

The Issue of a National Initiative Process

By Dennis Polhill

National referendums are a regular event among the world's democracies. With four national elections per year Switzerland has held approximately half of the 800 national referendums in world history.

One application of national referendums has been in exercising the "self determination" of a people. A referendum unified fragmented Italian states into a nation. Norway separated from Sweden in 1905 via national referendum. Only "five major democracies have never had a national referendum: India, Israel, Japan, the Netherlands, and the United States." In recent years Israel and the Netherlands have seriously contemplated the idea of a national referendum to advance intractable issues.

The demise of the Soviet Union was a byproduct of the largest national referendum in world history; the Soviet Union's first and last referendum. To advance his reforms Mikhail Gorbachev sought popular support by proposing the March 17, 1991 All-Union referendum. The All-Union Referendum would reaffirm the Union Treaty of 1922 that created the Soviet Union. The referendum opened a floodgate. The 15 Republics did not conform. Some redrafted the language; several added questions to the ballot; others declared their independence and still others boycotted the event. Although the All-Union Referendum passed overwhelmingly, periphery events turned out to be more relevant than the specific outcome. The Soviet Republics had discovered a way to articulate their frustration with central control and busily went about acting as independent states.

But has the national referendum process been abused?

The prospect of manipulation of a national referendum is real. Gorbachev directed the military to manage the election in Republics that boycotted the All-Union Referendum with the result that voter turn out approximated the local ethnic Russian population.

Hitler used national referendums to withdraw Germany from the League of Nations in 1933 and to consolidate his powers in 1934. The ability of the Nazi propaganda machine to insure the desired result is well known. This problem with referred measures was well expressed when Benito Mussolini said, "Give me the right to nominate and you can vote for whomever you please." The control of the language and what questions appear on ballots is not a minor detail. A recent example is the election held in April 2002 in Pakistan. President

Musharraf clearly manipulated the wording of the referendum in order to ensure he was reelected to another five year term as President of Pakistan.

So what about national I&R in the United States?

If I&R has been a means for dealing with the conflicts at the state level, why not resolve similar national conflicts with national I&R? Lincoln is said to have proposed a national vote to reconcile slavery. There have been 3 major efforts in the U.S. for national I&R: the Progressive movement (prior to 1920), the anti-war movement (during both World Wars I and II), and the environmental movement (during the 1970s).

An early advocate for national I&R was U.S. Senator and former Colorado Governor John Shafroth. The Shafroth Amendment was proposed as an amendment to the U.S. Constitution in 1914. It would have given the people of every state I&R for determining women's suffrage. When 8% of voters signed a petition, the issue would be determined by a majority vote at the next state election. Mounting pressure eventually forced Congress to deal with the issue. Had it become law, the Shafroth Amendment might very well have expedited resolution of women's suffrage. Perhaps more importantly, it would have set a precedent as a means of addressing other difficult national issues.

When the U.S. entered World War I, isolationists and pacifists called for a national referendum, arguing that only the people should decide whether to go to war. Advocates proposed an Amendment to the U.S. Constitution (also called the Peace Referendum) that would have required a nationwide popular vote to go to war, unless the U.S. was attacked or invaded. A similar movement emerged during World War II but was never approved by Congress.

After World War II, the use of the statewide initiative process declined and was largely forgotten by many activists until it was rediscovered in the 1970s by the environmental movement. Coincident with rediscovery of state I&R, was a renewed interest in national I&R. Senator Abourezk (D-SD) introduced the National Voter Initiative Amendment in 1977.

The NVIA would have taken an issue to nationwide vote, when 3% of voters in at least 10 states signed a petition. A majority of voters nationwide would decide the issue. The difference between the Shafroth and the Abourezk approaches merit elaboration. Shafroth empowered the people of the states, acknowledging that the Federal government is a collection of state governments. Abourezk did not account for the division of powers between Federal and State governments itemized in the U.S. Constitution or provide a means of addressing state

issues. Shafroth did not provide a means for directly resolving national concerns. A well-designed system of national I&R should do both: work within the bounds of the constitution and provide a means for addressing issues reserved to the respective Federal and State levels.

National I&R Proposals

There have been two distinct approaches to obtaining a national I&R process in the United States. One is working through the states and the other is by getting Congress to pass an amendment establishing the initiative process.

In the states, several organizations, like USPIRG, have worked hard to generate support for a national I&R process. In addition to the “PIRGs”, another organization, “Philadelphia Two” has been working to establish a national initiative process. Former U.S. Senator Mike Gravel heads the group. Though their approach is somewhat controversial (basically to set up an “electoral trust” that is not accountable to the government), they are working hard to build support for a national initiative process.

At the Congressional level, between 1895 and 1943, 108 proposals to amend the U.S. Constitution by adding national I&R were submitted. Seven would have created a general I&R, that would have allowed for consideration of any issue. The others created I&R for specific issues only or that had issue-specific prohibitions. For example, Abourezk would not permit the declaring of war, calling up troops, or amending the constitution and would permit statutory modifications by Congress with a two-thirds majority or simple majority after two years. Implementation of national I&R is more complicated in the U.S. than in other nations due to the unique Constitutional division of responsibilities between the Federal and State governments. In most countries, governments are centralized to either a greater or lesser extent. Other variations of national I&R that have been proposed in the U.S. include:

The first proposal for national I&R was in 1895 by Populist Party U.S. Senator William Peffer from Kansas. It provided for a national vote on an issue when 20% of voters nationwide or 20% of state legislatures requested it.

In 1907 U.S. Representative Elmer Lincoln Fulton from Oklahoma suggested that 8% of the voters in each of 15 states could put either a constitutional amendment or statute proposal to a national vote or that 5% of the voters in each of 15 states or their state legislatures could challenge a statute passed by Congress.

In 1911 Senator Bristow from Kansas proposed that the Initiative be used to reign in the court. Any law held unconstitutional by the Supreme Court would go to a vote of the people. This was the first proposal for using I&R as the method by which to reconcile conflicts between the equal branches of the Federal government.

Socialist Party U.S. Representative Victor Berger of Wisconsin introduced the most radical proposal ever. It would have abolished the Presidency, the Senate and the Supreme Court. Five percent of the voters in three-fourths of the state could propose a law or challenge a law passed by Congress.

U.S. Senator Bob La Follette from Wisconsin in 1916 proposed a non-binding national advisory referendum that would be held when 1% of the voters in 25 states petitioned.

The National approach would require some percentage (usually in the range of 3%) of voters nationwide to sign a petition. Because elections are managed by the states and there are no national voter rolls or other election systems, leaving states out of the process would require changes in election management.

Nullification advocates in the 1980s and 1990s suggested that Federal statutes should go to a nationwide vote when 10% of the voters in 1/3 of the states sign a petition challenging it. Nullification proposals were in reaction to “unfunded mandates” and directives imposed upon the states by Congress. A nullification mechanism would effectively be a national application of the referendum petition or challenge petition.

The State's Approach to National I&R

The question of national I&R in the U.S. is not whether it will be. Rather, the question is when it will be and what form it will have. When the Confederate States wrote their constitution, they substantially replicated the constitution they had lived under for over 70 years. Perhaps the most substantial variation cured a significant structural flaw in the U.S. Constitution: how Amendments are proposed for ratification. Recognizing that a constitution is the delegation of consent to govern and, therefore, a limitation on government, and acknowledging Congress' inherent conflict of interest, the authority of Congress to draft proposed amendments was revoked. A proposed amendment would go to ratification when 25% of the states passed resolutions supporting the same proposal. This, in fact, is what the Founders had intended with Article V; but their intent was subsequently subverted by Congress.

The “States Approach” may be the best form for national I&R. The “States Approach” would permit a number of states (25%) to agree either by state initiative petition and vote or by state legislature resolution, that a question should be addressed nationally. When a number of states concur, the Federal statute (simple majority)

or constitution (3/4 majority) is changed. Obviously, over-reaching Federal statutes could be stricken by the same means.

The “States Approach” acknowledges the respective constitutional roles of the State and Federal governments. It provides a means for addressing both state and national issues. It can cure both actions of omission and acts of commission by Congress and by individual state legislatures. It utilizes the existing election management systems of the states. It answers the problem of Congressional conflict of interest. It can deal with both Federal statutory or constitutional problems. It acknowledges the sovereignty of the people at every level. It might be a viable means for resolving conflicts between the equal branches of the Federal government or deadlocked Federal legislation. The fear of majoritarian abuse of I&R is reduced. National issues are resolved gradually via ongoing public debate and incremental approval by the states. A critical part of the Constitution is restored to the functionality intended by the Founders.

The “States Approach” also offers a practical means of implementation and can be achieved gradually by increasing the number of states with I&R until critical mass is reached. Critical mass is when the numbers of states with I&R is sufficient to press the issue of nationally.

Summary

National I&R in the U.S. would offer a mechanism to address national issues that partisan politics or Congressional inherent conflict of interest prohibits a solution. Several attempts have been made in Congress and in the states – but to no avail. However, as citizens enlarge their participation in their government, it appears inevitable that the U.S. will find a way to exercise this fundamental right in the near future.