The Legislative Regulation of the Initiative

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Abstract
The process of direct democracy in the 24 American states that permit the process has been under fire by state legislatures for over a century. During the first several years of the 21st century, however, the legislative effort to regulate, if not stifle altogether, the citizen initiative has intensified. In this paper we examine several factors—the number of statewide initiatives on the ballot, term limits and tax and expenditure limits placed on legislatures, unified government, legislative professionalization, and legislative insulation from the initiative—to determine why some legislatures in states with the initiative have tried to rein in the process more than others. Drawing on an original database (2001-2006) and using negative binomial event count models to examine over 400 bills regulating the initiative, we find that legislatures in states with higher use of the initiative are consistently more likely to introduce as well as enact legislation restricting the plebiscitary process.

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The Legislative Regulation of the Initiative

Lawmaking by initiative in the two-dozen American states that permit the process is at an all-time high (Smith and Tolbert 2007).[1] With its reemergence in the 1970s, the use of citizen lawmaking in the American states has become more prevalent than anywhere else in the world (Butler and Ranney 1994). Perhaps not surprisingly, accompanying the rise in the use of the initiative has been a concomitant increase in the regulatory oversight of the process by state legislatures.

In this paper we take a macro-level look at recent legislative efforts to restrict the process. Why are some state legislatures increasing regulations on the initiative, but not others? At its core, the regulatory action of state legislatures signifies an institutional power struggle between lawmakers and the citizens and special interests that use the initiative to advance policies preserving or changing the status quo. The variation in the amount of legislation regulating the process suggests there might be several possible motives at work across the states permitting the initiative. Is the increase in regulation the result of lawmakers reacting to certain initiatives—specifically term limits and tax and expenditure limitations—that have usurped the institutional power of the state legislatures? Is it the result of lawmakers' concerns that the heightened use the initiative process undermines representative democracy? Or, are regulations on the process a political response by professional legislatures, those with unified party control, and those with little ability to insulate themselves from ballot measures that view direct democracy as a threat to their control over the policy agenda?

The Rise in Initiative Use and the Regulatory Response of State Legislatures

Initiative fever is alive and well, and not only in the western region of the country where the plebiscitary process is thought by many to have formed its roots more than a century ago

[1] The 24 states currently with the initiative are: AK, AR, AZ, CA, CO, FL, ID, IL, MA, ME, MI, MO, MS, MT, ND, NE, NV, OH, OK, OR, SD, UT, WA, and WY.

(Price 1975; Boehmke 2005). According to data compiled by the National Conference of State Legislatures (NCSL 2007), citizens in the two-dozen initiative states have voted on more than 2,200 initiatives since the first statewide measures were placed on the ballot in Oregon in 1904. More recently, between 1991 and 2007, citizens in initiative states have voted on 616 initiated ballot measures. In the 2006 general election alone there were 80 initiatives on statewide ballots; two years earlier, there were 59 (Smith and Tolbert 2007). These ballot measures cover a remarkable range of issues, with some making national headlines and others remaining obscure. In recent elections, citizens have cast ballots on issues as diverse as same-sex marriage bans, taxation and spending limits on state government, public funds for stem cell research, ethics and election reforms, environmental protection, increasing the minimum wage, and ending affirmative action. Proposed ballot measures—constitutional amendments and statutes alike—run the gambit of public policies.

In light of the increased use of the initiative it should come as no surprise that some state legislatures have responded by trying to regulate and restrict the process. Over the past two decades, lawmakers have advanced a plethora of proposals to both reform and restrict the process (Collins and Oesterle 1995; Gerber 2001; Waters 2001). Though lawmaking in states with direct democracy may increasingly resemble what some scholars have termed "hybrid democracy" (Garrett 2005), with citizen-initiated ballot measures augmenting, if not always complementing, the traditional legislative process, legislatures in initiative states have not always welcomed the plebiscitary process. Weariness among legislators toward the process has been a constant over the past century. Since the mechanisms were first adopted during the Progressive Era, direct democracy has not been well received by state lawmakers. The most recent backlash against the initiative by state lawmakers, then, could be expected. As the initiative has resurged as a policymaking tool, some lawmakers see the power of state legislatures attenuated, prompting them to regulate the direct democracy mechanism.

Of course, state lawmakers often contend that they are not threatened by the initiative and that their actions are not intended to restrict the rights of citizens to petition their state government. Rather, they argue that they are simply trying to ensure that the process functions properly, fairly, and efficiently, or as the *Los Angeles Times* editorialized in 2003, to stop the process from "running amok." Legislative efforts are "necessary," NCSL staffer Jennie Drage (2001) writes, in order "to craft regulations that protect the integrity of the initiative process without infringing on rights guaranteed by the First Amendment." Regulations are needed, lawmakers are heard to say, to ensure the clarity of the propositions, improve voter competence, mitigate the power of special interest groups, and protect minority interests, or as one Florida lawmaker has bluntly put it, to stop the "Californication" of state politics (Smith 2006).

Yet, to many proponents of the initiative, the fears of lawmakers are often seen as punitive and aligned against the rights of citizens. "State officials regulating I&R processes are like all government agents," writes initiative proponent Paul Grant (2001: 195): "they will fight to preserve their power."[2] Indeed, the recent wave of legislation has the indubitable consequence of increasing the burdens on proponents trying to qualify their ballot measures and win majority support on election day. Legislative statutes restricting the process potentially raise the costs of participation for initiative backers, thereby discouraging its use (Gerber 2001). For an owner of a

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[2] California Governor Arnold Schwarzenegger's veto message of SB469 in 2005 epitomizes this sentiment:

> When special interests dominate Sacramento, the only recourse the people of California have is the initiative, the referendum and the recall. As I have previously said, at the very heart of the initiative process is the 1st Amendment of the U.S. Constitution and the core value of political speech. Any burden placed on either of these fundamental rights of Californians must be examined through a lens that favors the right of the people to address grievances with the government through initiatives, referendums, and recalls.
>
> This bill requires different notices on petitions to reflect whether it is being circulated by a paid or volunteer circulator. The paid or volunteer status of a circulator has no bearing on the merits of the petition being presented to voters. Furthermore, under existing law, petitions must contain the following notice in 12 point type: NOTICE TO THE PUBLIC - THIS PETITION IS BEING CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.
>
> This bill attacks the initiative process and makes it more difficult for the people of California to gather signatures and qualify measures for the ballot. While difficulty of the process may be a good thing for big-money special interests and for political consultants who stand to gain financially, it is not for everyday Californians with an idea for reform.

Available: http://gov.ca.gov/pdf/press/vetoes_2005/SB_469_veto.pdf.

signature gathering firm, so-called legislative "reforms" are nothing but "thinly veiled attempts to slowly kill I&R" (Paparella 2001: 130).

According to data compiled by the NCSL (2007), over 400 bills dealing with the process of direct democracy were filed between 2001 and 2007 in the 24 states that permit the initiative; 66 of them were sent to the governor to become law. In 2007 alone, legislators in the two-dozen initiative states filed 140 bills aimed at regulating the process; 19 were sent to the governor to be signed into law.[3] As Figure 1 reveals, roughly a third of the 24 initiative states have led the charge to increase regulations on the process. Between 2001 and 2007, lawmakers in Arizona and Massachusetts introduced over 100 bills to regulate the initiative process. In seven additional initiative states, lawmakers in each state introduced more than 20 bills over the period. These nine states accounted for exactly half (33 of 66) of all the bills sent to governors to be signed into law. Not all state legislatures permitting statewide initiatives have laid siege to the process. Lawmakers in Illinois, Mississippi, Missouri, Oklahoma, Wyoming, and Massachusetts (though not for want of trying) failed to approve any regulating the initiative during the timeframe.

[Figure 1 here]

The type of regulations imposed upon the process by legislatures varies considerably across the 24 initiative states. Our dataset includes legislation regulating several aspects of the initiative process, including setting subject and title, qualification and signature-gathering, campaign finance, voter education, and post-election challenges. Some of the more popular bills between 2001 and 2007 include requiring a financial impact statement for measures that qualify for the ballot, changing the format of petitions, tightening single-subject standards, placing additional restrictions on paid petition gatherers, and providing more disclosure of campaign

[3] Nearly a third of the 66 bills passed by state legislatures were subsequently vetoed by governors. For the purpose of our analysis, we count bills subsequently vetoed as "passed," as we are interested in legislative behavior.

finance activities. Other regulations focus on supposed fraudulent gathering of signatures for petition drives, including requiring petition gatherers to be residents of the state, necessitating petitioners to sign affidavits or have the petitions they are circulating notarized, and shortening the timeframe in which valid signatures may be gathered. The hostility shown by state legislatures toward direct democracy is palpable, despite the fact that many recent judicial rulings have found restrictions put in place by state legislatures to be unconstitutional (Zimmerman 1999; Donovan 2002; Donovan 2007; Donovan and Smith 2008).

Those with an eye toward history know that legislative efforts to regulate the initiative process are not new (Beard and Shultz 1912; Boyle 1912; Munro 1912; Wilcox 1912; Cushman 1916; Drage 1999; Grant 1999; Smith 2001a; Goebel 2002; Piott 2003; Smith 2008). As early as the Progressive Era, state lawmakers passed laws restricting the gathering of signatures to qualify petitions for the ballot (Ellis 2002; Smith and Lubinski 2002). In 1907, Oregon's state legislature enacted a law requiring circulators to sign an affidavit when collecting signatures (Barnett 1915). Soon after California's 1914 general election in which voters were confronted with 48 statewide measures on the ballot, lawmakers make it a criminal offense for signature gatherers to intentionally misstate the contents of a measure (Allswang 2000). In Washington in 1915, just three years after the state adopted the initiative, legislators passed a law giving registered voters 90 days to sign a petition for a ballot measure, but they had to go to their county clerk's office between 6 and 9pm to do so. The law never went into effect, however, as it was immediately overturned by a popular referendum (Lapalombara and Hagan 1951). Before being struck down by the US Supreme Court in 1988, Colorado's legislature in the 1940s made it a felony offence to pay petition circulators (Grant 2001).

Over the past century, state legislatures have passed numerous laws pertaining to the financing of ballot measures. In 1912, the Montana legislature passed a law prohibiting corporate expenditures on ballot measures (Winkler, 1998). More typical was Oregon's 1933 law requiring ballot issue committees to report their contributions and expenditures. In the following legislative

session, lawmakers prohibited "any person to give, pay, or receive any money or other valuable consideration for securing the signatures of electors on direct legislation petitions" (Lapalombara and Hagan 1951: 415). By the 1970s, over half of the initiative states had laws on the books restricting campaign contributions and expenditures in ballot campaigns, but those were overturned by the 1978 US Supreme Court ruling, *First National Bank of Boston v. Bellotti* (Smith 2001b). Since that time, state legislatures have placed geographic distribution requirements on signature gathering, limited ballot measures to a single-subject, shortened the time period to collect signatures, and allowed opponents of propositions to contest the validity of signatures (Waters 2001). As a result of these and other regulations, considerable variation exists regarding the ease and availability of the initiative process across states (Collins and Oesterle 1995; Bowler and Donovan 2004).

Expectations: Why Some State Legislatures Might Want to Regulate the Initiative

Why are some state legislatures more inclined to regulate the plebiscitary process than others? When looking across the 24 initiative states, are there any similar conditions that might help account for the increased hostility of state lawmakers towards the process of direct democracy? We offer five explanations for why some legislatures may be predisposed to regulating the process.

Initiative Industrial Complex

The first, and perhaps most obvious, explanation for why some lawmakers have tried to regulate the initiative is that they are responding to the number of measures qualifying for the ballot. To some legislators, the rise in initiative use may suggest the possibility that process is out of control (Schrag 1998; Broder 2000). At a minimum, the shear volume of measures qualifying for the ballot in some states may indicate that the initiative is not working in conjunction with the traditional legislative process in a "hybrid" form (Garrett 2005), but rather, has begun to replace it (Matsusaka 2005a). Some lawmakers view the initiative as an unmitigated rival, undermining

their authority over the lawmaking process. Others bemoan the unlimited amount of money that may be spent on ballot measures, allowing wealthy interest groups and individuals (Smith 2001b; Garrett and Gerber 2001; Smith and Tolbert 2004; Garrett and Smith 2005), as well as out-of-state consultants and signature gathering firms (Magleby and Patterson 1998; Donovan, Bowler and McCuan 2001) to dominate the process. The resulting ballot measures, some claim, do not reflect the desires of their constituents. Regardless of whether or not these claims are valid, the fact that some lawmakers perceive that there are too many initiatives on the ballot may be enough reason for them to call for more sanctions against the process. As such, we expect legislatures in states with more initiatives on the ballot to be more inclined to regulate the process.

Institutional Constraints on Legislatures and Legislators

Another possible reason for the legislative assault on the initiative is that some ballot measures have encroached on the institutional power of state legislatures. It is possible that some lawmakers have become displeased with the process because some ballot measures can directly weaken their institutional power (Phillips 2008). In particular, "governance" initiatives (Tolbert 1998), such as tax and expenditure limitations (TELs), term limits, and ethics measures, are perceived by some lawmakers as "populist" attacks on the legislative process (Waters 2001; Smith 1998; Smith 2008). Indeed, sponsors of governance measures, especially tax and expenditure limitations (TELs)[4] and term limits,[5] often intend for their initiatives to limit, undermine, or even usurp the power of state lawmakers (Smith 1998; Karp 1998). The budget authority of state legislatures is especially handcuffed by the constraints placed on them by TELs (Matsusaka 2005b). Governance initiatives such as term limits, however, not only impinge the

[4] Eighteen of the 24 initiative states have some form of TEL during the 2001-06 timeframe, including limits on spending, revenue, or both. Twelve have spending limits: AK, AZ, CA, ID, ME (2005-06 only), MS, MT, NV, OH (2005-06 only), OK, UT, WA. Four have revenue limits: FL, MA, MI, MO. Two have both: CO and OR. Data from NCSL.org.

[5] Several initiative states adopted term limits via ballot measures, only to have them overturned by the courts or legislatures (Smith 2003). The 13 initiative states with term limits in place between 2001 and 2006 are: AZ, AR, CA, CO, FL, ME, MI, MO, MT, NV, OH, OK, and SD. ID and OR are coded as having term limits in 2001-02, and WY is coded as having term limits in place in 2001-04, but not in subsequent years, as the laws were overturned. NE term limits began in 2006, and in 2004 in OK, and are coded as such. Data from NCSL.org.

institutional power of state legislatures (Castello 1986; New 2001). They also can prematurely stymie the career trajectories of incumbent lawmakers (Kousser 2005). Faced with the diminished autonomy of their institution, to say nothing of a threat to their own livelihood, the initiative process is susceptible to retribution by state lawmakers who especially resent TELs and term limits. For some observers (Waters 2001), ballot measures limiting legislative terms and imposing TELs have caused lawmakers to increase their regulatory oversight of the process. We expect state legislatures with TELs and term limits on the books to be more likely to push legislation reining in the process.

Party Unity and Partisan Politics

A third reason for legislative hostility towards the initiative has to do with partisan politics. Sponsors of liberal ballot measures have been able to circumvent GOP-controlled legislatures by placing successful measures on the ballot raising the minimum wage, prohibiting smoking in public areas, legalizing medical marijuana, and earmarking legislative appropriations for education programs. Proponents of conservative ballot measures, in turn, have been able to alter the status quo by advancing successful measures banning same-sex marriage, restricting abortions, limiting government taxing and spending authority, and easing local governments' eminent domain powers. It is possible that legislatures with unified party control—regardless of which party controls the legislature—will be more likely to try to regulate the initiative, as the majority party may perceive the process as subverting its ability to set the state's policy agenda (Romer and Rosenthal 1979). We expect state legislatures with unified party control (Democratic or Republican) to be more likely to advance anti-initiative legislation. We have no expectations whether Democratic or Republican unified legislatures will be more likely to restrict the process.

Legislative Insulation from the Initiative

Not all legislatures in initiative states are alike with respect to their ability to respond to successful measures at the polls. As Bowler and Donovan (2004) show, legislatures are insulated from the process to varying degrees. Some legislatures, like California's, are quite constrained by

initiated measures because it is sometimes difficult constitutionally to modify or overturn them (Gerber, Lupia, and McCubbins 2004), while others, like Maine's, are willing to modify successful ballot measures, if only reluctantly so (Ferraiolo 2007). Other legislatures, in contrast, have considerably more leeway in modifying ballot measures approved by citizens. We use Bowler and Donovan's nine-point legislative insulation index, which ranges from zero (the legislature is extremely limited in its power to modify successful initiatives) to nine (the legislature has considerable discretion to circumvent successful initiatives). According to their index, California and Arkansas have the lowest scores in terms of legislative insulation; Mississippi, Maine, Massachusetts, and Wyoming have the highest scores. We expect states with lower legislative insulation scores to be more likely to try to rein in the initiative process by modifying the rules of the game.[6]

Professional Legislatures

Beginning in the late 1960s and through the 1980s, many state legislatures became considerably more professionalized (Squire 1992). An outgrowth of the good government movement, advocates for more professional legislatures contended that state governments lacked the capacity and effectiveness to meet growing demands for policymaking because they were too reliant on amateur lawmakers. Numerous legislatures as late as the 1960s were still part-time, meeting only a few months out of the year, or even once every other year. Lawmakers had no permanent staff and were herded into shared offices (Citizens Conference on State Legislatures 1971). While today most state legislatures have become modernized, there remains a considerable gap in their professionalization along the lines of their length of the session, number of permanent staff, and lawmaker salaries (Maddox 2004; Malhorta 2006). We use Squire's (2007) measurement of legislative professionalism, which scores 13 states as having professional

[6] Legislative insulation scores are as follows: CA = 1; AR = 2; AZ, MI, ND, OR = 3; CO, ID, OK, SD, WA, UT = 4; FL, IL, NV = 5; AK, MO, MT, NE, OH = 6; MS = 7; ME, MA = 8; WY = 9.

legislatures.[7] We argue that since lawmakers in professional legislatures have more direct contact with their constituents (Squire 1992), and because professional lawmakers may take offense when voters assume the role of citizen lawmakers and undercut their expertise, we expect professional legislatures in initiative states to be more likely to try to regulate the plebiscitary process.

Data and Method

The data we use to explain legislative regulation of the initiative in the American states for three legislative cycles (2001-02, 2003-04, 2005-06) were provided by the NCSL.[8] After some culling and aggregating, our cross-sectional dataset consists of 72 cases (24 initiative states over three two-year legislative periods). We use a two-year period as our unit of analysis because it reflects the duration of most legislative sessions,[9] and because only a few of the 24 states allow initiatives to be placed on ballots in odd-numbered years.

Our two dependent (or response) variables are both counts: the number of bills introduced and the number of bills enrolled and sent to the governor over a two-year period.[10] Because our two dependent variables are counts, we use a negative binomial regression model to examine the causal factors for why legislatures both introduced and passed bills restricting the

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[7] The 13 states with professional legislatures according to Squire (2007) are: CA, NY, WI, MA, MI, PA, OH, IL, NJ, AZ, AK, HI, FL.

[8] Jennie Drage Bowser of NCSL generously provided us with legislative regulation data. The data contained 683 bills (including numerous duplications) dealing with various aspects of direct democracy introduced in all the state legislatures between 2001 and 2007. We removed all legislation that did not pertain to the initiative (i.e., the referendum and the recall), as well as all legislation in states currently without the initiative, and then aggregated it by two year legislative cycles. .

[9] Five of the 24 initiative states have biennial legislative sessions: AR, MT, NV, ND, and OR. For the purpose of counting introduced and enacted bills, they are treated the same as the states with annual sessions.

[10] It is certainly possible that the number of bills introduced and passed by a legislature regulating the initiative over a two-year period merely reflect the fact that some legislatures introduce and pass more legislation every two years regardless of the subject. This does not appear to be the case, however. Over the period of 2001-2004 (data not available for 2005-06), the 24 state legislatures introduced 162,148 bills and resolutions, and enacted 43,805 of them. Collectively over the same time period, they introduced 80 bills regulating the initiative and enacted 17. For the 24 states, the bivariate correlation between the total number of bills introduced and the total number of bills introduced regulating the initiative is negative (r=-0.148) and not significant (p< .490). The bivariate correlation between the total number of enacted bills and the total number of bills enacted regulating the initiative is also negative (r= -0.125) and not significant (p= 0.562).

initiative process between 2001 and 2006. We use negative binomial regression to test our hypotheses rather than Poisson regression because both dependent variables exhibit over-dispersion, which could lead to artificially small standard errors (King 1989; Hilbe 2007).[11]

Again, we expect that legislatures in states with more initiatives on the ballot during a two-year period will be more likely to regulate the process, as well as those that are constrained by TELs and term limits. We also expect professional legislatures, those that are less insulated from the initiative process, and those with unified party control (Democratic or Republican) to push for more regulations on the process.

Findings

Table 1 reports the results of our two negative binomial regressions (bills introduced and bills enrolled) over the three two-year periods. Each model has two columns of data. The first column displays the negative binomial regression coefficients and robust standard errors for each independent variable. The second column provides the marginal effect for each variable that achieves statistical significance ($p<.05$), that is, the substantive impact a one-unit change that a dummy or interval level variable is expected to have on the number of bills or laws enrolled during a two-year period, holding all other predictor variables constant.

[Table 1 here]

The findings from Model 1, which predicts the number of bills a state legislature will introduce over a two-year period, supports our hypothesis that legislators in states with heavier initiative use are more likely to introduce bills regulating the process, ceteris paribus. The marginal effect suggests that for every additional three initiatives on the ballot during a two-year

[11] As Figure 1 reveals, two states (AZ and MA) are outliers when it comes to the number of bills introduced. Identical models (not shown) excluding these states yield substantively identical results.

period, lawmakers in a state are predicted to introduce approximately one more bill, holding the other independent variables at their means. While at first glance the substantive magnitude does not appear too large, it is noteworthy that some states had more than a dozen initiatives on the ballot during a two-year span. Historically, since they first adopted the initiative in the early 1900s, California and Oregon have averaged more than half a dozen initiatives on the ballot every two years, and Colorado, North Dakota, Arizona, and Washington have each averaged more than 3 initiatives on the ballot every two years (Smith and Tolbert 2007). Thus, the marginal effect of initiative use on efforts by a legislature to regulate the process seems to have some face value.

Model 1 also reveals, as expected, that legislatures with TELs in place and professional legislatures are considerably more likely to introduce bills restricting the initiative, compared to those legislatures without revenue and spending limits and those that are non-professional. The marginal effect of having a TEL suggests that lawmakers in these 18 states are likely to introduce at least three more bills every two years than states without TELs, all else equal. The 13 professional legislatures in our dataset, again looking at the marginal effects, are likely to introduce roughly two more bills regulating the initiative process than non-professional legislatures during a two-year period. We find no evidence, however, that legislatures with term limits, those that are under unified party control (either Republican or Democratic), or those that are not well insulated from the process are any more or less likely to introduce restrictive bills.

Turning to Model 2, which examines the number of bills that a legislature is expected to pass regulating the initiative, once again we find that as the number of initiatives on the statewide ballot increases during a two-year period, lawmakers are more likely to send to the governor bills restricting the process. However, the substantive magnitude of the increased usage of ballot measures on the passage of regulatory legislation, as revealed by the marginal effect for the coefficient, is about one tenth of that for the introduction of such legislation. No other predictor variables achieve statistical significance except for the interval measure of legislative insulation from the process. As expected, Model 2 reveals that legislatures already possessing the

institutional means to thwart successful initiatives, holding constant the other independent variables, are less likely to pass legislation further regulating the process. Inversely, legislatures constitutionally required to be more deferential to the process are more likely to pass legislation reining in citizens' plebiscitary powers. For example, all else equal, California and Arkansas lawmakers are expected to pass at least one more bill regulating the initiative than are lawmakers in Wyoming during a two-year period.

Conclusion

Legislative attempts to check the initiative are nothing new. Efforts by state legislatures to regulate the process have been regular, albeit cyclical, occurrences since the adoption of the plebiscitary process in the American states more than a century ago (Waters 2001; Drage 2001; Grant 2001; Smith 2008; Donovan and Smith 2008). To some observers, and most state lawmakers, tightened regulations of citizen lawmaking could not come any sooner. Accounts documenting how the initiative has spun out of control, subverting the traditional legislative process, have received widespread attention in recent years (Schrag 1998; Broder 2000; Ellis 2002). Certainly, some state lawmakers view citizen-initiated lawmaking as lying beyond their own control. The plebiscitary process for these lawmakers has usurped representative government, and from their perspective must be reined in. Though the regulations introduced and passed by state legislatures may be couched in language laced with protecting rights of citizens and ensuring the integrity of the process, the underlying objective perceived by many defenders of the process is to reduce the likelihood of initiatives qualifying for the ballot.

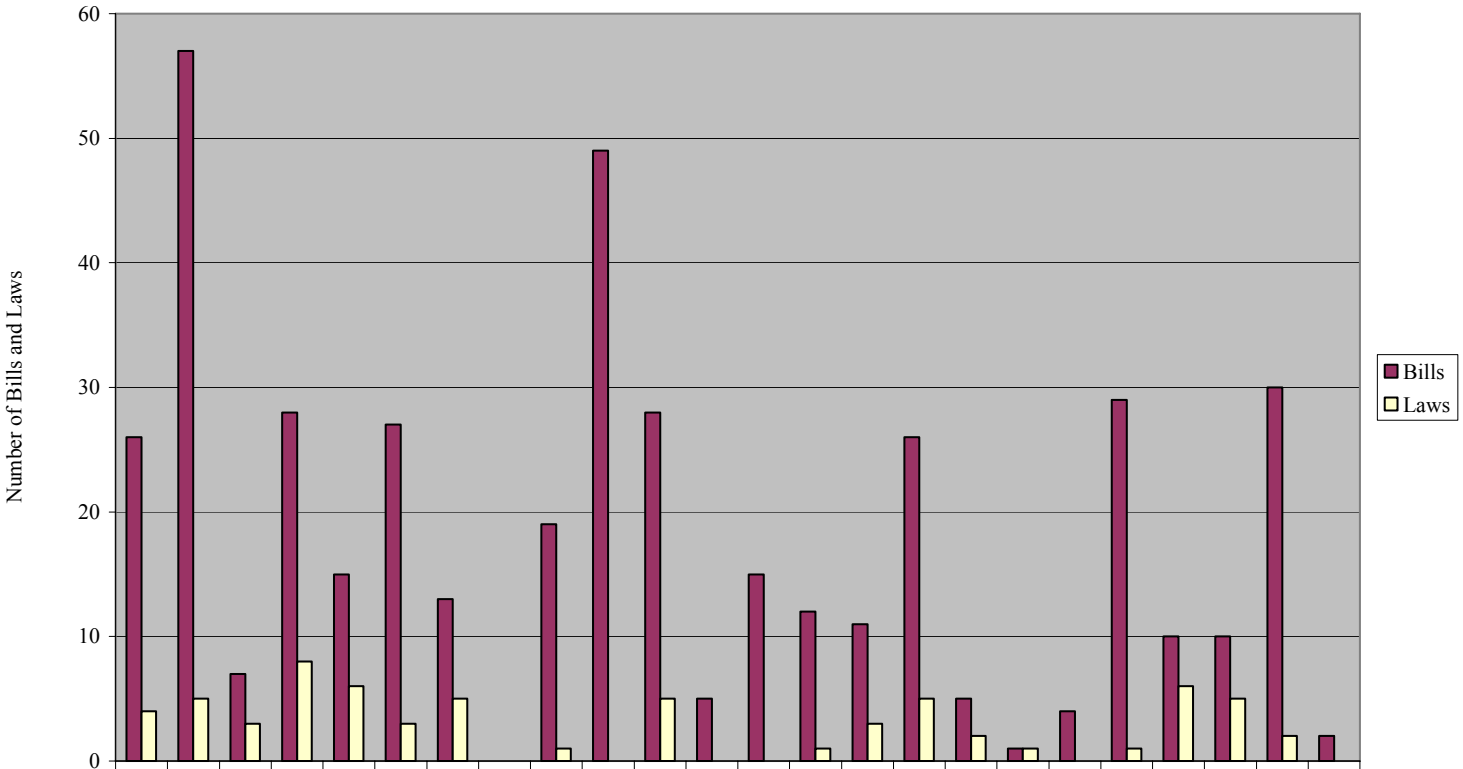
But are there certain conditions that have driven the flurry of legislative activity aimed at restricting the initiative process in some states more than others? Our analysis of more than 400 bills introduced over a six-year period in the 24 states permitting the initiative suggests that some lawmakers are reacting to a heightened use of the process, all else equal. Although the recent flurry of ballot measure activity may be only a temporary phenomenon (Tolbert 2003),

lawmakers in states with more measures on the ballot are more likely to introduce bills and pass legislation than lawmakers in other initiative states.

Does this increased regulation indicate that lawmakers, especially those in professional legislatures and those with limits imposed on their taxation and expenditure authority, have an innate animosity towards the so-called initiative industrial complex" (Donovan, Bowler and McCuan 2001), or are they genuinely worried about the integrity of the process? The fact that lawmakers in states with higher numbers of initiatives on the ballot are leading the charge to regulate the process, and not lawmakers in lower-use initiative states, seems to suggest that the regulatory efforts emanate from concerns that the process is becoming too widespread. There is also no indication that the regulatory effort of legislatures is the result of a unified legislature (either Democratic or Republican) lashing out against the process, or that is the result of a backlash stemming from lawmakers being term limited. Rather, the raft of regulations can be seen most clearly as an effort by lawmakers most directly affected by the plebiscitary mechanism to weaken the rival institutional process so that it does not compete with their traditional legislative powers.

The results also suggest that parity across initiative states may be developing when it comes to the regulation of direct democracy. Regarding bills becoming enrolled, besides increased initiative use, the only other significant predictor of sanctions against the process is if the legislature is not well insulated from the process. This finding suggests that there may be a natural equilibrium when it comes to balancing the power of citizens with the power of state legislatures. Legislatures in states where the constitution already gives lawmakers considerable power over the initiative process do not appear to be rushing to further regulate citizen lawmaking the process. As such, the legislative urge to regulate the initiative may become a passing fancy, as the number of measures on the ballot in high use initiative states will inevitably wane some day.

Figure 1
Regulation of Initiative Process, 2001-07



	AK	AZ	AR	CA	CO	FL	ID	IL	ME	MA	MI	MS	MO	MT	NE	NV	ND	OH	OK	OR	SD	UT	WA	WY
Bills	26	57	7	28	15	27	13	0	19	49	28	5	15	12	11	26	5	1	4	29	10	10	30	2
Laws	4	5	3	8	6	3	5	0	1	0	5	0	0	1	3	5	2	1	0	1	6	5	2	0

Table 1

Models Explaining the Number of Bills and the Number of Bills Enrolled Regulating the Initiative in State Legislatures, 2001-06

	Model 1 ***Number of Bills***		***Model 2*** ***Number of Bills Passed***	
Predictor Variables	**Coefficient (Rb. Std. Err.)**	**Marginal Effect**	**Coefficient (Rb. Std. Err.)**	**Marginal Effect**
Number of Initiatives on Ballot	**.121** (.055)	0.310	**.082** (.042)	0.039
Tax and Expenditure Limit	**1.586** (.450)	3.307	.553 (.370)	
Term Limits	-1.586 (.297)		-.425 (.357)	
Republican Legislature	.155 (.322)		.229 (.346)	
Democratic Legislature	.314 (.456)		-.284 (.450)	
Professional Legislature	**.772** (.351)	2.304	.246 (.391)	
Legislative Insulation Index	.018 (.101)		**-.292** (.116)	-0.138
Constant	-.981 (.804)		.151 (.770)	
Overdispersion (α)	2.166 (.590)		.263 (.359)	
Wald X^2	47.09		61.97	
Log Pseudolikelihood	-152.525		-70.285	
Observations	72		72	

Note: Figures in column one in both models are probabilities predicted using a two-tailed test. Robust standard errors, adjusted for clustering by state, are in parentheses. Figures in column two of each model are the marginal effects of the change in dependent variable, given a one-unit change in the predictor variables, with all variables held at their means. For dichotomous independent variables, the marginal effect is the change in the number of bills or bills enrolled given the predictor variable changing from zero to one, all else equal. **Bold** indicates $p < .05$.

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