly or implicitly. An example was Governor Arnold Schwarzenegger’s veto of A.B. 1832, the 2010 legislation that would have significantly raised the fee paid by initiative proponents when submitting a draft initiative to the Attorney General for circulation to voters (now pegged at \$200²²). The Governor’s veto message explicitly cited concerns the increased fee would “make it more difficult for citizen groups to qualify an initiative.”²³ (These explicit

html.).

21. Of course, the official explanations may not be the entire story. Governors may have other motivations for their vetoes. *See, e.g.*, Laird & Macdonald, *supra* note 15, at 308 (attributing Governor Davis’s veto of A.B. 1245 to a desire to avoid political controversy near the end of a close election).

22. CAL. ELEC. CODE § 9001 (West 2011).

23. Gov. Arnold Schwarzenegger’s Veto Message to A.B. 1832 (Sept. 24, 2010), *available at* http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1801-1850/ab_1832_vt_20100924.html. In vetoing an earlier bill, Governor Schwarzenegger was even more rhetorically colorful in invoking a process-reinforcing rationale. In vetoing A.B. 2946, the 2006 bill that included a provision making it easier to invalidate petition signatures, the Governor wrote in part:

The California Constitution provides the People the right to directly enact laws, approve amendments to the Constitution, to reject laws passed by the legislature and signed by the Governor, and to remove those elected from office. As envisioned by Hiram Johnson, this important democratic

process-reinforcing rationales are further classified based upon whether they focused on protecting voters, safeguarding the prerogatives of proponents, protecting their petition circulators, or preserving the current system generally.) Other veto rationales provided more implicit support for the status quo, by opining that the reform proposal was unnecessary because existing law was sufficient²⁴ (thus implying a desire not to saddle the current process with additional, unneeded limitations).

As is typical in the legislative process, governors vetoed some initiative-reform bills for reasons other than concern about their principal substantive goals. These *unrelated* rationales focused on fiscal matters ranging from concern about cost of implementation²⁵ to state budgetary realities limiting the governor to high-priority bills, or

process gives the people direct control over their government and is one of our most important means to prevent out of control special interests. This measure is a direct assault on the Peoples right to initiative, referendum and recall. By requiring signatures to be held invalid if a petition has any sort of defect, this bill would allow legal technicalities to thwart the will of hundreds of thousands of Californians who choose to sign initiative petitions. This runs counter to the long-standing judicial policy of applying a liberal construction to the people's power of the initiative.

Gov. Arnold Schwarzenegger's Veto Message to A.B. 2946 (Sept. 29, 2006), available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_2901-2950/ab_2946_vt_20060929.html.

24. All three California governors vetoed legislation to require paid signature-gatherers to disclose their status, with similar arguments that this reform was unnecessary because present California law allowed voters to ask about, and receive an answer to, whether the petition circulator was being paid. See, e.g., Gov. Arnold Schwarzenegger's Veto Message to A.B. 738 (Sept. 6, 2005), available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0701-0750/ab_738_vt_20050906.html; Gov. Arnold Schwarzenegger's Veto Message to S.B. 469 (Oct. 7, 2005), available at http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_0451-0500/sb_469_vt_20051007.html; Gov. Gray Davis's Veto Message to S.B. 725 (July 30, 2001), available at http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_0701-0750/sb_725_vt_20010730.html; Gov. Gray Davis's Veto Message to S.B. 1219 (Oct. 10, 1999), available at http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_1201-1250/sb_1219_vt_199910_10.html; Gov. Pete Wilson's Veto Message to S.B. 1979 (Sept. 22, 1998), available at http://www.leginfo.ca.gov/pub/97-98/bill/sen/sb_1951-2000/sb_1979_vt_19980922.html.

25. For example, Governor Davis cited excessive implementation costs as one of two reasons for vetoing A.B. 1245. See Veto Message to A.B. 1245, *supra* note 15.

on other process concerns, such as preserving executive-branch powers.²⁶

The veto rationales for two proposals were especially interesting. Two different governors cited a concern that targets of the reforms could evade the intended limitations through manipulation. In vetoing A.B. 1245, Assembly Member Laird's bill requiring initiative proponents to submit a draft proposal for public comment, Governor Davis expressed a concern that appeared to echo an earlier legislative-analyst concern—that initiative proponents would “be[] able to submit essentially a ‘spot’ initiative . . . for posting, only to submit a substantially different measure” to voters.²⁷ More recently, Governor Schwarzenegger's 2010 veto of S.B. 1202, which would have notified voters reading ballot pamphlets of the top five contributors to an initiative campaign, cited concern that the bill would encourage late contributions by contributors seeking to avoid having their contributions count toward “top five” status.²⁸ These rare acknowledgments of the game-playing propensities of key players in the initiative process are intriguing—in part because they are at odds with the more typical rhetoric of supporting a favorably characterized initiative process—so they are coded separately as “*abuse-acknowledging*” rationales.²⁹

26. Veto Message to S.B. 1208, *supra* note 14 (objecting to taking power out of the hands of the Department of Finance and giving it solely to the Legislative Analyst's Office).

27. See Report of Assembly Committee, A.B. 1245, Assemb. Comm. on Elections and Redistricting, 2003-2004 Leg., Reg. Sess., at 3 (Mar. 28, 2003), available at http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_1201-1250/ab_1245_cfa_20030328_132612_asm_comm.html; Veto Message to A.B. 1245, *supra* note 15 (“Specifically, under this bill, I am concerned that an initiative could receive either a negative or positive public comment while displayed on the [Secretary of State's] web site; the proponents may then revise the initiative, but they are not required to repost it. Consequently, the public may see one version of the initiative prior to the election and an entirely different initiative during the election.”); Laird & Macdonald, *supra* note 15, at 308 (summarizing Governor's concern that initiative proponents would employ “spot bill trick”).

28. Gov. Arnold Schwarzenegger's Veto Message to S.B. 1202 (Sept. 23, 2010), available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_1201-1250/sb_1202_vt_20100923.html (claiming S.B. 1202 would “encourage late contributions” so “[l]arge donors could avoid being included on the list”).

29. Not surprisingly, vetoing governors sometimes cited multiple reasons,

II. LEGISLATIVE EFFORTS TO REFORM THE INITIATIVE PROCESS: TRENDS FROM THREE PERSPECTIVES

This Part examines the past fourteen years of legislative initiative-reform efforts from three different focal lengths. Subpart A reflects on the focus of all proposals considered at any portion of the lawmaking process from bill introduction to enactment (called “chapters”) into the California statute books. Subpart B focuses on, and makes generalizations about, the thirty proposals passing both houses of the Legislature and arriving at the Governor’s desk. Subpart C divides the subset of thirty proposals examined in the previous subpart yet further; Subpart C compares the five proposals chaptered with the twenty-five proposals falling victim to gubernatorial veto.

A. The Reform-Proposal Universe: Deliberation-Enhancing Ideas and Process Reforms

Of the 87 initiative-reform proposals we identified as having been considered in the California Legislature since 1997, 31 (or almost 36%) include proposals primarily or secondarily enhancing the ability of interested parties and voters to understand, and deliberate on, initiative proposals.

One of the leading deliberation-enhancing proposals has already been mentioned: former Assembly Member John Laird’s A.B. 1245, introduced into the 2003 session of the legislature. Meriting its own, fuller coverage in a specific article in this collection, A.B. 1245 would have set up a process by which, prior to submitting an initiative proposal to voters for the necessary qualifying signatures, the proposal would be posted on an online forum supervised by the California Secretary of State. Interested persons would then have thirty days to comment on the proposal. At the end of this comment period, proponents could move to the petition-circulation phase with their original initiative proposal or with a revised proposal. Proponents would also have been able to submit revised proposals to another round of posting and comment.³⁰ A.B. 1245 clearly and primarily

spanning multiple categories. *See, e.g., id.* (citing concerns S.B. 1202 could “create confusion,” “mislead” voters, and create “significant cost pressure to print information that is already available at the Secretary of State website”).

30. *See* LEGISLATIVE COUNSEL’S DIGEST FOR A.B. 1245, *supra* note 15, at 1.

sought to enhance deliberation, both by creating a forum for the exchange of considered views between proponents and key stakeholders and by creating a “paper trail” of information about initiative pros and cons that could be quite useful to voters considering whether to give initiative proposals their signatures on petitions and their votes on election day. (Other ideas for enhancing deliberation by triggering a public hearing include S.B. 384, a 1999 proposal that would convene a public hearing on an initiative measure after it receives 15% of the signatures ultimately needed to place the measure on the ballot.³¹)

Other interesting proposals sought to primarily improve the value of information to voters or their cue providers. For example, A.B. 677 sought to prompt a panel of retired appellate judges to develop a “nonbinding advisory opinion” about the constitutionality of ballot-qualified initiatives; the Secretary of State would then have summarized the opinion and included it in the official ballot pamphlet.³² Another information-enhancing proposal, A.B. 1500, would have required that information about initiatives on the ballot enter the public conversation earlier in the election cycle.³³

31. S.B. 384, 1999-2000 Leg., Reg. Sess. (Cal. 1999). Although proponents could after the hearing continue their qualification efforts without modifying the proposal, S.B. 384 envisioned that deliberations at the public hearing might prompt the proponent to “make nonsubstantive technical changes, such as correcting drafting errors or making stylistic changes” or to “make substantive changes to the text of the initiative” (in which case, the circulation process would start again). CAL. OFFICE LEG. COUNSEL, LEGISLATIVE COUNSEL’S DIGEST FOR S.B. 384 (Mar. 17, 1999), *available at* http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_0351-0400/sb_384_bill_19990317_amended_sen.html.

32. *See* A.B. 677, 1997-1998 Leg., Reg. Sess. (Cal. 1998); CAL. OFFICE LEG. COUNSEL, LEGISLATIVE COUNSEL’S DIGEST FOR A.B. 677 (Feb. 26, 1997), *available at* http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_0651-0700/ab_677_bill_1997_0226_introduced.html.

33. A.B. 1500, 2001-2002 Leg., Reg. Sess. (Cal. 2001). As noted in the Legislative Counsel’s Digest accompanying the bill’s introduction on February 23, 2001, after the Secretary of State transmits a copy of a ballot-qualified initiative measure to the Legislature, “[e]xisting law requires each house to assign the initiative measure to its appropriate committees, and requires the committees to hold joint public hearings on the subject of the measure prior to the date of the election at which the measure is to be voted upon.” A.B. 1500 would have instead required “the appropriate committees to hold the public hearings within 45 days of receipt of the measure.” CAL. OFFICE LEG. COUNSEL, LEGISLATIVE COUNSEL’S DIGEST FOR

Other proposals did not directly aim to promote deliberation but would nevertheless have done so by enhancing the extent of public information on proposed initiatives or otherwise improving the ability of voters to make sense of information. One of several examples of this “deliberation dividend” is A.C.A. 11, a constitutional amendment proposed by Secretary of State Debra Bowen when she served in the California Assembly.³⁴ A.C.A. 11 would have allowed the legislature to consider (and pass legislation equivalent to) a proposed initiative before it was submitted to the voters.³⁵ Even if the legislature ultimately declined to adopt the equivalent of the initiative, some deliberations and debate would likely have occurred, generating a paper trail of analysis about initiative pros, cons, and likely implications. Voters and cue-givers could have made good use of this enhanced information when called upon to decide whether to follow the legislature’s reticence. Similar enhancements to the public information about initiative pros and cons would have flowed from other proposals.³⁶

Looking at the proposal universe empirically, Table I indicates that ten out of eighty-seven reform proposals considered since 1997 primarily related to opportunities for deliberation during the California

A.B. 1500 (Feb. 23, 2001), *available at* http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_1451-1500/ab_1500_bill_20010223_introduced.html; *see also* A.B. 943, 2007-08 Leg., Reg. Sess. (Cal. 2007) (requiring Legislative hearing on initiative proposals 30 days before their placement on the ballot).

On a related note, S.B. 1243, 2005-2006 Leg., Reg. Sess. (Cal. 2006), sought to enhance the required public hearings triggered when initiatives qualify for the ballot by transferring the responsibility for them from the Legislature to the “Little Hoover” Commission on California State Government Organization and Economy. Finally, another proposal that on its face merely transferred authority from one state official (the Attorney General) to another (the Legislative Analyst) could have resulted in different (and perhaps improved) information for voters considering initiative proposals. *See* A.C.A. 18, 2007-2008 Leg., Reg. Sess. (Cal. 2008) (transferring duty to prepare the title and summary for a proposed initiative or referendum).

34. A.C.A. 11, 1997-1998 Leg., Reg. Sess. (Cal. 1997).

35. *Id.*

36. *See, e.g.,* S.C.A. 16, 2009-2010 Leg., Reg. Sess. (Cal. 2009) (discussing initiative process similar to Bowen’s A.C.A. 11); A.C.A. 14, 2009-2010 Leg., Reg. Sess. (Cal. 2009) (enhancing the ability of voters to deal with existing information by limiting the number of initiative measures placed on any statewide election ballot to five).

initiative process and another twenty one of the eighty-seven proposals would have advanced deliberation in a secondary sense. Combined, thirty-one reform proposals—slightly more than a third—had some connection to deliberation.

TABLE I: NUMBER OF REFORM PROPOSALS RELATED TO DELIBERATION, BY STAGE IN THE LEGISLATIVE PROCESS

	PROPOSALS PRIMARILY RELATED	PROPOSALS SECONDARILY RELATED	PROPOSALS NOT MEANINGFULLY RELATED
TOTAL OF REFORMS PROPOSED (87)	10	21	56
PROPOSALS NOT PASSING BOTH HOUSES (57)	7	16	34
PROPOSALS PASSING BOTH HOUSES (30)	3	5	22
VETOED PROPOSALS PASSING BOTH HOUSES (25)	3	4	18
PROPOSALS ENACTED INTO LAW (5)	0	1	4

Still, the majority of the legislative proposals considered over the last fourteen years had no meaningful connection to deliberation. Instead, the greater legislative concern was with paid petition circulators, big-moneyed initiative proponents and supporters, and other unrelated process deficiencies. This explains why, as Table II shows, a large proportion of proposals concentrated on reforming the direct-democracy phases preceding and including the circulation of initiative petitions.³⁷

37. Note, the phase categories in Table 2 exceed the total number of bills. This is because, as noted in the text accompanying notes 13 & 14, some proposals affect multiple phases.

TABLE 2: NUMBER OF REFORM PROPOSALS, BY PHASE OF INITIATIVE PROCESS AFFECTED

	PRE-CIRC. PHASE	CIRCULATION PHASE	ELECTION PHASE	POST-ELECTION PHASE
TOTAL OF REFORMS PROPOSED (87)	16	48	27	2
PROPOSALS NOT PASSING BOTH HOUSES (57)	11	23	21	2
PROPOSALS PASSING BOTH HOUSES (30)	5	25	6	0
VETOED PROPOSALS PASSING BOTH HOUSES (25)	4	20	5	0
CHAPTERED PROPOSALS PASSING BOTH HOUSES (5)	1	4	1	0

B. Proposals Clearing Both Legislative Houses

During the period under review here, thirty reform proposals passed both legislative houses (five were enacted into law and governors vetoed twenty-five). Treating these reform ideas as one package, two interesting and related trends emerge.

First, a preoccupation with reforms not related to deliberation—the trend noted above in Part II.A—is even more pronounced when the focus is on the subset of bills clearing both houses. As Table 1 indicates, twenty-two (over 73%) of the thirty initiative proposals passing both houses were *not* meaningfully related to deliberation and only three of the thirty proposals would have had a “direct effect” on deliberation. One bill directly related to deliberation was A.B. 1245, Assembly Member Laird’s posting-and-comment bill summarized in Part II.A of this Article.³⁸ The other two were more modest. One portion of A.B. 2946 would have struck a blow for voter comprehension by requiring the description of an initiative proposal on a signature petition to be understandable to the average voter.³⁹ And S.B. 1208 would have caused a modest improvement in the

38. See *supra* note 15.

39. See S.B. 1208, *supra* note 14.

fiscal-impact information made available to voters considering whether to sign initiative petitions or voting on ballot-qualified initiative proposals.⁴⁰

When the focus is on proposals secondarily affecting deliberation, five of the thirty proposals passing both houses qualify. Four relate to providing voters indirect “cues” for evaluating the credibility of proponents or key supporters.⁴¹ A fifth pertains to the accessibility of voter information. As chaptered on September 14, 1998, S.B. 1764 required the California Secretary of State to “disseminate the complete state ballot pamphlet over the Internet.”⁴² The ballot pamphlet contains information about electoral processes and candidates and is the official source of information and pro/con arguments about initiative proposals. Ballot pamphlet information is also the *only* source (beyond the text of initiatives) consulted by California courts seeking to ascertain voter intent when the application of adopted initiatives is contested in subsequent litigation.⁴³ Thus, enhancing the online availability of the ballot pamphlet in the “internet age” connects to promoting deliberation, albeit indirectly and modestly.

A second, related trend is the predominant focus of reform efforts on the process phases prior to electoral consideration of ballot-qualified initiatives, the “pre-circulation” and “circulation” phases. Table 2 shows that only six of the thirty proposals approved by both legislative chambers during the fourteen year period applied beyond the pre-circulation and circulation phases, while twenty-two (almost

40. *See supra* note 17 (explaining how S.B. 1208 would have a primary effect on deliberation).

41. Three of these proposals require disclosure of “the top five contributors” to initiative campaigns. *See supra* note 18. In addition, S.B. 1979 would have, in pertinent part:

[R]equire[d] . . . any committee circulating, distributing, or mailing a petition to show on the face of each petition in no less than 12-point bold type, as specified, the name, street address, and city of the committee . . . [and] [i]f the committee is a controlled committee, the name of the person or organization controlling the committee . . . to be on the face of each petition

S.B. 1979, 1997-1998 Leg., Reg. Sess. (Cal. 1998).

42. S.B. 1764, 1997-1998 Leg., Reg. Sess. (Cal. 1998).

43. Glenn C. Smith, *Solving the “Initiatory Construction” Puzzle (and Improving Direct Democracy) by Appropriate Refocusing on Sponsor Intent*, 78 U. COLO. L. REV. 257, 262-63 (2007).

three-quarters) of the thirty proposals applied to the circulation phase. (This reflects, in part, the dominant legislative concern with paid-signature-gathering.)

C. *Enacted and Passed-but-Vetoed Reforms*

Comparing enacted, as opposed to passed-but-vetoed, bills provides some especially interesting contrasts. To begin with, deliberation figured less prominently in the five enacted proposals than in their vetoed cousins. No proposal with a primary effect on initiative-process deliberation has been chaptered in the last fourteen years; all three of the primary-effect proposals clearing all legislature hurdles were vetoed.⁴⁴ In addition, only one of the five secondary-effect proposals to pass both houses made it into the statute books—the relatively modest late-1990s bill requiring internet access to the official ballot pamphlet.⁴⁵ (Related trends showed up in the initiative-process phases to which the enacted proposals applied. Only one bill, the internet-ballot-pamphlet bill, sought to improve the election phase of initiative deliberation.⁴⁶)

The most revealing comparison between the two proposal types, however, relates to the political dynamics behind those that succeeded and those that did not. Table 3 breaks down the rationales invoked by governors vetoing eighteen bills⁴⁷ in this Article's time frame. As this

44. See *supra* text accompanying notes 38-40.

45. See S.B. 1764, 1997-1998 Leg., Reg. Sess. (Cal. 1998).

46. *Id.* A small portion of another chaptered bill, A.B. 753, 2009-2010 Leg., Reg. Sess. (Cal. 2009), the “code-cleanup” bill, updated existing code provisions relating to the preparation of ballot titles and summaries for the official ballot pamphlet. See Cal. Bill Analysis, A.B. 753, Assemb. Comm. on Elections and Redistricting, 2009-2010 Leg., Reg. Sess., at 2 (Sept. 8, 2009), available at http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0751-0800/ab_753_cfa_20090908_204601_asm_floor.html [hereinafter Bill Analysis of A.B. 753]. Although this change related to the way initiatives would be presented to voters during the “election” phase, for purposes of this Article, A.B. 753 is not counted as relating to that phase because of the modest nature of the change and the bill's far greater emphasis on pre-circulation activities. Counting A.B. 753 as contributing to the election phase would have overstated the extent to which enacted bills focused on the election phase.

47. Unlike the remainder of this Article, which uses the “proposal” as the basic unit of analysis, the analysis of gubernatorial vetoes references “bills.” This is

breakdown shows, the major downfall for initiative-reform bills was a perception that they threatened direct democracy or the major participants in the initiative process.⁴⁸ Governors cited one or more of the process-reinforcing rationales in vetoing seventeen out of eighteen bills.⁴⁹ (By far the lion's share of this initiative-process-preservation concern was invoked on behalf of initiative proponents and especially their petition-circulation prerogatives.⁵⁰)

because California's governors typically provide short, generic veto messages which do not usually differentiate among a bill's different proposals. As a result, it is usually difficult to determine which rationales applied to which provisions in a multi-provision bill.

48. The categories and subcategories listed in Table 3 add to more than the total number of proposals (eighteen) because some proposals were vetoed on multiple bases.

49. *See, e.g.*, Gov. Arnold Schwarzenegger's Veto Message to A.B. 1068 (Oct. 12, 2009), *available at* http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1051-1100/ab_1068_vt_20091012.htm (stating Governor cannot "support limiting how proponents of a measure negotiate a contract for gathering signatures"); Veto Message to A.B. 1245, *supra* note 15 (vetoing bill based on concerns the public should review the same version of an initiative that is submitted for election); Gov. Pete Wilson's Veto Message to A.B. 188 (Sept. 30, 1998), *available at* http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_0151-0200/ab_188_vt_19980930.html (citing concerns bill would inhibit private sector involvement in ballot measure elections). In total, veto messages for the following bills cited process-reinforcing rationales: A.B. 1068, A.B. 1832, A.B. 436, A.B. 6, S.B. 1202, S.B. 408, A.B. 2946, S.B. 1598, S.B. 469, A.B. 1245, A.B. 2917, S.B. 725, S.B. 1219, A.B. 188, and S.B. 1979. *See infra* Appendix B, pp. 288-90 (providing details on these bills).

50. *See, e.g.*, Gov. Arnold Schwarzenegger's Veto Message to A.B. 6 (Oct. 11, 2009), http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/ab_6_vt_20091011.html ("I cannot support a measure that places an undue burden on reform-minded Californians."); Veto Message to A.B. 2946, *supra* note 23 ("The prohibitions on per-signature payments will make it more difficult for grass-roots organizations to get the necessary signatures in the time allotted."). Governors overtly invoked the need to protect proponents in vetoing three proposals—A.B. 436, A.B. 1832, and A.B. 188. Governors overtly invoked the need to protect petition circulators in vetoing the following seven proposals: A.B. 1068, A.B. 6, S.B. 408, A.B. 2946, S.B. 1598, S.B. 469, and A.B. 2917. *See infra* Appendix B, pp. 288-90 (providing details on these bills). Three proposals that governors argued were not needed could, in theory, have complicated the petition-circulation phase. *See* S.B. 725, 2001-2002 Leg., Reg. Sess. (Cal. 1998) (requiring disclosure when circulator is paid); S.B. 1219, 1999-2000 Leg., Reg. Sess. (Cal. 1998) (requiring disclosure when circulator is paid); S.B. 1979, 1997-1998 Leg., Reg. Sess. (Cal. 1997) (requiring petitions disclose contact information for ballot committees and

TABLE 3: VETO RATIONALES, BY RATIONALE CATEGORY, FOR EIGHTEEN VETOED PROPOSALS

Rationale Category	Number of Bills Vetoed (at least in part) On This Basis
Initiative-Process- Reinforcing Rationale: Protecting Voters	2
Initiative-Process- Reinforcing Rationale: Protecting Proponents	3
Initiative-Process- Reinforcing Rationale: Protecting Petition Circulators and Circulation Process	7
Initiative-Process- Reinforcing Rationale: Implicit (Reform is Unnecessary)	5
Unrelated Rationale: Fiscal Concerns	4
Unrelated Rationale: Non-Fiscal Concerns	1
Unrelated Rationale: Abuse-Acknowledging	2

The importance to a reform proposal's success of avoiding a perceived attack on the initiative process is underscored by looking in the opposite direction—at the *absence* of system threats in the five chaptered bills. Other than the one adopted bill that is “mostly non-substantive” (i.e., A.B. 753, the 2009 “code clean-up measure” sponsored by Secretary of State Debra Bowen “to reorganize, update, and clarify the Elections Code provisions regarding ballot labels, titles, and summaries”⁵¹), the remaining four adopted bills, summarized in the rest of this paragraph, enhance prerogatives of existing direct-democracy participants. Two such proposals are voter friendly: A.B. 1134 makes it easier for voters to withdraw the

disclosure when circulator is paid).

51. Bill Analysis of A.B. 753, *supra* note 46, at 2.

signatures they earlier lent to an initiative petition and A.B. 1717 makes ballot pamphlets available online, giving tech-savvy voters another way to access official ballot proposal information.⁵² A third chaptered bill modestly expands the ranks of persons who can serve as ballot-petition circulators.⁵³

A last proposal appears at first blush to run counter to this process-enhancing trend. A.B. 2101 amended an existing law to allow a court, as a condition of parole, to prohibit a defendant who violated election rules from serving as a paid signature gatherer.⁵⁴ This modest incursion on unfettered signature gathering, however, seems to show that concerns for protecting direct-democracy and voters can predominate.⁵⁵

52. A.B. 1134, 2009-2010 Leg., Reg. Sess. (Cal. 2009); A.B. 1717, 2009-2010 Leg., Reg. Sess. (Cal. 2010). A.B. 1134 responded to a 2007 recall petition in the City of Carson, in which “[i]n addition to the recall petition, there was an active signature withdrawal campaign run, urging people who had signed the petition to submit signature withdrawal cards to have their signatures removed from the original petition.” Cal. Bill Analysis, A.B. 1134, Assemb. Comm. on Elections and Redistricting, 2009-2010 Leg., Reg. Sess., at 1-2 (May 4, 2009), available at http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1101-1150/ab_1134_cfa_2009_0504_092356_asm_comm.html [hereinafter Bill Analysis of A.B. 1134]. When a court decision imposed an “extra hurdle” on voter-signature withdrawal, *id.* at 2, Assembly Member Mendoza successfully carried this bill to reverse the court ruling. See LEG. COUNSEL STATE CAL., OFF. BILL HISTORY OF A.B. NO. 1134, 2009-2010 Leg., Reg. Sess. (2009), available at http://info.sen.ca.gov/pub/09-10/bill/asm/ab_1101-1150/ab_1134_bill_20091011_history.html.

53. See Cal. Bill Analysis, S.B. 904, S. Comm. on Elections and Reapportionment, 2001-2002 Leg., Reg. Sess., at 1 (Apr. 5, 2001), available at http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_0901-0950/sb_904_cfa_20010405_122306_sen_comm.html. S.B. 904 would have required circulators be *eligible* to register. *Id.* This would have expanded previous law requiring petition circulators be registered voters. *Id.* S.B. 904 sought to “conform[] [an unenforceable] California law regarding eligibility of petition circulators to the Supreme Court’s decision in *Buckley v. American Constitutional Law Foundation* [525 U.S. 182 (1999)].” *Id.*

54. See Cal. Bill Analysis, A.B. 2101, Assembly Floor, 2009-2010 Leg., Reg. Sess., at 1 (Aug. 11, 2010), available at http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2101-2150/ab_2101_cfa_20100811_183301_asm_floor.html.

55. See *id.* at 2 (quoting author’s concerns that “bounty” paid to signature gatherers encourages them to “mislead voters” and to cause voters to sign petitions “without disclosing to the voter what those petitions would do”).

III. THE FUTURE OF LEGISLATIVE REFORM OF CALIFORNIA'S DIRECT DEMOCRACY

With the past as prologue, it is now possible to look ahead to the future. Part III of this Article does this by (A) providing some preliminary notes on the prospects for direct-democracy reform in the current California legislative session and (B) drawing some conclusions about the lessons future reformers can learn from the last fourteen years.

A. The Climate for Legislative Reform in 2011-2012: An Update

One obvious development this legislative session is a change in the party and person occupying the California Governorship. Governor Jerry Brown did not comment on initiative reform during his election campaign. And other, less direct, signals about the strength of the Governor's support for the initiative process are equivocal. During his campaign, Governor Brown emphasized the importance of popular sovereignty by promising not to raise taxes "unless the people themselves actually vote for them."⁵⁶ As Attorney General, however, Brown refused to defend Proposition 8, both when challengers argued that the initiative was contrary to the California Constitution's limitations on fundamental constitutional change⁵⁷ and when litigation challenged it on federal constitutional grounds.⁵⁸

Whether these and other stances on particular initiatives transcend substantive specifics and indicate Governor Brown will be less protective of the initiative process compared to previous governors—

56. David Siders, *Ballot Watch: Fixing the State Budget*, SACRAMENTO BEE, Oct. 23, 2010, at 4A, available at <http://www.sacbee.com/2010/10/23/3125657/ballot-watch-fixing-the-state.html>.

57. See Respondents' Preliminary Response to Petition for Extraordinary Relief at 6, *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009), 2008 WL 5516861. Indeed, rather than simply fail to defend Proposition 8 in *Strauss*, Brown's office actively participated in oral argument. See Transcript of Oral Argument, *Strauss*, available at <http://www.courtinfo.ca.gov/courts/supreme/highprofile/documents/prop8-transcript.pdf>.

58. See Attorney General's Memorandum in Response to Court's Inquiry Into the Attorney General's Role in the Initiative Process, *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), 2010 WL 197613.

and more welcoming of reform—remains to be seen. In part, this depends on whether Brown will follow the recent pattern of vetoing initiative reform bills in order to preserve direct democracy or provide another potential check on the Legislature. Recent governors have used the initiative process to attempt to circumvent the Legislature and promote their legislative agendas. Governor Pete Wilson did this by attaching himself to Proposition 187.⁵⁹ Similarly, Governor Arnold Schwarzenegger often took sides or backed initiatives through his “California Dream Team.”⁶⁰ Governor Brown may similarly want to preserve this option by remaining skeptical about initiative reform. However, the mixed record of success and adverse political fallout from past gubernatorial efforts⁶¹ to circumvent the legislature by using

59. See Pete Wilson, Former Governor of California, Remarks to The Hudson Institute, *Illegal Immigration: Past, Present, and Future* (June 12, 2006) (transcript available at http://www.hudson.org/index.cfm?fuseaction=HUDSON_upcoming_events&id=261).

60. See *No on 27*, CAL. DREAM TEAM, http://sites.activatedirect.com/www.joinarnold.com/issues/detail.php?_c=zjkom5wanidxf&id=z5a3ab5wflg01 (last visited Mar. 31, 2011); *No on 23*, CAL. DREAM TEAM, http://sites.activatedirect.com/www.joinarnold.com/issues/detail.php?_c=zjkom5wanidxf&id=z5a367r307dewo (last visited Mar. 31, 2011).

61. Governor Wilson may have achieved a short-term benefit to his own reelection campaign in his support of the Proposition 187. (Some political observers credit that support for a successful come-from-behind reelection win. See, e.g., John Marelius, *Governor; U.S. Senate; Constitutional Office; Ballot Measures*, SAN DIEGO UNION-TRIBUNE, Oct. 23, 1994, at 1) However, courts later overturned Proposition 187 on federal constitutional grounds. *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755, 771 (C.D. Cal. 1995) (finding provisions of Proposition 187 denying illegal immigrants benefits and services granted to them under federal law were preempted and granting initiative opponents a preliminary injunction), *aff'd*, 997 F. Supp. 1244 (9th Cir. 1997). And many associate Wilson’s and the Republican Party’s support of Proposition 187 with the decline of the Party in California due to alienating a growing and increasingly active group of Latino voters. See, e.g., Carla Marinucci, *Reaching Out to State Latinos/Bush Distances Himself From Pete Wilson*, SFGATE.COM (Apr. 8, 2000), http://articles.sfgate.com/2000-04-08/news/17642940_1_latino-voters-illegal-immigration-bush-administration.

Governor Schwarzenegger and his “Dream Team” achieved some notable successes in supporting initiatives. See GOVERNOR SCHWARZENEGGER’S CAL. DREAM TEAM: A BALLOT MEASURE COMM., JOINARNOLD.COM, <http://www.joinarnold.com> (last visited Mar. 1, 2011). (Especially important among the fourteen out of twenty-five Dream-Team-supported initiatives is Proposition 11, which took

the initiative process may have tarnished the appeal of direct-democracy as a Governor's friend, and opposing concerns about the adverse budgetary and political fallout from the initiative process may come to the fore.

Whichever scenario emerges, the current legislative session also includes a newly reelected Secretary of State with a track record for proposing initiative changes both in her prior term of office,⁶² and in her previous role as a member of the State Legislature.⁶³ In addition, there will be no lack of initiative-reform proposals; several proposals have already been introduced in the 2011-2012 legislative session.

Most notably, Assembly Member Mike Gatto introduced the following five ambitious constitutional amendments this legislative session:

A.C.A. 6, which would require initiatives imposing new costs on the State or on local governments to provide sufficient funding sources in the initiative itself;

A.C.A. 9, which would require initiatives imposing supermajority requirements on government policymaking to be passed by a supermajority;

A.C.A. 10, which would allow the Legislature to amend an initiative which has been in place for four years;

A.C.A. 11, which would increase the signature requirements to qualify initiatives; and

redistricting out of the hands of the Legislature and empowered an independent commission to do this politically significant task. Cal. Proposition 11: Redistricting. Initiative Constitutional Amendment and Statute, *reprinted in* California Ballot Pamphlet 137-40 (2008), *available at* http://traynor.uchastings.edu/ballot_pdf/2008g.pdf (codified at CAL. CONST. art. XXI, § 2).) On the other hand, despite considerable investment of personal political capital, Schwarzenegger failed to convince voters to adopt five out of the six initiatives he supported in 2009 to deal with California's looming budget crisis. *See California Online Voter Guide – 2009*, CAL. VOTER FOUNDATION (May 8, 2009), <http://www.calvoter.org/voter/elections/2009/special/props/index.html>. Some observers argue that Schwarzenegger's failure to end-run the Legislature via direct democracy may have compromised his subsequent efforts to work with legislators on budget solutions.

62. *See supra* text accompanying note 51 (discussing Assembly Member Bowen's sponsorship of "code clean-up" measure).

63. *See, e.g., supra* text accompanying notes 34-35 (discussing then-Assembly Member Bowen's sponsoring of A.C.A. 11).

A.C.A. 12, which would require the Legislature to hold hearings on ballot initiatives before they go to the ballot; the Legislature could propose amendments to the initiative, which proponents could then accept or not.

Most of Assembly Member Gatto's proposals follow the pattern of previous bills. Three of the five are not primarily or secondarily related to deliberation in the initiative process. A.C.A. 9 and 11 would make it harder for an initiative to qualify or become law, and A.C.A. 10 would allow the Legislature to counteract the effects of initial voter deliberations. However, two of the five are related to deliberation. A.C.A. 6 would primarily further deliberation by generating new information for voters about the fiscal implications of proposed initiatives. Similarly, A.C.A. 12 is a process reform that would provide a "deliberation dividend" because the enhanced legislative hearings regarding initiative measures would generate new information. (As with past efforts to reform direct democracy through constitutional amendment, these proposals face special political hurdles. The Legislature would have to pass them by two-thirds vote margins and then they would need to be approved by a majority of voters⁶⁴).

B. Drawing Lessons From the Past: The Advantages of Focusing on Deliberation Reforms and Framing Them as Direct-Democracy Friendly

What lessons can California legislators (and perhaps executive branch reformers) draw from the recent era of initiative-process

64. CAL. CONST. art. XVIII, §§ 1, 4. The California Constitution distinguishes between constitutional amendments and constitutional revisions. *Compare* CAL. CONST. art. XVIII, §1, *with* CAL. CONST. art. XVIII, §2. Constitutional revisions are changes to the California Constitution that "fundamental[ly]" change the "basic governmental plan or framework." *Strauss v. Horton*, 207 P.3d 48, 99 (Cal. 2009). Constitutional amendments, on the other hand, are changes that "simply change[] the substantive content of a state constitution." *Id.* Both constitutional amendments and constitutional revisions require voter approval. CAL. CONST. art. XVIII, §§ 1, 2. However, constitutional amendments may be proposed by a two-thirds vote of the California Legislature or signatures equal to 8% of the votes cast for all candidates for governor at the gubernatorial election, while a constitutional revision requires a constitutional convention or a two-thirds vote by the legislator followed by majority approval. CAL. CONST. art. II, § 5; CAL. CONST. art. XVIII, §§ 1, 2, 4.

reform? A first take-away is that reformers must maximize efforts to frame their proposals as neutral toward—and, even better, beneficial for—direct democracy. This reflects lessons drawn from gubernatorial veto rationales (with their emphasis on stopping perceived anti-initiative-process threats) and from the absence of anti-direct-democracy taints in proposals ultimately enacted.⁶⁵ Further, the very reasons why many California legislators naturally resist the direct-democracy alternative will likely cause a special cloud of suspicion to form over reform efforts that originate from the state capitol.

These observations suggest that reformers would do well to focus more of their exertions on proposals that enhance initiative-system deliberation, especially in the election phase of the process. This shift of emphasis is an appropriate response to the general failure of past efforts largely focused elsewhere. And, beyond the simple wisdom of trying something different, deliberation-enhancing reforms are the easiest to characterize as direct-democracy neutral (or even direct-democracy supportive)—thus heeding the first lesson. Proponents of reforms for this phase can argue that their proposals do not delay or complicate the process of submitting initiative proposals to citizen-legislators. Instead, as opposed to proposals making it harder to qualify initiative proposals for the ballot or to pass proposals once they do qualify, deliberation-enhancing proposals accept the current rules of direct-democracy and seek to make the existing process more meaningful. Avoiding an anti-direct-democracy taint thus seems especially feasible for reforms aimed at this so-far-deemphasized election phase.

A case can be made, of course, that meaningful direct-democracy reforms are inevitably doomed to fail—a veritable “third rail” of California politics—and perhaps all reform proposals are vulnerable to simplistic sloganeering that the proponent is trying to weaken direct democracy.⁶⁶ In combination with the power of initiative-industry

65. See *supra* text accompanying note 51 (discussing the success of A.B. 753 based on its characterization as a non-substantive “clean-up” measure); notes 52-53 and accompanying text (discussing the success of “voter friendly” bills A.B. 1134 and S.B. 904 which would have made it easier for voters to withdraw their signatures and expanded who can serve as ballot-petition circulators respectively). Of course, as with all legislation, idiosyncratic political and practical reasons may be part of the recipe for success for some of the reform proposals eventually adopted.

66. See, e.g., Veto Message to A.B. 2946, *supra* note 23 (“[M]aking the

lobbyists, this could continue the trend of the last fourteen years—in which the majority of reform proposals will die within legislative halls and most of those emerging from the capitol will fall victim to the gubernatorial veto pen.

But there is an alternative scenario. A combination of changed political dynamics and a renewed emphasis on deliberation enhancement can significantly increase the odds that the California Legislature will pass real initiative reform. Indeed, the chaptering of A.B. 1134, the reform proposal making it easier for voters to withdraw their initial assent to a petition, shows how voter-empowering changes can trump concerns about the prerogatives of initiative proponents. (It is telling that the author of the measure expressly lamented imposing an “extra hurdle” on voters that “would *unfairly* benefit proponents of the initiative and any company hired to collect signatures on their behalf.”⁶⁷) This suggests that reform proposals apparently and actually enhancing voter autonomy and deliberation can carry the day!⁶⁸

process more difficult may be fine for those opposed to the initiative process or those who profit from it, but it is not for everyday Californians with an idea for reform.”)

67. Bill Analysis of A.B. 1134, *supra* note 52, at 2 (Comment 1) (attributing quoted statement to sponsoring Assembly Member Mendoza).

68. As noted earlier, an impulse to protect voters from manipulation and to ensure their assent was meaningful also appeared to trump deference to proponents and their signature gatherers in another chaptered bill, A.B. 2101. *See supra* text accompanying notes 54-55.

APPENDIX A: 5 ENACTED INITIATIVE-PROCESS REFORMS

BILL/ LEG. SESS.	INITIATIVE PHASE AFFECTED	EFFECT ON DELIB.	FOCUS	SUMMARY	OUTCOME	SPONSOR
AB 753 (*09-'10)	Pre- Circulation Circulation	None	Initiative- Process Procedures	"Clean[ed] up" and streamlined existing provisions on initiative proposals, including provisions regarding circulation and balloting of initiatives.	Chartered 10/11/09	Assembly Member Anthony Adams-R
AB 1134 (*09-'10)	Circulation	None	Voter Control	Made it easier for voters to withdraw previous support; overcame hurdle disputed in state court case involving local recall petitions.	Chartered 10/11/09	Assembly Member Tony Mendoza-D
AB 2101 (*09-'10)	Circulation	None	Circulator Ethics	Allowed a court, as a condition of parole, to prohibit someone from being a paid signature gatherer if they violated election rules in the past.	Chartered 9/27/09	Assembly Member Paul Fong-D
SB 904 (*01-'02)	Circulation	None	Circulator Prerogatives	Responded to U.S. Supreme Court case by only requiring circulators to be <i>eligible to vote</i> (and not actually registered to vote) in the district where they circulate petitions.	Chartered 7/25/01	Senate Committee on Elections and Reapportionment
SB 1764 (*97-'98)	Election	Secondary	Accessibility of Voter Information	Required Secretary of State to make ballot initiatives and voter pamphlets for candidates available online.	Chartered 9/14/98	Senator Betty Karnette-D

**APPENDIX B: 25 VETOED INITIATIVE-REFORM PROPOSALS
(CONTAINED IN 18 BILLS)
(in reverse order of veto date)**

BILL/ LEG. SESS.	INITIATIVE PHASE AFFECTED	EFFECT ON DELIB.	FOCUS	SUMMARY	VETO BASIS	SPONSOR/ VETOING GOVERNOR
AB 1068 (09-10)	Circulation	None	Circulator Ethics	Prohibited circulators from being paid contingent on whether measure qualified for the ballot	Protect Circulation	Assembly Member Lori Saldana-D (Schwarz)
AB 6 (09-10)	Election	None	Circulator Ethics	Required companies hiring paid circulators register, pay a fee with the Secretary of State, and train circulators about applicable California law	Protect Circulation	Assembly Member Lori Saldana-D (Schwarz)
AB 436 (09-10)	Pre-Circulation	None	Fees for Proposal Submission	Increased fee to submit an initiative to the Attorney General (from \$500 in 2010 to \$2000 in 2016)	Protect Proponents	Assembly Member Lori Saldana-D (Schwarz)
AB 1832 (09-10)	Pre-Circulation	None	Fees for Proposal Submission	Increased fee to submit an initiative to the Attorney General (from \$500 in 2011 to \$2000 in 2017)	Protect Proponents	Assembly Member Lori Saldana-D (Schwarz)
SB 1202 (09-10)	Election	Secondary (Voter Cues)	Process Ethics	Required ballot pamphlet to list top five contributors or \$50,000 to initiative campaigns	Avoid Voter Confusion Abuse Cost	Senator Mark DeSaulnier-D (Schwarz)
AB 2584 (07-08)	(1) Circulation (2) Election	(1) None (2) None	(1) Voter Control (2) Litigation over Ballots and Ballot Pamphlets	(1) Made it easier for voters to withdraw support; overcame hurdle controverted in state court case involving local recall petition (2) Made Secretary of State real- party-in-interest in litigation over ballots or ballot pamphlets related to initiatives	Cost	Assembly Member Tony Mendoza-D (Schwarz)

SB 1208 ('07-'08)	Circulation	Primary	Quality of Voter Information	Made the Legislative Analyst Office solely responsible for estimating fiscal implications of initiative proposals (as stated on ballot pamphlets)	Balance Between Exec. and Legs. Authority	Senator Denise Ducheny-D (Schwarz.)
SB 1686 ('07-'08)	Circulation	None	Circulator Ethics	Made it a crime to direct or permit a circulator to make a false affidavit regarding initiative signatures	Cost	Senator Jeff Denham-R (Schwarz.)
BILL/ LEG. SESS.	INITIATIVE PHASE AFFECTED	EFFECT ON DELIB.	FOCUS	SUMMARY	VETO BASIS	SPONSOR/ VETOING GOVERNOR
SB 408 ('07-'08)	Circulation	None	Circulator Ethics	Required circulators of initiative petitions to be of legal age and to tell potential petition signatories how long they have lived at their current residence	Protect Circulation	Senator Jenny Oropeza-D (Schwarz.)
AB 2946 ('05-'06)	(1) Circulation (2) Circulation (3) Circulation (4) Circulation	(1) None (2) None (3) None (4) Primary	(1) Circulator Ethics (2) Circulator Ethics (3) Circulator Ethics (4) Enhanced Voter Understanding of Proposal	(1) Outlawed circulators being paid per signature (2) Provided that unlawfully collected petition signatures would not be counted (3) Provided civil penalties for knowing collection of unlawful signatures (4) Required the description of the proposal on the petition to be understandable to the average voter	Protect Circulation	Assembly Member Mark Leno-D (Schwarz.)
SB 1398 ('05-'06)	(1) Circulation (2) Circulation	(1) None (2) Secondary (Voter Cues)	(1) Circulator Ethics (2) Process Ethics	(1) Required petition circulators to indicate whether they are being paid (2) Required circulation petition to state the top five contributors to the initiative campaign	Protect Circulation	Senator Debra Bowen-D (Schwarz.)

SB 469 ('05-'06)	(1) Circulation (2) Circulation	(1) None (2) Secondary (Voter Cues)	(1) Circulator Ethics (2) Process Ethics	(1) Required petition circulators to indicate whether they are being paid (2) Required circulation petition to state the top five contributors to the initiative campaign	Protect Circulation	Senator Debra Bowen-D (Schwarz.)
AB 2917 ('03-'04)	Circulation	None	Circulator Ethics	Increased penalties for persons intentionally gathering petition signatures unlawfully	Protect Circulation Proposal Not Needed	Assembly Member Fran Pavley-D (Schwarz.)
AB 1245 ('03-'04)	Pre-Circulation Circulation Election	Primary	Early Deliberation about Init. Proposals Voter Information	Created 30-day public-notice-and-comment forum for initiatives prior to collection of voter signatures; proponents could, but were not required to, change the substance of their proposals in response.	Avoid Voter Confusion Abuse Cost	Assembly Member John Laird-D (Davis)
BILL/ LEG. SESS.	INITIATIVE PHASE AFFECTED	EFFECT ON DELIB.	FOCUS	SUMMARY	VETO BASIS	SPONSOR/ VETOING GOVERNOR
SB 725 ('01-'02)	Circulation	None	Circulator Ethics	Required circulators to disclose to potential signatories whether they are being paid	Proposal Not Needed	Senator Jack Scott-D (Davis)
SB 1219 ('99-'00)	Circulation	None	Circulator Ethics	Required circulators to disclose to potential signatories whether they are being paid	Proposal Not Needed	Senator Adam Schiff-D (Davis)
AB 188 ('97-'98)	Pre-Circulation Circulation Election	None	Influence of Money on Initiative Process	Prevented use of funds solicited or referred for one initiative, referendum, or recall to promote or defeat another initiative	Protect Proponents Proposal Not Needed	Assembly Member Kevin Murray-D (Wilson)
SB 1979 ('97-'98)	(1) Circulation (2) Circulation	(1) None (2) Secondary (Voter Cues)	(1) Circulator Ethics (2) Sponsor Ethics	(1) Required petition to state whether circulators are being paid and, if so, required the petition to state the name of the company employing them (2) Required petition circulated by ballot committees to provide the committee's contact information.	Proposal Not Needed (Second Portion of Proposal Not Mentioned)	Senator Adam Schiff-D (Davis)

APPENDIX C: 23 DELIBERATION-ENHANCING INITIATIVE-REFORM PROPOSALS
 NOT PASSED BY BOTH HOUSES OF THE LEGISLATURE
 (By bill number, within each two-year legislative session)

BILL/ LEG. SESS.	INITIATIVE PHASE AFFECTED	EFFECT ON DELIB.	FOCUS	SUMMARY	STATUS	SPONSOR
ACA 13 ('09-'10)	Election	Secondary (process reform would yield additional voter info)	Alternate Form of Indirect Initiative	Legislature would hold hearings on qualified initiatives and could adopt them as is, as amended legislation, or as proposed constitutional amendments	Died in Assembly	Assembly Member Edward Hernandez-D
ACA 14 ('09-'10)	Election	Secondary (would make existing information more manageable)	Too Many Initiative Proposals on Ballot	Only the first five initiative measures to qualify would be placed on the ballot; qualified measures not placed on the ballot would have to be qualified newly	Died in committee	Assembly Members Edward Hernandez-D and Warren Furutani-D
SCA 10 ('09-'10)	Election	Secondary (process reform would yield additional voter info)	Alternate Form of Indirect Initiative // Alternate Proposal Creation	Legislature would hold hearings on qualified initiatives and could propose amended versions which, with proponent permission, may replace the original proposals on the ballot	Died in Senate	Senator Denise Ducheny-D

SCA 16 (09-'10)	Pre-Circulation	Secondary (process reform would yield additional voter info)	Alternate Form of Indirect Initiative	Proponents of legislation or constitutional amendments could petition Legislature for action, based on significantly smaller percentage of voter signatures than required to qualify initiatives	Died in Senate	Senator Mark DeSaulnier-D
AB 943 (07-'08)	Election	Secondary (would make existing info available earlier)	Legislative Hearings on Qualified Initiatives	Deadline for Legislative committees to hold hearings on qualified initiatives would be moved up to 30 days before an initiative is placed on the ballot	Died in committee	Assembly Member Charles Calderon-D
ACA 18 (07-'08)	Pre-Circulation	Primary	Quality of Voter Info	Titles and summaries for ballot measures would be written by Legislative Analyst, rather than Attorney General	Died in committee	Assembly Member Anthony Adams-R
SCA 29 (07-'08)	Pre-Circulation	Secondary (process reform would yield additional voter info)	Fiscal Impact of Initiative Proposals	Initiative proposal could not be submitted to electors unless the Legislative Analyst and Director of Finance determine that its net increase in state government costs is offset by proposed revenue measures	Died in committee	Senator Denise Ducheny-D

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BILL/ LEG. SESS.	INITIATIVE PHASE AFFECTED	EFFECT ON DELIB.	FOCUS	SUMMARY	STATUS	SPONSOR
ABX1 8 ('05-'06)	Election	Primary	Additional Voter Info re: Cost of This Initiative	Ballot pamphlet for certain special statewide elections called by the Governor would have to include on the front cover information on cost of conducting election	Inactive; died at Senate desk	Assembly Member Thomas Umberg-D
SB 1243 ('05-'06)	Election	Primary	Quality of Voter Info	Hearings on qualified initiatives, to be conducted under current law by Legislative committees, would instead be conducted by Little Hoover Commission	Died in committee	Senator James Battin-R
ACA 18 ('05-'06)	Election	Secondary (process reform would yield additional voter info)	Alternate Form of Indirect Initiative	Legislature could adopt qualified initiative as legislation, either in the form proposed or in amended version	Amended version died in Assembly	Assembly Member Joseph Nation-D
AB 1236	(1) Election (2) Circulation	(1) Secondary (would provide voter cues re proponent credibility) (2) Secondary (would provide voter cues re proponent)	(1) Circulator Ethics (2) Process Ethics	(1) A "volunteer qualified initiative" would be labeled as such in the ballot pamphlet (2) "Major contributors" to a campaign to qualify an initiative would be stated on the initiative petition	(1) Died in Committee (2) Died in Committee	Assembly Member Hannah-Beth Jackson-D

	<p>(1) Election</p> <p>(2) Circulation</p> <p>(3) Election</p>	<p>credibility)</p> <p>(1) Secondary (would make existing info available earlier)</p> <p>(2) Secondary (would provide voter cues re proponent credibility)</p> <p>(3) Secondary (would provide voter cues re advocate credibility)</p> <p>Secondary (process reform would yield additional voter info)</p>	<p>(1) Legislative Hearings on Qualified Initiatives</p> <p>(2) Process Ethics</p> <p>(3) Process Ethics</p> <p>Alternate Form of Indirect Initiative</p>	<p>(1) Deadline for Legislative committees to hold hearings on qualified initiatives would be moved up to 45 days after receipt of the measure from the Secretary of State</p> <p>(2) (Provisions added by Senate committee:) Signature gatherers must make available to potential signers the names and contribution amounts of top 5 contributors to the proponent; initiative petitions would be accompanied by written campaign-finance disclosure statements</p> <p>(3) (Provision added by Senate committee:) Mass mailings supporting or opposing initiative proposals would have to disclose the names and contribution amounts of top 5 contributors to the advocate</p> <p>Each House of Legislature would hold hearing within 30 days of receiving a qualified initiative and would recommend whether it should be adopted into law as proposed or in amended version; after recommendation, proponent could</p>	<p>(1) Deleted when bill was later amended in Senate committee</p> <p>(2) Died in Senate</p> <p>(3) Died in Senate</p> <p>Died in committee</p>	<p>Assembly Member Robert Hertzberg-D</p> <p>Assembly Member Robert Hertzberg-D</p>
<p>AB 1500 ('01-'02)</p>						
<p>ACA 14 ('01-'02)</p>						

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					revise measure if Attorney General determines that revision furthers purposes and intent of measure			
SB 384 ('99-'00)	Pre-Circulation	Primary	Early Deliberation about Initiative Proposals Voter Information	Thirty days after initiative petition receives 15% of the necessary voter signatures, a hearing would be held on the proposal; after hearing, lead proponent could decide (i) to make changes in proposal and start circulation process over or (ii) to make non-substantive modifications or no modifications and continue with signature-gathering process as is.	Died in committee to which re-referred	Senator Dede Alpert-D		
SB 1829 ('99-'00)	Election	Secondary (would provide voter cues re advocate credibility)	Identity of Committees Supporting Print Advertisements	Print advertisements concerning candidates or ballot measures would have to disclose names of committees providing financial support	Provisions applying to ballot measures were deleted during Senate amendments	Senator Charles Poochigian-R		
AB 677 ('97-'98)	Election	Primary	Constitutional Analysis of Initiative Proposals	Secretary of State could choose panel of three retired appellate state judges to give non-binding advisory opinion on a qualified initiative's constitutionality; opinion would appear in the ballot pamphlet	Died in Assembly	Assembly Member Fred Aguiar-R		

AB 679 ('97-'98)	Election	Secondary (would make voter info more understandable)	Voter Ability to Distinguish Legislative from Outside Proponent Measures	Ballot measures submitted for voter approval by Legislature would be more clearly distinguished from proposals submitted by initiative proponents	Died in committee	Assembly Member Louis Caldera-D
AB 1233 ('97-'98)	Pre-Circulation	Primary	Constitutional Analysis of Initiative Proposals	Attorney General could send initiative prior to petition circulation to the Legislative Counsel's office for constitutional analysis	Deleted before final bill was chaptered	Assembly Member Brett Granlund-R
AB 1359 ('97-'98)	(1) Election (2) Election	(1) Secondary (process reform would yield additional voter info) (2) Primary	(1) Legislative Review of Qualified Initiatives // Ability to Make Needed Proposal Revisions (2) Additional Info to Voters re: Conflicting Initiative Proposals	(1) A legislative committee would review and issues a recommendation on a qualified initiative; proponents could thereafter propose amendments, which would be included in the proposal presented to voters if the Attorney General determines that the amendments "further the intent and purpose of the measure" as originally supported by petition signers (2) Initiative proposals on any one election ballot deemed by Attorney General to potentially conflict would be grouped together on ballot and ballot pamphlet would provide notice of potential conflict	(1) Died in Assembly (2) Died in Assembly	Assembly Member Debra Bowen-D

APPENDIX D: 34 NON-DELIBERATION-ENHANCING
INITIATIVE-REFORM PROPOSALS
NOT PASSED BY BOTH HOUSES OF THE LEGISLATURE
(by Initiative-Process Phase Affected, Topic, Legislative Session, and Bill
Number)

I. PRE-CIRCULATION PHASE (6 PROPOSALS)

A. PROPOSALS CHANGING THE SUBSTANCE OF PROPOSED INITIATIVES

- ACA 14 ('01-'02; Hertzberg-D) (tightened single-subject rule to require that all initiative provisions be “functionally related and reasonably germane to each other”)
- SCA 15 ('99-'00; Murray-D) (tightened single-subject rule to require that each by initiative provision be “germane to the specific objective or purpose of the measure” and “functionally interdependent with all other provisions”)
- SCA 5 ('97-'98; Karnette-D) (tightened single-subject rule to require that each initiative provision be reasonably germane to the general objective or purpose of the measure” and “reasonably interdependent with all other provisions”)

B. PROPOSALS CHANGING THE PROCESS FOR PROPOSING INITIATIVES

- AB 935 ('97-'98; Vincent-D; original version) (extended time for gathering petition signatures)
- AB 935 ('97-'98; Vincent-D; final version) (required proponent to certify to Attorney General that proposed measure has been reviewed by legal counsel legal for “legal form, clarity of language, and proper drafting style”)
- SB 1449 ('97-'98; Thompson-D) (required that proposed initiatives be sent for Legislative Counsel review; in confidential memorandum, Legislative Counsel could recommend “technical, nonsubstantive amendments consistent with the policy and intent of the measure”)

II. CIRCULATION PHASE (21 PROPOSALS)

A. PROPOSALS REFORMING PAID-SIGNATURE_GATHERING (10 PROPOSALS)

1. Proposals Prohibiting Per-Signature Payments for Signature Gatherers

- SB 1047 ('05-'06; Bowen-D; included in amended version of bill)
 - AB 980 ('01-'02; Pavley-D; included in original version)
 - AB 73 ('97-'98; Bordonaro-R; included in original version)
 - AB 1359 ('97-'98; Bowen-D; included in original version; provision deleted during amendment in Assembly) (also required proponent submission to state officials of information re: paid circulators)

2. Proposals Requiring Signature Gatherers to Disclose Whether They Are Being Paid

- AB 1236 ('01-'02; Jackson-D)
- SB 1219 ('99-'00; Schiff-D)
- AB 1233 ('97-'98; Granlund-R)

3. Other Reform Proposals

- SB 1203 ('09-'10; DeSaulnier-D) (required signature gatherer to wear badge)
 - AB 980 ('01-'02; Pavley-D; final version) (allowed payment of circulators by commission, but limited payment to \$5,000 per election cycle)
 - AB 73 ('97-'98; Bordonaro-R; final version) (required paid signature gatherers to obtain permit from Secretary of State)

B. PROPOSALS REFORMING SIGNATURE GATHERING MORE GENERALLY (7 PROPOSALS)

- AB 1914 ('07-'08; Torrico-D) (imposed civil liability on proponents knowingly failing to report violations to Secretary of State; required proponents to notify signatories of misconduct related to petitions and offer signers an opportunity to withdraw signature)
- AB 2459 ('05-'06; Oropeza-D) (sought to prevent out-of-state petition circulators with only short-term association with state, by requiring circulators to be registered or eligible to vote in most recent state election)
- AB 667 ('01-'02; Cox-R) (required state to reimburse counties for cost of verifying signatures on initiative petitions)

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- AB 1351 ('01-'02; Cardoza-R) (prevented signatures on petitions from being declared invalid when voter moves to another precinct)
- AB 1371 ('01-'02; Cardoza-R) (prevented signatures on petitions from being declared invalid due to technical irregularities in officially required declarations by petition circulators)
- AB 439 ('99-'00; Peschetti-R) (included in original version; provision deleted when final bill was chaptered) (required state to reimburse cities and counties for cost of verifying signatures on initiative petitions)
- AB 935 ('97-'98; Vincent-D; original version) (extended time for gathering petition signatures from 150 days to 175 days)

C. PROPOSALS CHANGING SIGNATURE REQUIREMENTS (4 PROPOSALS)

- AB 943 ('07-'08; Calderon-D) (raised 8% requirement for initiatives amending state constitution to 10%)
- ACA 6 ('07-'08; Calderon-D) (same)
- ACA 18 ('05-'06; Nation-D) (raised 8% requirement for initiatives amending state constitution to 16%; raised 5% requirement for initiative statutes to 10%; required signatures to be broadly distributed through at least thirty counties)
- AB 1233 ('97-'98; Granlund-R) (required that existing 5% requirement for initiative statutes and 8% requirement for initiatives amendment state constitution to be based on number of *registered* voters, not actual voters; has effect of substantially increasing signature requirements)

III. ELECTION PHASE (5 PROPOSALS)

A. PROPOSALS CHANGING VOTE MARGINS FOR INITIATIVE PROPOSAL/PASSAGE (4 PROPOSALS)

- ACA 21 ('09-'10; Calderon-D; included in original version) (required 2/3 vote for initiatives changing state constitution)
- ACA 21 ('09-'10; Calderon-D; final version) (lowered percentage of Legislature needed to propose constitutional amendments from 2/3 to simple majority; thus, made Legislature's authority to propose constitutional amendments same as initiative proponents' authority)

- ACA 26 ('09-'10; Calderon-D) (required initiative proposals to pass by the same vote margin they require for Legislative amendments to initiative provisions)
- SCA 22 ('05-'06; Murray-D) (required 2/3 vote for initiatives changing state constitution)

B. PROPOSAL RESTRICTING THE ELECTIONS FOR WHICH INITIATIVES CAN APPEAR ON THE BALLOT

- ACA 34 ('05-'06; Umberg-D) (prevented initiatives or referenda from being voted on at the same election at which there is a presidential primary election)

IV. POST-ENACTMENT PHASE (2 PROPOSALS)

- ACA 38 ('05-'06; DeVore-R) (granted California Supreme Court sole jurisdiction over litigation challenging enacted initiatives)
- AB 1181 ('99-'00; Frusetta-R) (granted California appellate courts jurisdiction over litigation challenging enacted initiatives)