

League of Women Voters of Massachusetts
Study of the Ballot Question Process in Massachusetts

Study Guide

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Section I: Understanding the Ballot Questions
(Refer to “Information for Voters” red booklet, 2018)

Consensus Question 1

1. Should additional efforts be made to ensure **petition summaries** are written for the greatest understanding by voters?

- Yes No No consensus

Massachusetts

The Attorney General’s office prepares the “fair, concise summary” for initiative petitions within one month of submission. The Attorney General’s office welcomes proponents and opponents to review and suggest changes to the summary. The summary is used in three defined places throughout the process: on every petition page, in the “Information for Voters” red booklet, and on the ballot. Massachusetts does not have a required limit on the length of the petition summary.

Other States

Of the 24 states that have a mechanism for initiatives for laws and/or constitutional amendments, most have either a summary or a lengthy descriptive title that is the responsibility of the Attorney General, Secretary of State, or comparable official. In a few states the proponents are tasked with writing the summaries, usually subject to review by an official.

Internal preparation guidelines are not readily available, but at least one state, Oklahoma, specifies the summary should be “free from jargon and written at an eighth grade reading level.”

Political scientists Shauna Reilly and Sean Richey calculated a mean Flesch-Kincaid Grade Level score for 47 states with at least one ballot measure during the 10-year period from 1997 to 2007. Flesch-Kincaid scoring is a well-established standardized tool for indicating the understandability of a passage in English widely used by educators, the Department of Defense, regulators, publishers, advertisers and businesses. The state with the highest mean score was New Mexico. The state with the lowest mean score for reading level on ballot questions was Oklahoma, which had a mean FKGL score of nine years of education. Massachusetts was scored at a mean of 14 years of education, which was the 10th lowest grade level on ballot questions among the 47 states.

Points of View

Yes: There should be more specific guidelines for preparing the summary, including required input from professionals skilled at evaluating and developing reading material that is understandable by those with a recognized and specified reading comprehension level. The summary is critically important because it appears on the ballot (one year later). If necessary, the timeline should be adjusted to allow for additional review if required for more specific guidelines. As noted above, the only state with a requirement for a reading level, Oklahoma, was found to have the most readable ballot questions.

No: Article XLVIII provides general guidance, stating the Attorney General shall provide a “fair, concise summary.” This guidance is sufficient, and there is no reason to change the procedure or timeline, thus incurring additional cost as well. According to the research by Reilly and Richey, Massachusetts has a lower reading level than most other states.

References for This Question

Information for Voters 2016 https://www.sec.state.ma.us/ele/elepdf/IFV_2016.pdf
 Information for Voters 2018 https://www.sec.state.ma.us/ele/elepdf/IFV_2018.pdf
https://ballotpedia.org/Ballot_measure_readability_scores,_2018
 Study Report Sections 3.1.2, 3.2.2, 3.3.2, 4.1.4

Consensus Question 2

The remaining questions in this section are based on the premise that the “Information for Voters” red booklet should be understandable and accessible to all voters.

2. This question has 2 parts, each regarding the **statement of fiscal consequences** in the “Information for Voters.”

Massachusetts

Massachusetts law requires that fiscal consequences statements be included with the summaries of ballot questions that the Secretary of the Commonwealth mails out to voters. It is to be “a statement of not more than 100 words prepared by the Secretary of Administration and Finance regarding the fiscal consequences of the measure for state and municipal government finances.” There is no further guidance for this section in the law or regulations. The ballot question statements of fiscal consequences first appeared in the “Information for Voters” red booklet in 2016. Refer to 2016 and 2018 in Appendix 3.

Other States

It is currently the law in 16 of the 24 states that have a mechanism for initiatives for laws and/or constitutional amendments (including Massachusetts) that a fiscal impact statement must be drafted if a proposed initiative will have a monetary effect on the state budget. From state to state, the fiscal impact statements differ as to who is responsible (executive officials or legislative services offices). States also differ as to how the information is disseminated and where it is printed. Three typical locations are the petition, the ballot, and/or the voter information pamphlet. In Massachusetts it is in the “Information for Voters” red booklet. Six states require the statement to be published on the petition form itself. A few states hold public hearings about the fiscal impact.

- 2A. Do the statements of fiscal consequences in the "Information for Voters" red booklets from 2016 and 2018 provide voters with the information they need to make an informed decision on the potential fiscal impact of passing the ballot question(s)?

Yes No No consensus

Points of View

Yes: The statements in the “Information for Voters” red booklet give the voter enough information to understand the possible impact. A complex fiscal impact analysis is unlikely to help inform voters, even those who chose to read it. We should give this new requirement a chance.

No: The statements from the past two election cycles do not give voters enough information to determine the fiscal impact on the overall state and municipal budgets of each individual ballot question or all of them taken together. To make a fiscal consequences statement helpful to the voters it must be considered in the context of the fiscal resources of the state and municipalities.

2B. Should voter information beyond the 100-word statement of fiscal consequences found in the “Information for Voters” red booklet be available, such as through public meetings, webinars, telephone call-ins, websites, etc.?

Yes No No consensus

Points of View

Yes: Further information needs to be provided either in the “Information for Voters” red booklet or elsewhere. The state should utilize multiple ways to educate the public beyond the red booklet. Other states include fiscal impact information on the petition and on the ballot. Others use websites, newspaper articles, and public meetings in addition to a printed voter guide.

No: Every household where there is a voter receives the red booklet. This wide distribution has been in use for many years and provides voters all the information they need. Other means may require additional expenditures by the state, and the voter may need to make a greater effort to find additional information.

References for This Question

Study Report Section 4.1.6

Study Report Appendix 3

Information for Voters 2016 https://www.sec.state.ma.us/ele/elepdf/IFV_2016.pdf

Information for Voters 2018 https://www.sec.state.ma.us/ele/elepdf/IFV_2018.pdf

Consensus Question 3

3. Should the arguments in favor and against in the “Information for Voters” red booklet be prepared by an independent source such as a citizen group appointed for that purpose rather than, or in addition to, the proponents and opponents identified by the Secretary of the Commonwealth?

Yes No No consensus

Massachusetts

Currently, the Secretary of the Commonwealth seeks arguments for and against from the principal proponents and opponents. If there is more than one proponent or opponent group, the Secretary determines who is best able to present the argument for and against the measure. In determining the principal proponents and opponents of a measure, the Secretary shall contact each political committee, which is properly organized to influence the outcome of such a measure. All arguments filed with or prepared by the Secretary under this section shall be open to public inspection.

The Citizen Initiative Review (CIR) process prepares independent arguments in favor and against the question. It has been in place for three election cycles in Oregon. Over fifty percent of voters report reading these citizen statements. Encouraged by these findings, State Representative Jonathan Hecht, 29th Middlesex filed legislation to implement the CIR system as practiced in Oregon here in Massachusetts, and pilots were conducted in Massachusetts in 2016 and in 2018.

Other States

See description of Oregon’s process above and at the link below.

Points of View

Yes: An independent group of citizens charged with making clear, factual statements, after interviewing the proponents and opponents, will ensure that information from an independent source is available. Voters may find such statements to be more objective.

No: The proponent and opponent groups are in the best position to write these statements. In many cases they have, over a long period and with the involvement of recognized experts, developed in-depth knowledge and expertise on the subject.

References for This Question

Study Report Sections 4.1.7 and 4.3

MA Citizens Initiative Review Pilot 2016 and 2018: <http://www.cirmass.org>

Consensus Question 4

4. Should there be a limit to the length (e.g., number of words or number of pages) of **the full text** of a proposed law for an initiative petition (and eventual ballot question)?

Yes No No consensus

Massachusetts

There is currently no limit to the length of the proposed law. As an example, in 2016, proposed questions ranged from as short as one-third of a page to 11 pages (as printed in the “Information for Voters”). The full text of the proposed law is printed in the “Information for Voters” but not on the ballot. The summary appears on the ballot.

Other States

The Study Committee did not find any states that limited the length of the proposed law.

Points of View

Yes: Voters are more likely to read in entirety and better comprehend proposed laws that are of limited length. For most voters, a thorough reading of a lengthy law in advance of voting is unlikely, and a one-page summary cannot possibly inform voters of all the provisions a lengthy law includes.

No: It would be difficult to set and enforce a limit on length. Limiting the length of the law limits the intent of Article XLVIII: that citizens may initiate laws. Citizens should be able to make the law as long and complex as needed.

References for This Question

Information for Voters 2016 https://www.sec.state.ma.us/ele/elepdf/IFV_2016.pdf

Information for Voters 2018 https://www.sec.state.ma.us/ele/elepdf/IFV_2018.pdf

Consensus Question 5

5. Should the Secretary of the Commonwealth periodically review and update the means of disseminating and publicizing the “Information for Voters” red booklet?

- Yes No No consensus

Massachusetts

The MA constitution states: “The secretary shall cause to be printed and sent to all residential addresses and to each voter residing in group residential quarters ...” Massachusetts prints, distributes by mail to the homes of registered voters, and posts a PDF of the printed document on the Secretary of the Commonwealth’s website.

Other States

Most states print and distribute and/or publish the information in newspapers. Most states also post a copy of the printed document on a state website. This YouTube video is an example of a ballot question description from the Ohio Secretary of State <https://www.youtube.com/watch?v=V8mXfAZXobE>.

Points of View

Yes: If the contents of the “Information for Voters” red booklet, the primary objective and balanced vehicle for voter information, is to be as accessible as possible for all voters, the Secretary of the Commonwealth should use additional, up-to-date methods to disseminate the information. A periodic review of methods available to reach more registered voters, such as through various social media, would result in more voters getting the information they need to make an informed decision.

No: Mailing the red booklet fulfills the Secretary of the Commonwealth’s responsibility under the constitution that every registered voter receives the information. The red booklet is recognizable and portable. It is available on the Secretary of the Commonwealth website for downloading. A periodic review and update is not necessary because mailing the red booklet is sufficient.

References for This Question

Study Report Section 4.1

Information for Voters 2016 https://www.sec.state.ma.us/ele/elepdf/IFV_2016.pdf

Information for Voters 2018 https://www.sec.state.ma.us/ele/elepdf/IFV_2018.pdf

Section II: Signature Requirements

Consensus Question 6

6. Currently there is a limitation on the number of signatures that can be certified from any one county.
(NOTE: Answer “yes” or “no” to both A and B.)

6A. Should that limitation be modified to reflect population variation while still ensuring geographic dispersion of signatures?

Yes No No consensus

6B. Should that limitation be eliminated?

Yes No No consensus

Massachusetts

Article XLVIII, Section II “Limitation on Signatures” states: “Not more than one-fourth of the certified signatures on any petition shall be those of registered voters of any one county.” In 1978 the Massachusetts Supreme Judicial Court upheld a geographic distribution even though the Court had previously rejected a similar requirement for candidate petitions.

Other States

In the 26 states that feature the powers of initiative, veto referendum, or both, 16 have a distribution requirement, while 10 of them do not. Among the 16, in 7 states (including Massachusetts) the distribution requirement is spread out over a state's counties. In the remaining 9 states, it is calculated based on state or U.S. legislative districts.

Almost all of the other states require a minimum number from each designated region (e.g., *at least* x% from each congressional district), but Massachusetts sets a maximum (e.g., *no more than* 25% from any one county). States’ requirements can be viewed at https://ballotpedia.org/Distribution_requirement.

Points of View

Yes: The 14 counties in Massachusetts range in number of registered voters from 1.0 million in Middlesex County to 9,000 in Nantucket County. For a petition for which there were 65,000 collected signatures, it is not fair that voters in Middlesex County are not able to contribute more than 16,250 signatures, 1.6% of their population, whereas every single voter in Nantucket and Dukes County who signs will be counted. In Franklin County (50,480 registered voters) 32% of their voters would be counted. When the votes are counted for the ballot questions there is no regional requirement, so why should the signatures be restricted? Signatures above one-fourth from a county are rejected and not counted, which seems to go against the basic premise of “one-person, one-vote (although we recognize this is different from voting). Furthermore, there is already a requirement in Article XLVIII that the proposed law is not “restricted in its operation to a particular town, city or other political division or to particular districts or localities of the Commonwealth.” If Massachusetts maintains a geographic requirement, it should be based on the more equitable legislative or congressional districts rather than county.

No: The current requirement is an attempt to ensure that no single geographic region or county dominates the signatures collected. If this requirement was lifted, any one of the 11 largest counties could conceivably collect all of the required signatures, and thereby could control the inclusion of a petition.

References for This Question

Study Report Section 3.1.3

https://ballotpedia.org/Distribution_requirement

“State Ballot Question Petitions”: <https://www.sec.state.ma.us/ele/elepdf/State-Ballot-Question-Petitions-Jan-2017.pdf>, p 4

Consensus Question 7

7. Should every identifiable, unique signature on a petition be counted toward the required total, rather than rejecting, for example, all signatures on a page because of one error or stray mark?

Massachusetts

The Secretary of the Commonwealth provides guidance for signature gathering on pages 17-18 of “State Ballot Question Petitions (rev. January 2017)”. If a stray mark or other infraction is on a petition, the entire page of signatures may be rejected. Fearing loss of multiple valid signatures, collectors may be instructed by their campaigns not to complete an entire page. In an extreme case in 2017, collectors gathered just one signature per page, rather than the usual 10-15 per page, resulting in more than 65,000 separate petition pages being delivered to the Secretary. The rules in Massachusetts are based on the interpretation of two court cases within Massachusetts.

Other States

We did not find anything similar in other states.

Points of View

Yes: The concept of rejecting signatures because of a stray mark on a page that might influence the signer in some way is no longer preventing the problem that was brought forth in the lawsuits, which were primarily concerned with adding a box identifying campaign committees, signature collectors, and highlighting. The regulations over-interpret the problem, including doodles and any stray marks. In modern times, a petition could be covered with sticky notes or other temporary messages. Further, a signer who is *opposed* to the question can easily disqualify sheets by making a stray mark on purpose, so those signatures will not be counted.

No: These laws are essential to prevent the proponents from influencing potential signers by marking up the petitions.

References for This Question

Study Report Section 3.4.2

“State Ballot Question Petitions”: <https://www.sec.state.ma.us/ele/elepdf/State-Ballot-Question-Petitions-Jan-2017.pdf>, pp 17-18

Consensus Question 8

8. In a petition for law, a second round of signatures must be collected after the legislature has had time to act. Only signatures from registered voters who did not sign the first round can be counted. Should this second round be eliminated?

Yes No No consensus

Massachusetts

Article XLVIII, amendment Article LXXXI requires that if the general court (the legislature) does not act on a petition after it is filed, a second round of signatures must be obtained before the initiative can go on the ballot. The number of signatures required in this round is “not less than one half of one per cent of the entire vote cast for governor at the preceding biennial state election, and excluding those who signed the petition earlier” (10,792 for 2018 ballot).

Other States

Among the nine states that have an indirect initiative process for laws, only Ohio, Massachusetts and Utah require a second round of signatures if the legislature does not approve the proposed law. Utah also has a direct initiative process which requires more signatures.

Points of View

Yes: It is an unnecessary burden on the proponents and election officials and, if eliminated, could free up more time prior to the election for some of the other steps in the initiative petition process. It is unlikely that a campaign committee that collected 65,000 signatures just six months earlier will no longer be interested in pursuing the question. Only three states require a second round of signatures.

No: This round is necessary to make sure the proponents have maintained the level of support that was present at the time the original signatures were collected six months earlier, which may have been brought forth because of a “hot button issue” that was relevant six months earlier.

References for This Question

Study Report Section 3.1.5

“State Ballot Question Petitions”: <https://www.sec.state.ma.us/ele/elepdf/State-Ballot-Question-Petitions-Jan-2017.pdf>, p 5

Section III: Signature Gathering

Consensus Question 9

9. Should there be regulations governing signature collectors?

- Yes No No consensus

Massachusetts

Massachusetts has no regulations governing signature collectors.

Other States

A majority (19) of the 24 initiative states have requirements for signature collectors. The most common regulations for collectors are residency and age requirements, requiring signature collectors to disclose whether they are paid or volunteer, requiring that signature collectors witness petition signatures and attest to their validity, and banning the pay per signature method.

Eighteen of the 24 initiative states (not MA) require that circulators must personally witness each petition signature and sign an oath or affidavit stating that he or she personally witnesses the signing of the signature.

States have attempted in the past to disallow paid collectors, but the US Supreme Court has ruled that states cannot prohibit paying for signature gathering (Meyer vs. Grant, 486 US 414, 1988).

Points of View

Yes: Such requirements may prevent fraud and dishonesty in the petitioning process. The requirements also provide the voter with information about collectors that might influence his/her willingness to sign the petition.

No: Requirements on signature collectors may make it more difficult to gather signatures and thus limit the number of ballot questions that would be brought forth. This could be seen as a means to limit citizens' ability to petition.

References for This Question

Appendix 4

Consensus Question 10

10. Should the Secretary of the Commonwealth provide training opportunities for signature collectors?

Yes No No consensus

Massachusetts

In Massachusetts, the Secretary of the Commonwealth provides guidance for signature gathering on 2 pages (17-18) of “State Ballot Question Petitions (rev. January 2017)” Currently there is a lack of clarity about the justification for rejecting an entire page of signatures because of stray marks, as well as legal rights and obligations about petitioning in certain locations.

Other States

Some other states have developed training materials, and at least one requires completion of online training for signature collectors.

Points of View

Yes: A better understanding of what is acceptable would reduce inefficiencies in the signature gathering and review process. The Secretary of the Commonwealth should provide more extensive training materials so that campaign committees and signature gathering businesses can have consistent, accurate, guidelines for signature collectors. Training materials could include, for example, a training manual for signature collectors that outlines infractions and illustrates petitions likely to be rejected. Training webinars would allow collectors to ask questions and then could be available for viewing. A training video would explain the process, and the reasons for the rules.

No: No change is needed; proponent groups have an incentive to make sure signature gathering on their behalf is consistent with the legal requirements. Failure to do so may jeopardize efforts to get their petition on the ballot.

References for This Question

Appendix 4

“State Ballot Question Petitions”: <https://www.sec.state.ma.us/ele/elepdf/State-Ballot-Question-Petitions-Jan-2017.pdf>, pp 17-18

Section IV: Legislative Involvement and Responsibilities

Consensus Question 11

11. An initiative petition for a **constitutional amendment** requires two votes, one in each of two successively elected Legislatures. Should the second vote be eliminated?

Yes No No consensus

Massachusetts

As required in Article XLVIII of the Massachusetts Constitution, an initiative for a constitutional amendment must be placed on the ballot if, in joint sessions held by two successively elected Legislatures, the petition wins the support of at least 25% (50) of the 200 legislators. An initiative for a constitutional amendment will not appear on the ballot if, when it comes to a vote in either joint session, less than 25% of the legislators vote in favor of it or no vote is taken before the legislative term ends. In the past 100 years, only three citizen-initiated constitutional amendments have made it to the ballot. Legislature-initiated ballot questions for constitutional amendments have been more common (63 questions since 1919).

Other States

Eighteen states have a provision for citizen-initiated constitutional amendments. Quote from Ballotpedia: “In several of these states, including Illinois, Massachusetts and Mississippi, the requirements for placing a proposed amendment before the people through an initiative process are so prohibitively difficult that the process has rarely or never been used.”

(https://ballotpedia.org/Initiated_constitutional_amendment). Only one other state requires legislative approval of a citizen-initiated constitutional amendment (Mississippi). One state (Nevada) requires voters to vote in two elections, but no legislative action.

Points of View

Yes: This second vote of just 25% of legislators prolongs the process by two years. The framers of Article XLVIII created a process for the citizens to initiate a constitutional amendment, but the current requirement for a second Legislature to approve it is an unnecessary step.

No: A constitutional amendment is sufficiently important to require the approval of two sessions of the legislature, which prolongs the time between the original drafting and the vote and helps ensure the amendment endures the test of time. It also gives the legislature and the public time to consider and discuss the ramifications of the amendment.

References for This Question

Study Report Sections 3.2.4 and 3.2.5

https://ballotpedia.org/Initiated_constitutional_amendment

Consensus Question 12

12. Should there be a period during which the legislature is not allowed to change a citizen-initiated law passed or repealed by ballot question?

- Yes No No consensus

Massachusetts

Article XLVIII, General Provisions, Section VI. “The General Court's Power of Repeal” states: “Subject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people.” Therefore, there is no limitation on the legislature’s ability to amend, overturn a citizen-initiated law or reinstate a repealed law approved by a vote of the people.

The 1998 “Clean Elections” initiative passed. The Legislature subsequently repealed the law in 2003.

In 2000, voters passed a proposed law that would repeal the law setting the state personal income tax rate on Part B taxable income (such as wages and salaries), which was 5.95% as of September 1, 1999, and would set the rate at 5.6% for tax year 2001, 5.3% for tax year 2002, and 5% for tax year 2003 and after. The Legislature did not allow this law to go forward, but the current tax rate (2017) is 5.1% as a result of the Legislature making several reductions over a longer period of time.

In November 2016, parts of the lengthy recreational marijuana law went into effect January 1, 2017, but the legislature amended aspects of the oversight, commercial establishments, and local control.

Other States

Eleven of the 21 states that allow citizen initiatives for laws have no restrictions on how soon or with what majority state legislators can repeal or amend initiated statutes. Four states have restrictions on how soon state legislators can repeal or amend initiative statutes—ranging from two to seven years. Six states have restrictions on how large a supermajority vote is required in the legislature to repeal or amend initiative statutes. Two of these states have restrictions both on how soon and with what majority state legislators can repeal or amend initiative statutes. California and Arizona are the only two states with voter approval requirements for changes to or the repeal of citizen-initiated state statutes.

Points of View

Yes: Because the legislature has no time restrictions on changing citizen-initiated laws it can modify or reverse the will of the people almost immediately, or even many years after passage. This can be true even if, years later, the enacted law still reflects the will of the people. To strengthen the citizen rights created in Article XLVIII, a time period during which the legislature is not allowed to change a citizen-initiated law should be created.

No: The legislature has primary authority to enact laws and should not be restricted in the timing of exercising its authority. This is true even though Article XLVIII, an amendment to the Constitution, provides a mechanism for citizen-initiated laws. Article XLVIII provides citizens, under certain circumstances and subject to well-defined requirements, a process that augments the Legislature’s authority. However, it does not replace it. The desire to be re-elected is sufficient incentive for the legislators to carry out the will of people.

References for This Question

Study Report Sections 3.1.7, 3.2.6, 3.3.5

https://ballotpedia.org/Legislative_alteration.

<https://www.bostonmagazine.com/news/2015/12/16/state-income-tax-rate/>

<https://www.nytimes.com/2003/06/21/us/massachusetts-legislature-repeals-clean-elections-law.html>

Section V: Campaign financing for ballot questions

Consensus Question 13

13. Should Massachusetts seek ways to limit the amount of money that can be spent on ballot question campaigns?

Yes No No consensus

Massachusetts

Currently there are no limits to the amount of money that can be donated or spent in support or opposition of ballot questions. In the 2014 election, spending on Massachusetts ballot questions broke all prior spending records, and spending in 2016 broke the 2014 record. In *First National Bank of Boston v. Bellotti*, in 1978, the US Supreme Court struck down a Massachusetts statute forbidding corporate contributions to influence initiative campaigns. In 1981, in *Citizens Against Rent Control v. City of Berkeley*, the court negated a city ordinance limiting ballot campaign contributions to \$250.

Other States

As with all aspects of ballot questions, there are no federal laws governing them, but there are US Supreme Court decisions that can influence state law. Thus far, the US Supreme Court has struck down state attempts to limit ballot question spending.

Points of View

Yes: Although currently there are Supreme Court decisions against limiting the amount of money that can be spent, there are measures that could be more vigorously investigated and implemented, such as Office of Campaign and Political Finance (OCPF) regulations, limits on out-of-state contributions, and more vigorously enforcing current disclosure laws. The US Congress should continue to seek legislative solutions to curb the influence of money in campaigns, and Massachusetts should continue to work on constitutional solutions to the widespread and unregulated money in campaigns.

No: The amount of money spent on any particular ballot question campaign does not necessarily equate to or result in undue influence. Just as there are any number of reasons to initiate a petition, there are a variety of reasons for costs associated with getting one on the ballot. Reasons for such costs can include: (1) administrative costs required to comply with MA laws governing this process, including, in some cases, legal fees for court challenges by regulators and/or other opponents; (2) the complexity of the issue – the more complex the underlying issue the more proponents may need to spend to insure voters are adequately informed; and (3) the need effectively to counter any opposition activity. In past elections in Massachusetts, the ballot question campaign that spent the most money did not always win, indicating that voters can distinguish the merits of a question regardless of the level of spending. Alternatives to limiting the amount of money include prioritizing efforts to develop and promote a better-informed electorate.

References for This Question

Study Report Section 6.2

Consensus Question 14

14. Should accurate information on campaign donations to and expenditures from ballot question committees be available to the public prior to the election?

Yes No No consensus

Massachusetts

Campaign donations and expenditures are reported on a schedule and directly to the Office of Campaign and Political Finance website. In instances where there are multiple campaign committees transferring funds among themselves, the overview page of the website on campaign donations and expenditures have been found to reflect inaccurate totals due to “double counting.” The schedule for reporting donations and expenditures requires a report through November 1, which is due November 5, but the final report is made after the election, so donations received after November 1 are not known prior to the election.

Other States

The states vary widely in what they post on websites before the election. In the eight states (including Massachusetts) in Table 6.1, all require reporting that usually increases as elections approach. Two states require very quick reporting on contributions or expenditures over a certain amount—North Dakota within 48 hours if contributions are \$500 or more and are within 39 days of the election, and Maine within 24 hours if contributions are \$5,000 or more or expenditures are \$1,000 or more.

Points of View

Yes: Voters should be able to access accurate information on donations and expenditures on all ballot questions prior to voting. OCPF should ensure that information is reported and presented in such a way to provide easy access to accurate information. Funds contributed from one committee to another should be clearly identified as such so they will not be double counted in the total. Large donations (above a defined amount) should be reported immediately, so that this information is known prior to the election.

No: State budget and system constraints may make it too difficult to make this information transparent and accurate prior to the election. OCPF has shown that it will investigate possible wrongdoing and levy fines when appropriate. A thorough investigation may not be possible prior to the election.

References for This Question

Study Report Sections 6.1, 6.3, 6.4 (Including Table 6.1)

Section VI: The Initiative and Referendum Process in Massachusetts

Consensus Question 15

15. Should the current initiative and referendum process by which citizens can do the following (A-C) be retained?

A. Initiate laws

Yes No No consensus

B. Initiate constitutional amendments

Yes No No consensus

C. Repeal laws through referendum

Yes No No consensus

Massachusetts

Article XLVIII of the Massachusetts Constitution went into effect for the state election of 1919 (when state elections were held every year). It established the right for Massachusetts citizens to initiate laws and constitutional amendments, and to repeal existing laws. It has been amended four times since and has resulted in 103 ballot measures through November 2016, of which 48 were approved by the voters.

The debate at the 1917-1919 Constitutional Convention considering a proposal for an initiative and referendum process was one of longest, if not the longest, debate of any MA Constitutional Convention. It spanned several months resulting in an almost 1100-page debate transcript and six draft resolutions before final passage.

The proponents identified what they observed, in their day and time, as shortcomings in the representative form of government. Based on these observations they believed the initiative and referendum mechanism was necessary to provide citizens with a direct say in their government. They believed creating the initiative and referendum mechanism was a necessary compromise between maintaining a strictly representative democracy, and one in which citizens have some direct say.

The dissenters believed preserving the representative democracy established in the Massachusetts Constitution was best for the Commonwealth.

Other States

As shown in Table 5.1, Massachusetts is one of 26 states that have some form of initiative and/or referendum mechanism. The remaining 24 states have no form of direct democracy. Massachusetts is one of 16 states that have provisions for all three types of initiatives and referendum (law, constitutional amendment and veto referendum).

Points of View

Points of View 15A

Yes: Article XLVIII provides an alternative to a pure representative democracy. Citizens dissatisfied with the action or inaction of their elected representatives(s) have the option to have a direct say in their government through the initiative for law mechanism created under Article XLVIII. This mechanism can also be used to repeal or change existing laws.

No: The Massachusetts Constitution established a representative democracy, which allows for deliberation, debate and compromise on a law, which the initiative process does not. If a citizen is dissatisfied with their elected representative(s), the remedy is to elect a different representative through

the election process. Also under the state Constitution any citizen may file a proposed piece of legislation with the General Court through his or her representative or senator. This "right of free petition," which is unique to Massachusetts, allows citizens to file a bill, but also allows for legislative deliberation. The passage of laws is the Legislature's responsibility, not the citizens'.

Points of View 15B

Yes: Article XLVIII provides an alternative to a pure representative democracy. Citizens dissatisfied with the action or inaction of their elected representatives(s) have the option to have a direct say in their government through the citizen initiative for constitutional amendment mechanism created under Article XLVIII. Citizens should be able to initiate a change to constitutional law, as they can for statutory law as in 15A.

No: The Massachusetts Constitution established a representative democracy, enabling the legislature to initiate constitutional amendments and the citizens to approve them. Because the Constitution forms the bedrock of the state's legal structure, initiating an amendment should be solely within the authority of the Legislature. Citizens interested in amending the Constitution should work with their elected legislators to initiate a change. The process in Massachusetts has resulted in only three citizen-initiated constitutional amendment proposals making it to the ballot in 100 years.

Points of View 15C

Yes: Article XLVIII provides an alternative to a pure representative democracy. Citizens dissatisfied with a law their elected representatives(s) have passed should be able to collect signatures within a short timeframe (90 days) to ask voters to repeal a law through a referendum on an existing law.

No: A total of ~32,000 signatures to place a referendum on an existing law on the ballot is a much lower threshold than the initiative for a law (~76,000 in two rounds). Further, being able to suspend a law with just ~43,000 signatures, prior to any vote, is far too easy to accomplish, especially in the era of hiring signature collection companies. Given that we have a mechanism to repeal a law in 15A, a separate 'referendum' process is not needed.

References for This Question

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Study Report Section 5 (Including Table 5.1 and Figure 5.1)

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