

# The People's Power of Initiative and Referendum

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# • Initiative and Referendum Power

- Definitions
- History and Philosophy
- Usage
- Regulations and Restrictions
- Recent legislative changes
- Hot topics proposed for the ballot
- Duties of local clerks
- Erosion v. expansion

# Definitions

**Initiative**: adopts new laws or amends existing laws.

**Direct**: placed on ballot directly

**Indirect**: submitted to legislature first

**Referendum**: accepts or rejects laws passed by the legislative body.



# Definitions - continued

**Popular referendum**: petitioners refer the matter to the people. (vouchers)

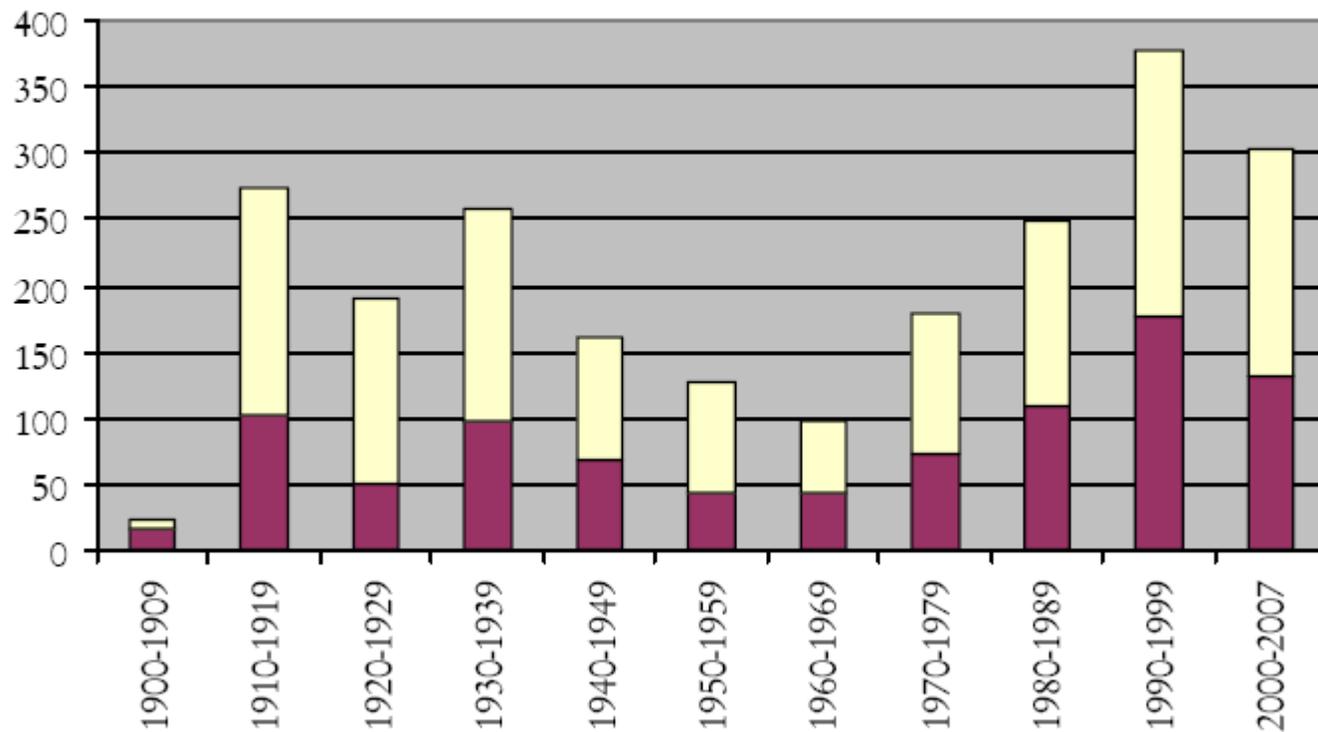
**Legislative referendum**:  
elected representatives refer proposition to the people.  
(bonds, constitutional amendments)





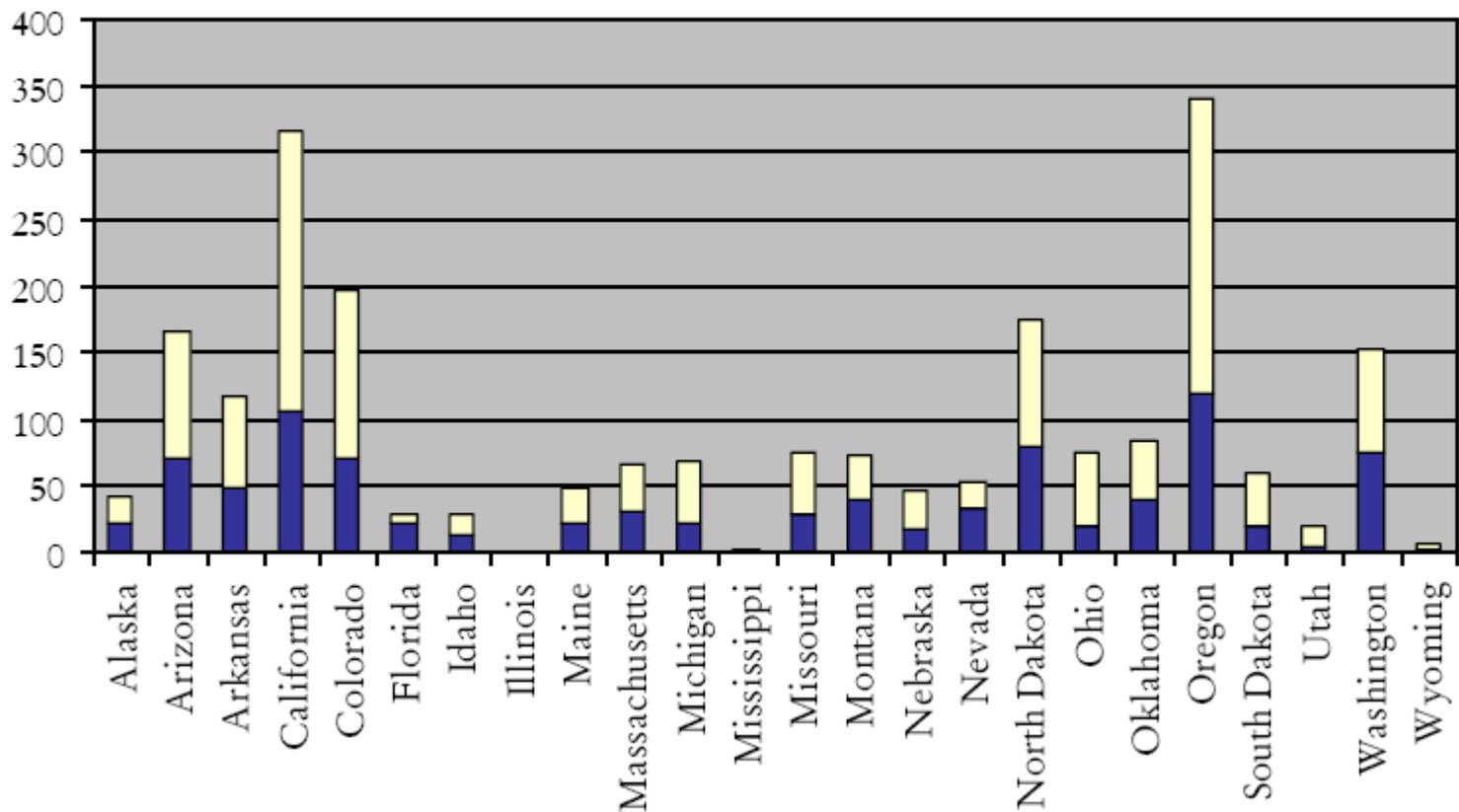
# Overview of Initiative Use 1904-2007

## Number of Initiatives by Decade



# Overview of Initiative Use 1904-2007

## Number of Initiatives by State



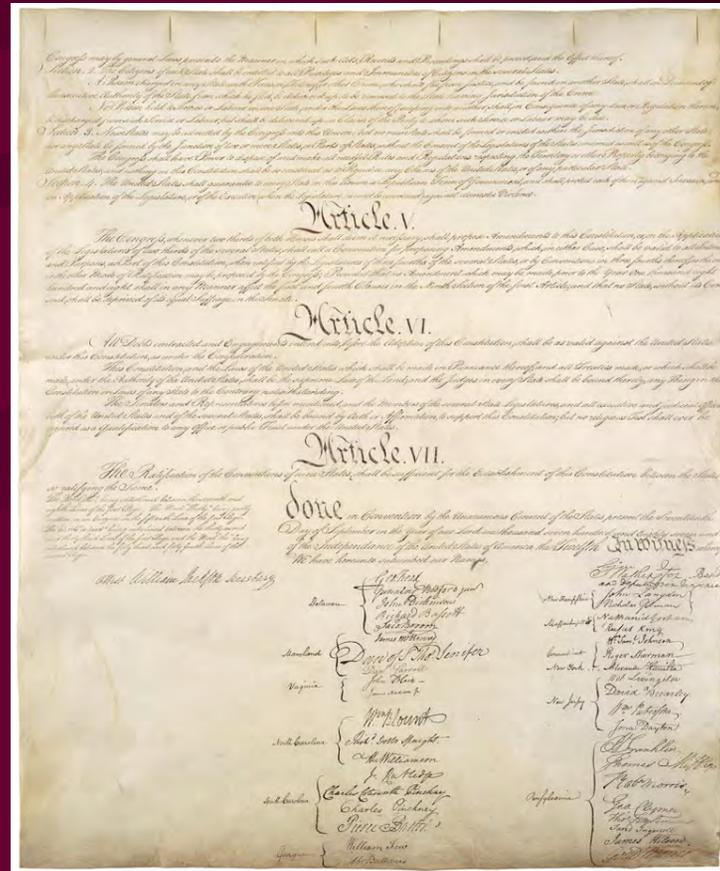
# Local Initiative Process

Almost every major city in the country has the local initiative process. Initiatives are used more frequently than referenda.



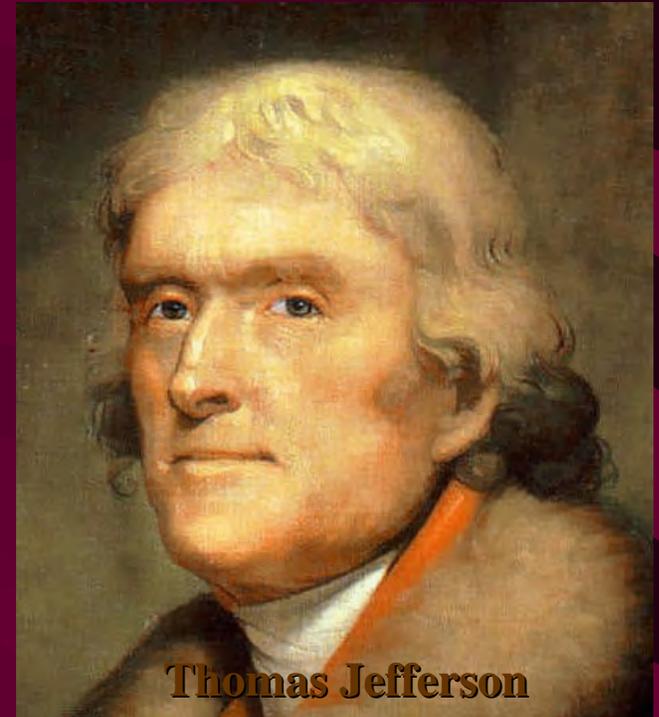
# Article IV, Section 4 United States Constitution

The United States shall guarantee to every State in this Union a Republican Form of Government.



# Direct Democracy v. Representative Democracy

- 24/50 states permit popular initiative
- All 50 states have legislative referendum



Thomas Jefferson

# Political Philosophy

“I believe in the Initiative and Referendum, which should be used not to destroy representative government, but to correct it whenever it becomes misrepresentative.”

--Teddy Roosevelt



# Brief History of Initiative and Referendum



## The Progressive Era 1890s

- \*Women's Suffrage
- \*Secret ballots
- \*Direct election of U.S. Senators
- \*Initiative and Referendum

Southern and eastern states did not adopt I&R over concerns that blacks and immigrants might enact reforms.

# Utah State Constitution

- **Article VI, Section 1. [Power vested in Senate, House, and People.]**
- (1) The Legislative power of the State shall be vested in:
  - (a) a Senate and House . . . ; and
  - (b) the people . . . .
- (2) (a) (i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:
  - (A) initiate any desired legislation . . . ; or
  - (B) require any law passed by the Legislature, except those laws passed by a two-thirds vote . . . to be submitted to the voters . . . .(ii) Notwithstanding Subsection (2)(a)(i)(A), legislation initiated to allow, limit, or prohibit the taking of wildlife or the season for or method of taking wildlife shall be adopted upon approval of two-thirds of those voting.
- (b) The legal voters of any county, city, or town . . . .

# Initiative Power: A Fundamental Right

“The reserved right and power of initiative is a fundamental right under Article VI, Section 1 of the Utah Constitution.”



Gallivan w. Walker, 2002 UT 89, 54 P.3d  
1069 (Utah 2002)

# I&R: A Fundamental Right

“Because the people’s right to directly legislate through initiative and referenda is sacrosanct and a fundamental right, Utah courts must defend it against encroachment and maintain it inviolate.”



Gallivan w. Walker, 2002 UT 89, 54 P.3d 1069 (Utah 2002)

# Results of Utah Elections

## RESULTS OF UTAH INITIATIVES AND REFERENDUMS 1960-2004

YEAR	INITIATIVES AND REFERENDUMS	RESULT
2007	House Bill No. 148, "Education Vouchers" (R)	Defeated
2007	House Bill No. 38, "Amendments to Local option sales tax: Real Soccer (R)	Insufficient
2004	Utah Clean Water, Quality Growth and Open Space (I)	Defeated
2002	Radioactive Waste Restrictions Act (I)	Defeated
2000	A) English as the Official Language of Utah (I)	Passed
	B) Utah Property Protection Act (I)	Passed
1998	NONE ON THE BALLOT	
1996	NONE ON THE BALLOT	
1994	Term Limits and Election by Majority Vote or by Run-Off (I)	Defeated
1992	County Option on Parimutuel Wagering (I)	Defeated
1990	Removal of State and Local Sales Tax From Food (I)	Defeated
1988	A) Tax and Spending Limitation (I)	Defeated

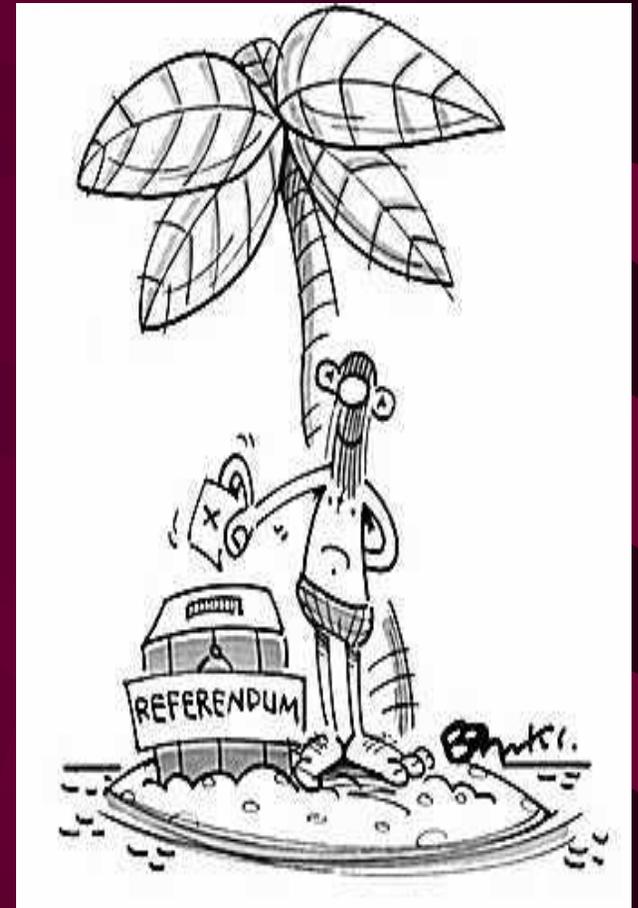
# Legislative Response

In reaction to the Utah Supreme Court decision (Gallivan), the legislature enacted new, burdensome regulations in the 2003 General Session. S.B. 28



# Legislative Reaction to Gallivan

- 2003 Response
  - One-year requirement
  - Senate district requirement
  - Public meetings requirement
  - Same or similar ban
  - Signature removal provisions



## S.B. 53 1<sup>st</sup> Sub. (2008)

Prohibits: use of local initiative for land use ordinances or changes thereto or use of referendum for land use ordinances.

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section 20A-7-401 is amended to read:

**20A-7-401. Limitation -- Land use ordinances and budgets.**

(1) The legal voters of any county, city, or town may not initiate [budgets]:

(a) a budget or [changes] a change in [budgets.] a budget; or

(b) a land use ordinance or a change in a land use ordinance.

(2) The legal voters of any county, city, or town may not require any budget adopted by the local legislative body or the implementation of a land use ordinance adopted by the local legislative body to be submitted to the voters.

## S.B. 54 1<sup>st</sup> Sub. (2008)

Regulates LOCAL initiative and referendum petitions as drafted:

- to contain only one subject;
- to clearly express the subject in its title; and
- changes deadline for submittal to local clerks.



# More Restrictions

A quick summary of the new burdens put on the citizens of Utah

- One subject rule – (S.B. 2)
- Law clearly expressed in title -- (H.B. 359)
- Content restrictions--no local land use or budget topics (AG opinion)
- Rebuttable presumptions (ballot title)
- Legal sufficiency—review twice
- Wildlife initiatives – 2/3 vote
- Referendum? 10 percent of voters in 15 counties

# • Hot Button Citizen Issues

## Statewide Initiative

income tax reform, redistricting, campaign finance reform, land use regulations

## Local Initiative

coal-fired power plant (Sevier County)

## Local Referendum

mandatory recycling (Bountiful), annexation petition re ag. protection area (Tremonton), development plan approval of Elk Meadows Ski Resort (Beaver County)



# Duties of Local Clerks

1. Sponsors file initiative or referendum application with county or local clerk
2. Clerk provides sponsors with materials – five copies of petition and five signature sheets
3. April 15: Clerks to receive verified packets  
May 1: Clerks check circulators' names for age, residency and report offenders if any  
May 15: Clerks certify each signer is registered voter, each name signed corresponds, delivers packets to Lt. Gov.

# The Big Picture

You measure a democracy by the freedom it gives its dissidents, not the freedom it gives its assimilated conformists.

--Abbie Hoffman

