

Study Notes Negatives, Positives of Legislation to Amend Citizen Ballot Measures

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Michael Card, University of South Dakota political science professor emeritus and Doug Kronaizl of Vermillion recently studied the attempts that have been made by the South Dakota Legislature to amend the referendum and initiative process in the state.

Kronaizl, a 2011 graduate of Vermillion High School and a 2015 graduate of Columbia University who presently works for Ballotpedia, shared the results of that research at a recent luncheon meeting of the Vermillion Rotary Club.

“This presentation is more the product of our joint work together that we presented at the Center for Western Studies. After looking at a variety of attempts to limit ballot measures, we discovered there appears to be a somewhat systematic effort, but it may not be systematic at all,” Card said. “We both suffer a little bit of confirmation bias in this particular realm.”

He noted that Kronaizl’s presentation has the formal title of “Legislative Efforts To Limit Citizen Initiatives” and the subtitle would be “Unloading the Gun Behind the Door.”

“That particular phrase comes from the efforts to put the initiative and referendum in our state’s constitution in the early to mid-1890s,” Card said. “The view was that the Legislature was unresponsive and owned by Chicago and Minneapolis banks, and therefore the cause of much of the corruption that had affected territorial legislators, and they did not believe that the legislators were following the wishes of the people. On the other hand, they kept electing them. So there’s a little bit of a ying and yang here.”

Kronaizl said there are two methods of direct democracy in South Dakota in which voters will see items on the ballot on election day.

“One is the citizen-initiated process. That’s where people go out and gather signatures to put things onto the ballot,” he said.

Citizen-initiated actions include initiated measures, initiated constitutional amendments, veto referendums and the calling of a constitutional convention. South Dakota citizens have never gone to the ballot on election day to call such a convention.



Doug Kronaizl shares the results of a study that focused on legislative attempts to amend the initiative and referendum process in South Dakota during a recent luncheon meeting of the Vermillion Rotary Club. Courtesy of Vermillion Rotary Club

Legislatively referred items may also appear on a South Dakota ballot.

“If the Legislature ever wants to amend the Constitution, that has to go on the ballot,” Kronaizl said. “State statutes can also be referred on the ballot, although we’ve never done that. There are two paths by which you’ll see things on the ballot – either people are putting it there as the voters or people are putting it there as legislators.”

The citizen-initiative process became a reality in South Dakota when it was placed on the ballot in 1898 and approved by voters.

“We’ve had direct democracy somewhere in the United States for over half of our nation’s history,” he said. “Statewide democracy has been a process of governing in our country and we were the first to bring it out on a statewide level.”

Kronaizl noted that the power of the initiative process, as far as citizen initiatives go, lies in Article 3, Section 1 of the State Constitution.

“This is the same part of the Constitution that establishes a legislative branch,” he said, “so in the same breath at which the legislative branch is being created, the Constitution also creates the initiative process. They’re kind of two pieces of one legislative branch.

“You’ve got the legislators who go out to Pierre which is the part that people probably most readily

recognize, because that's what we think of when we think of legislative legislators," Kronaizl said. "But in South Dakota, the citizen initiative process is also a piece of that legislative branch in the Constitution."

He said the analogy of "the gun behind the door" that Card mentioned earlier describes an interested group that's out of power who doesn't feel like they're being represented and wants to express themselves. Initiatives are intended to provide an avenue for a party that's out of power and ideas that are out of vogue.

"We've seen it from both sides of ideology. We've seen it in California with the 1978 Prop 13 (dealing with property taxes), in Washington with Initiative 200 ... they introduced a measure banning affirmative action in 1998," Kronaizl said, "and more recently, we've seen ballot measures in more conservative states regarding abortion access."

There may be a group in power at the state level, he said, "but then there might be some ideas that the populace wants or doesn't want and then that's where the direct democracy, where the initiative, comes into play."

Since 1890 there have been 128 citizen initiated measures, and 238 legislatively referred measures placed on ballots. Fifty percent of the legislatively referred measures have passed.

Kronaizl couldn't recall the success rate for citizen-initiated measures, but a graph he used during his presentation shows both peaks and troughs of success. The initial era of the initiative process occurred during the first 16 years of South Dakota's statehood.

Beginning in 1890, only legislatively referred measures could be introduced to voters. The first citizen-initiated measure appeared on a South Dakota ballot in 1908.

Kronaizl calls the years 1908 through 1924 in South Dakota "the progressive era," with citizens becoming more politically active.

"Twenty six percent of all the citizen initiatives that have ever happened in South Dakota happened between 1908 and 1924," he said. "Then, we entered a doldrum, a period where there was not a lot of citizen initiative activity for about 50 years or so."

"There were only 23 citizen initiatives from 1926 to 1970," Kronaizl said. "Most of those were veto referendums, so referred laws are actually only seven initiatives and 16 veto referendums."

He terms 1972 through 1978 as a reorganization era.

"There was not a lot of citizen initiative activity there, but a lot of very big legislatively referred measures appeared on the ballot," Kronaizl said. "And then we enter kind of the Wild West, the most excitingly named one that we really like, 1980 to 1988 where on any one of these given cycles, there was at least one ballot measure regarding nuclear waste or gambling for each of those years."

From 1980 to 1988, nuclear waste and gambling appeared to be hot political topics in South Dakota.

"In 1990, we transitioned from indirect initiatives to direct initiatives. It's how we got to where we are now," he said. "Where we are now is, if we pass an initiative measure, it goes into effect at a certain point in time in the future."

South Dakota is presently in the "unloading the gun era," Kronaizl said, from 2006 to the present.

"In 2006 and in 2016 – those two years are tied for the most citizen initiatives ever to appear on the ballot," he said, with nine citizen initiatives during both of those years.

"In the last 18 years, we've similarly seen that a little over a quarter of all citizen initiatives in our state's history have been on the ballot in very recent history," Kronaizl said. "We saw that peak, and we're like, all right, what else has been happening during that time?"

Ballotpedia conducted a study of legislation introduced throughout the country from 2018 through 2023 that would make the initiative process more difficult.

"South Dakota was at the forefront of that with 10 by the standards of that study. We've got this peak of activity, and we wanted to see why this is happening at this point in time," he said. "What we saw was that these peaks with like nine measures on the ballot were typically followed by little spikes in legislation addressing the initiative process."

In 2006, there were nine measures on the ballot. During the 2007 legislative session, there was an uptick in measures affecting the initiative process.

In 2016, there were, once again, nine initiated measures on the South Dakota ballot. The South Dakota Legislature introduced 12 measures to affect the initiative process in 2017 followed by a spike, with 25 different measures introduced (by the Legislature) in 2018.

“You’ve got this increase in initiatives, and then this increase in legislation affecting the initiative process,” Kronaizl said. “So, the process is being used more, and now it’s being regulated as well. But this only paints part of the picture.”

He said it is important to look at the contents of the citizen initiatives. Topics such as video lottery and nuclear compacts split along party lines.

“But starting in 2006, you start to see far more conspicuously and clearly focused measures appearing on the ballot,” Kronaizl said. “In 2006, issues involving marijuana and abortion were both on the ballot. And in 2008, abortion was on the ballot again. In 2010 marijuana was on the ballot again.”

In 2014, minimum wage was on the ballot. In 2016, IM 22, a measure dealing with ethics, was on the ballot. Citizens placed an ethics measure on the ballot again in 2018; marijuana was on the ballot in 2018, with marijuana and Medicaid expansion issues for voters to decide in 2022.

Marijuana and abortion are poised to be among many topics in the upcoming 2024 election.

“These are topics that very clearly break along partisan lines in a way that some other issues that may have been big focuses of ballot measure campaigns in the past necessarily weren’t,” he said. “That was another aspect of this recent history – you start to see a lot more polarizing topics appearing on the ballot through the initiative process.”

The study then focused on categorizing legislation that affects the initiative process. Kronaizl noted that the discussion centers on things that make the initiative process easier and more difficult.

“It doesn’t necessarily mean that something that makes the process more difficult is bad, or something that makes it easier is good,” he said. “What we were looking for here were things that would increase the cost required to participate in the initiative process. If that cost increased, we’d categorize that as more difficult. If that cost decreased, we’d categorize that as making it easier.”

Of 79 bills introduced by the Legislature, it was found that 61, or 77% of all those introduced would have made the process “a little bit more difficult,” Kronaizl said. “Of that total, 33 passed and 28 failed, so a little over half of those ones that made it harder have passed since 2006.

“Seven would have made it easier. Three of those passed, four of those failed, and then there were 11 that were neutral,” he said.

The study dug further to examine the different ways that this legislative response happens.

“Because when we’re talking about unloading the gun, it’s not kind of a wholesale thing. It’s 1,000 cuts, right? It’s piece by piece, legislation by legislation,” Kronaizl said. “It’s far easier to make a lot of small changes than it can be to convince everyone to make a huge change all at once.”

These small changes include: Timeline changes that affect the amount of time that citizens have to gather signatures on petitions to place something on a ballot. “Some examples of legislation that has been introduced to the past regarding that one that made it a little bit harder was House Bill 1006 in 2018,” Kronaizl said. “This basically says that if you try to put in an initiated measure, you must submit it to the LRC while the legislators are in session.”

It is legislation that can have the effect of limiting the amount of time citizens have to gather petition signatures. He added that a bill that was passed in 2020 allows citizens to submit multiple versions of a measure to the LRC, which can save time.

“That’s an example of one that might make it easier versus one that might make it harder,” Kronaizl said.

In recent years, there have been bills introduced to attempt to make petition signature requirements more difficult, to change the material format requirements on petitions, to bring about new restrictions regarding people’s ability to circulate petitions and to add new campaign finance disclosure requirements.

Some of the bills regarding these topics have been approved by the Legislature and some failed.

“The effect here is that you’ve got kind of a death by 1,000 cuts over the last 18 years or so,” Kronaizl said. “Typically, when a measure appears on the ballot that affects the initiative process, voters side in favor of the process ... “so it can kind of be easier if you are trying to implement or regulate the process to do it in 100 small ways rather than one big way all at once.”

Citizens and lawmakers may complain that there is too much money pouring into South Dakota for ballot measure campaigns and so laws with limitations are needed.

“The Catch 22 is that by passing these laws, we’re making the initiative process something that only groups with a lot of money can actually do,” he said. “They have the money to hire all the attorneys when they need to go to court after the election to defend themselves against a single subject rule. They have the money to oversee all those paid circulators and things like that.

“So, it’s kind of like that dual coin – the more restrictions you place on the process, the less likely it is that a regular person could just kind of go out and get a bunch of like-minded citizens together and utilize the process,” Kronaizl said. “But you know, what are you supposed to do? Because if you

leave the door wide open, then, yes, a lot of money could come in and affect the process.”

The study of the legislation over the years offers no solutions to the problems it revealed.

“This is just me telling you something that we’ve been observing over the last few years. There isn’t really a clear path forward,” he said. “There are a lot of changes that have happened, as we’ve seen over the past two decades or so. A lot of times it feels like the process is hard to advocate to make it easier.”

A task force study was held a few years ago, and Kronaizl said a new study involving ballot measure sponsors may provide possible solutions.