

# Policy Connection



Are elections an effective way to make public policies?

DOMESTIC  
POLICY

## The Policy Challenge

In the Policy Connection at the end of Chapter 6, we reviewed some of the mechanisms used to bring the public into the policymaking process. In this Policy Connection we turn our attention to the use of initiatives and referenda discussed in Chapter 8. As we noted, the use of these mechanisms is often controversial, with critics noting that they circumvent and undermine the constitutional system of checks and balances that are central to our constitutional system. Nevertheless, these special forms of election are drawing attention as an increasingly potent type of policymaking.

## “Electing” a Public Policy

On Tuesday, November 6, 2012, the voters of Colorado, like millions of other Americans, went to their respective polling places to cast their ballots for president of the United States and a range of other offices. But there was something else on the Colorado ballot that drew national—and even worldwide—attention. On that day, a majority of Colorado voters cast their ballots in favor of “Amendment 64”—an addition to the state constitution that decriminalized the personal possession, growth, and use of marijuana and legalized the cultivation, distribution, and sale of “industrial hemp,” thus effectively eliminating barriers to the development of businesses focused on the recreational use of cannabis.<sup>29</sup>

This was not the first time the voters of Colorado have made headlines by addressing policy issues on election days. In 1972, for example, Coloradans shocked the international community by passing (by

an overwhelming margin) an initiative to end the state’s support for the 1976 Winter Olympics, which had been officially awarded to the Denver region two years earlier.<sup>30</sup> The vote was partly a result of a nationwide taxpayer revolt, but growing public concern for the impact of the Olympics on the environment played a major role as well. In 1976, the voters of Boulder, Colorado, passed a law putting a cap on housing construction to slow the city’s growth; nine years earlier, they had voted to increase the local sales tax to purchase land for the development of a “greenbelt.” Coloradans also used the ballot box for environmentally inspired antigrowth laws and greenbelt development in many other towns and cities over the years.

Although Colorado often makes headlines with this form of direct democracy, they are not the only ones to “elect” public policies. Direct democracy mechanisms are found in twenty-four other states. On the same day Coloradans decided to legalize recreational marijuana, a similar ballot question passed in Washington State. In fact, there were literally dozens of policy questions covering a wide range of issues on ballots that day, just as there are on any given election day in different jurisdictions. Voters in Maine and Maryland, for example, went to the polls in 2012 to back legislation allowing same-sex marriages in those states. Californians typically face a number of ballot questions every time they walk into the voting booth, and in 2012 they decided against doing away with the death penalty. Oklahoma voters passed a measure that effectively undermined the use of affirmative action in state programs, including admission to state universities. In Montana, voters



resoundingly voted to deny state services to undocumented immigrants, whereas in Maryland they approved allowing undocumented immigrants to pay in-state tuition at the state's schools. Physician-assisted suicide, which had been approved through popular vote in Oregon (1994) and Washington (2008), was defeated by a close vote in Massachusetts. And voters in other states supported fifteen of sixteen state funding measures that were on the ballot.

These decisions are the results of campaigns and elections that allow the citizens of a state (and, more frequently, local governments) to play a direct role in the making of public policies. Although the procedures for holding such policy-focused elections vary from state to state, the practice of allowing *referenda* and *initiatives* is actually widespread.

Touted as the closest our American system comes to the mythical ideal of direct democracy discussed in Policy Connection 6, initiative and referendum procedures at the state and local levels have drawn increasing attention in recent years. In general terms, initiatives and referenda are alternative means for engaging citizens in direct policymaking using elections as the way in which voters express their positions—yea or nay—on a policy appearing in the form of a ballot proposition.

In the United States and elsewhere, referendum and initiative systems come in many shapes and sizes.<sup>31</sup> The first thing to note is that although they are often discussed as one form of election, referenda differ from initiatives. Technically, a referendum is a question “referred to” voters by the government or some other public authority. An “obligatory referendum” is one required under state provisions of constitution or legal mandate. In Massachusetts, for example, if a local government or school district determines that it needs to raise property tax rates more than 2.5 percent, it is obliged to hold a referendum to “override” that statutorily imposed limit. In many states and localities, any changes to the state constitution or municipal charter must go before the voters.

In some jurisdictions, the government has the option of referring a policy question or issue to the voters, although there is no obligation to do so. At times, the question put to the voters may be advisory in nature—that is, with the government authorities

seeking popular input. Most often, however, the government offers the voters a chance to vote yea or nay on a specific piece of legislation. This is typically called a “legislative referendum” and can occur when the legislative body decides for a range of reasons—most often political—that a policy they approve of must be put on the ballot. In some jurisdictions, opponents of a law can gather enough signatures to have a “citizen’s referendum” on the law at the next election. Since the reason for doing this is to overturn the bill, this is also called a “veto referendum.”

In practice, most referenda in the United States<sup>32</sup> deal with tax matters and funding issues at the local level, and those at the state level that attract the most attention usually focus on general policy questions such as the legalization of pot or the death penalty. There are no mechanisms for referenda at the national level in the United States. This is in contrast to the practice in many European nations, where referenda are sometimes used to deal with major proposals that frequently impact the nation as a whole. In Canada, for example, a referendum focused on separating Quebec from the rest of the country was defeated twice (1980 and 1995) by voters in that province, and in Scotland a vote for independence from the United Kingdom was defeated in 2014. After UK voters unexpectedly approved a controversial 2016 nationwide referendum to pull Britain out of the European Union (known as “Brexit”), there were renewed calls for another vote on Scottish independence.<sup>33</sup> In other countries, such as Switzerland, referenda are a common feature of almost every election cycle.<sup>34</sup>

In contrast with referenda, initiatives originate from the citizenry, and they too come in a variety of forms depending on the rules set forth in the jurisdiction. A “citizen’s initiative” involves seeking to have a specific proposal placed on the ballot through a petition process. In some locales, through a “citizen’s proposal,” the petitioners may do nothing more than propose that the government authorities address a given problem, and at times these include strong suggestions as to an approach that can be used. In other jurisdictions there exist even more elaborate initiative mechanisms that allow citizen petitioners to offer counterproposals to legislative referenda.



## The Pros and Cons

Given the wide variety of initiative and referenda systems, the question of whether they provide an effective means for making public policy is difficult to answer.<sup>35</sup> Those who advocate the use of referenda and initiatives rely on several arguments. The strongest advocates would not only integrate these mechanisms into the policymaking process, but also give them priority wherever possible. The more direct democracy, the better. Moreover, contrary to those who believe that true direct democracy is not feasible in this modern age, advocates point to its extensive and relatively successful use in Switzerland and American local government as positive examples.

Other advocates admit to the limitations of direct democracy, but regard referenda and initiatives as valuable and essential democratizing supplements to a representative government system. They provide a means for drawing attention to issues and innovative policy options that might not otherwise be given consideration. By promoting increased participation, the use of these electoral tools engages and informs the electorate, thus creating a more educated and competent citizenry.<sup>36</sup> In addition, seeking popular support for policies enhances the legitimacy of both the policies and the government in the eyes of the public.

Those who argue against the use of referenda and initiatives note that ordinary citizens often lack the competence and information required to make sound decisions and that their votes are frequently based more on short-sightedness and emotions than on clear thinking and analysis. They also argue that some proposals that emerge out of referendum and initiative efforts are written to attract majorities but

may be indifferent or even harmful to minority rights and concerns. Those same proposals, when put through the normal legislative process, would likely be adjusted and modified through debate and deliberation. In this way, the major benefits of a representative system are circumvented and undermined.<sup>37</sup>

## Conclusion

Whether we are for or against the process, there is little doubt that direct legislation is here to stay. Social media and related technologies are already altering the landscape, often making it easier to mobilize the support needed to get a measure on the ballot. In addition, there exists a consulting industry of specialists ready and willing to assist any group that seeks to develop campaigns either promoting or opposing a ballot question. As students of American government, our task is to approach each measure in a way that makes sense of its meaning and implications.

### QUESTIONS FOR DISCUSSION

1. Although advocates for initiative and referendum procedures believe they are the most democratic means for getting the public involved in policymaking, critics argue that today's public problems are too complex to be handled through oversimplified ballot questions. Given U.S. experience with these policymaking elections, which side of the debate would you support?
2. Do you believe there should be a constitutional amendment adding a national initiative and referendum process for federal legislation?