

Vox Populi: **Voters Weigh in on School Finance and Property Taxes**

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In this article, the authors look at statewide property tax and related measures on the ballot in 2018.

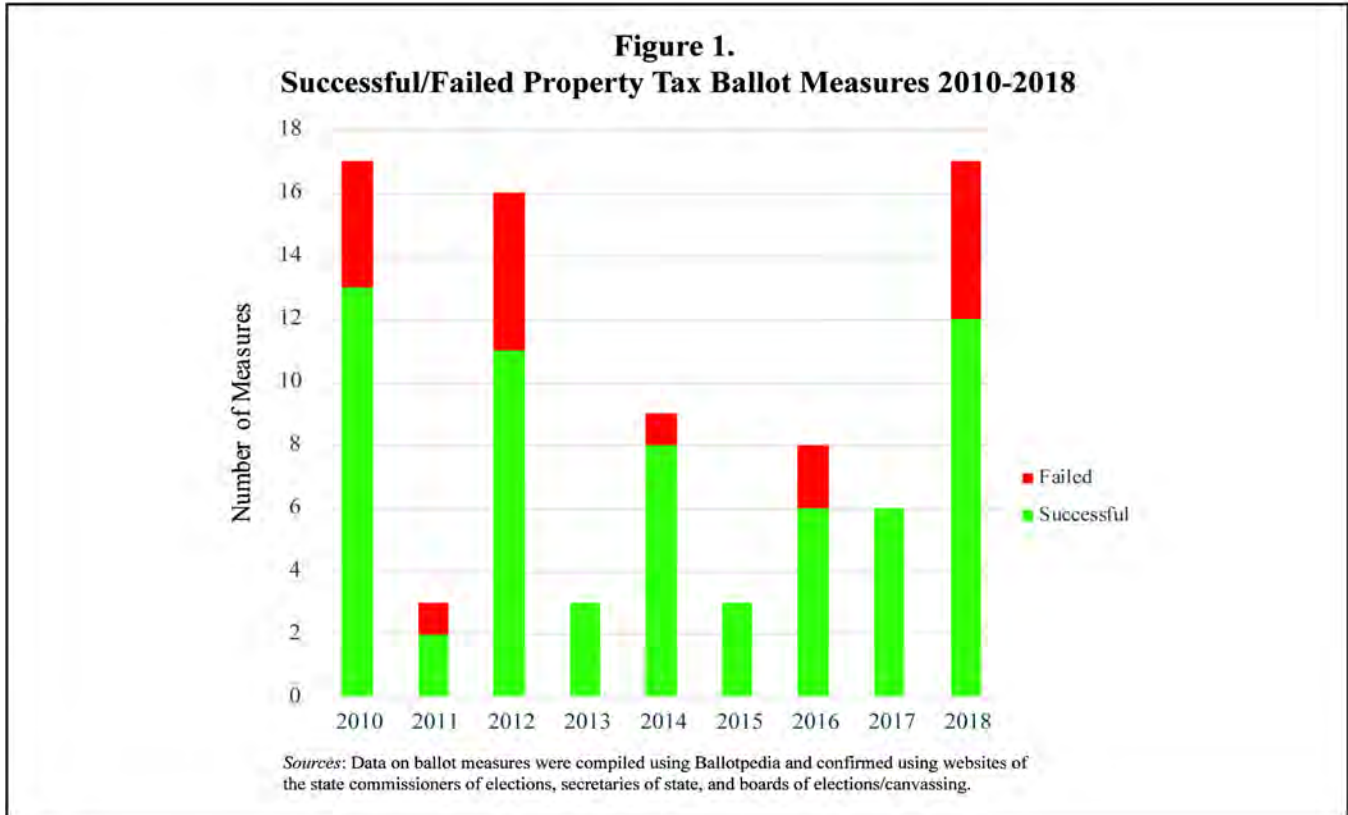
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This election cycle, a wide variety of measures dealing with school finance and property taxes appeared on statewide ballots. In this article we highlight 17 of them. We include school finance measures along with property tax measures because of the strong link between the two. About half of K-12 funding comes from local governments, and more than 80 percent of the local government

contribution comes from the property tax.¹ Also, some states, such as New Hampshire, levy state property taxes to fund education. (Appendix A provides a brief description of the measures and the results.²)

¹ Andrew Reschovsky, "The Future of U.S. Public School Revenue from the Property Tax," *Land Lines* (July 2017).

² Appendix A includes a few property tax measures of minor importance that we do not discuss in this article.



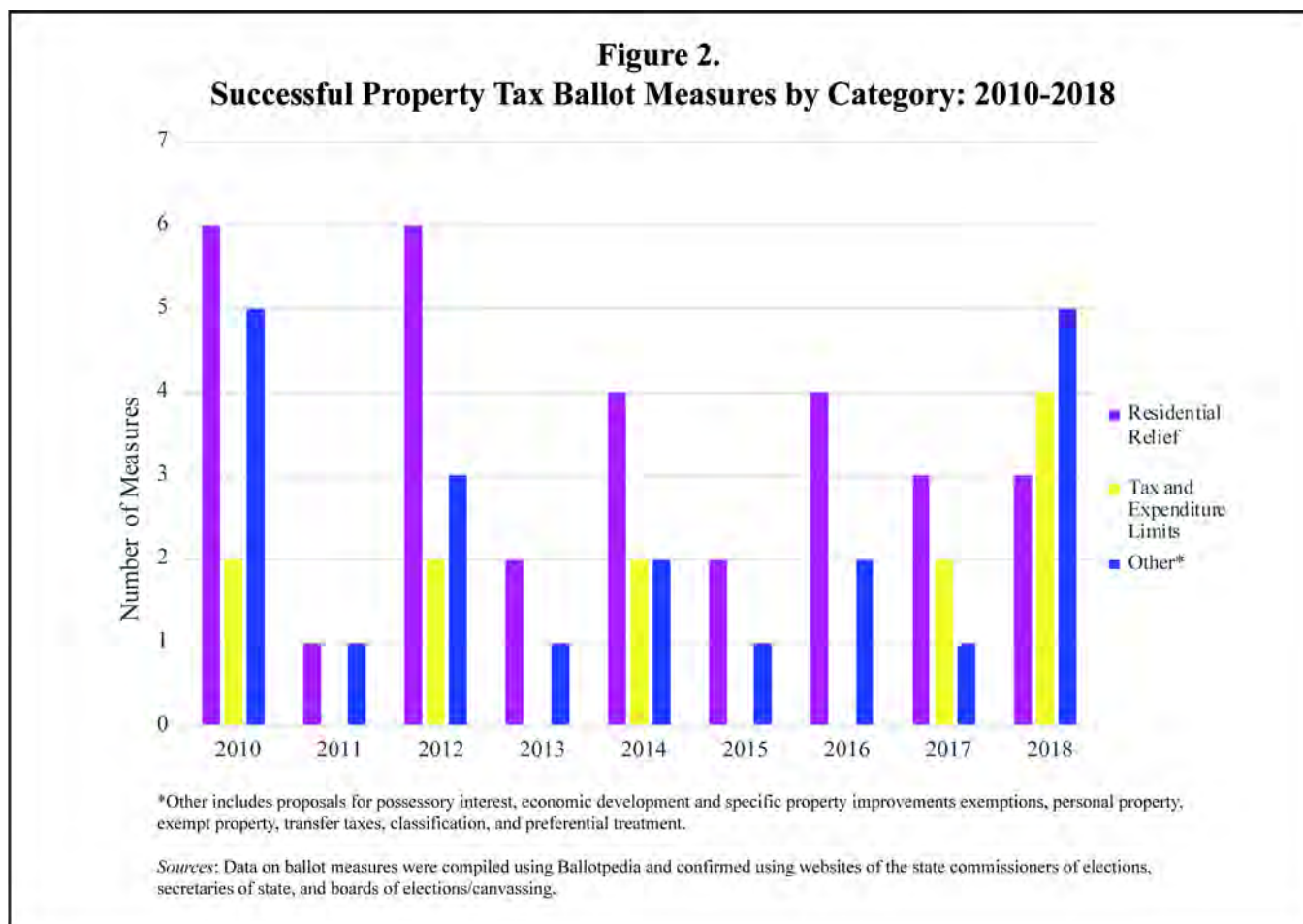
Two of the most salient property tax and school finance ballot measures in 2018 were California’s Proposition 5, which sought to mitigate the impact of Proposition 13 for homeowners seeking to relocate within the state, and Colorado’s Amendment 73, designed to increase funding for schools. To place our discussion in context, we survey the recent history of property tax measures, provide background on the ballot measures and how options vary by state, and provide a table on all of California’s property-tax-assessment-related ballot measures since Proposition 13 was enacted in 1978.

I. Recent History of Property Tax Measures: 2010-2018

Since 2010, 84 ballot measures regarding property taxes have come before voters, with more than three-quarters winning approval.³ Ballot measures are more prevalent in even years as all states hold statewide elections in those years, while only a few have statewide elections in odd years.⁴ Figure 1 clearly shows this pattern between 2010 and 2018. The lowest number in even years (eight measures in 2016) is higher than the greatest number in odd years (six measures in 2017). More property tax ballot measures appeared on state ballots in 2018 than in any year since 2010.

³ Not included in these totals are measures on intangible property or any bond issues.

⁴ Five states elect governors in odd years: Kentucky, Louisiana, Mississippi, New Jersey, and Virginia.



Historically, residential property tax relief and tax limitations have dominated successful property-tax-related measures appearing on state ballots, as shown in Figure 2. Proposals providing residential relief are by far the most common, comprising more than two-fifths of all measures, and are also the most successful, with a 91 percent success rate. In contrast, tax and expenditure limits, which represent about 20 percent of property tax ballot measures, have a significantly lower approval rate of 55 percent. Constitutional amendments to either allow for a new tax (see Hawaii school finance tentative amendment) or prohibit the imposition of a tax appear on ballots with less frequency than either residential relief or tax limitations.⁵ Unusually, in 2018 other types of property-tax-related measures outnumbered

⁵ From 2010 until 2014, five states adopted amendments to prohibit the imposition of a real estate transfer tax (Louisiana, Missouri, Montana, North Dakota, and Oregon). In 2012 North Dakota rejected a proposal to eliminate the property tax.

residential relief and tax and expenditure limit measures on state ballots.

II. Funding Schools and Teachers

During a year in which teacher strikes and calls to increase funding for K-12 education have made the headlines, it is no surprise that several states considered ballot measures regarding school funding. Five measures designed to increase funding for K-12 education made it to the ballot, as well as one measure (in Oklahoma) to allow increased flexibility in spending current tax revenue. Although the property tax is the single most important tax funding schools in the United States, only Oklahoma's ballot measure and Hawaii's ballot measure (for which votes didn't count) involved property taxes. Revenue options ranged widely from gaming revenue to income and sales taxes.

Voters in Georgia and Maryland overwhelmingly approved two ballot measures

with modest impacts. Georgia's Amendment 5 was approved 71 percent to 29 percent. Amendment 5, a legislatively referred constitutional amendment, makes it easier for school districts in counties with more than one school district to propose sales and use tax referenda. Georgia makes heavy use of local-option sales taxes, most of which are countywide, including for education. Typically, when a referendum for a local sales tax is called, the proposed rate is 1 percent, to expire after five years. Amendment 5 was designed to overcome the requirement for all school districts within a county to agree upon a sales tax proposal before it is put before the voters. Passage of Amendment 5 "gives a new right to the larger school system . . . to call a vote for a penny sales tax for education, even without the smaller system's buy-in."⁶ Revenue from the sales tax will be divided among the school systems in a county according to an agreement among the systems, or if no agreement can be reached, divided among school systems based on their share of total county school enrollment.

Maryland's Question 1 passed 89 percent to 11 percent. Question 1 tightens earlier measures on the use of gaming proceeds. The state has a long history of using gaming revenue as a substitute for general support for education, and Question 1 is intended to ensure that does not continue. In 2008 the voters approved an amendment authorizing video lottery for the primary purpose of raising money for education.⁷ To manage these new revenues and those from a later amendment allowing slots and table games, the state created the Education Trust Fund in 2009.⁸ Although gaming revenues flowed into the Education Trust Fund, some general fund revenues that previously supported education were redirected to other purposes. The amendment in Question 1 requires that by the fourth year after passage, all monies in the Education Trust Fund will supplement primary state funding for

education. It also sets some reporting requirements for the governor's budget.

Voters decisively rejected other school funding ballot measures. Colorado's Amendment 73, designed to raise approximately \$1.6 billion in additional school funding revenue, was defeated with only a 46 percent favorable vote, far below the 55 percent needed for passage. Because of budget cuts, more than half of Colorado school districts now have four-day school weeks.⁹ The amendment would have increased individual income taxes by adding graduated rates to the flat tax and raised the corporate income tax rate. It also proposed changes to the state's complex property tax limits for school districts. Amendment 73 would have set assessment rates for school districts, reducing the assessment for nonresidential properties from 29 percent to 24 percent and setting the rate for residential assessments at 7 percent rather than being adjusted annually. Since under existing law the residential assessment rate was projected to decline to 6.1 percent in 2019, these changes would have reduced nonresidential property taxes but increased residential property taxes.¹⁰

Another income tax school funding measure was pulled off the ballot before the election. Arizona's Proposition 207 would have imposed an extra income tax on those earning more than \$250,000 to pay for teacher salaries and school operations. Proposition 207 "produced an astounding 270,000 signatures in 10 weeks, and early polling commissioned by its backers showed wide public support for the idea."¹¹ In August the Arizona Supreme Court ruled that the wording in the ballot measure was misleading and the proposition should be taken off the ballot. Arizona is one of several states

⁹ Daarel Burnette II, "Colorado Ballot Measure Tests Voter Appetite for More K-12 Funding," *Education Week*, Oct. 30, 2018.

¹⁰ See Legislative Council of the Colorado General Assembly, 2018 State Ballot Information Booklet, Research Publication No. 702-2. For an explanation of Colorado's complex system of property taxation, including an explanation of the Gallagher Amendment, see the Colorado entries in State-by-State Property Tax at a Glance or State-by-State Property Tax in Detail on the *Significant Features of the Property Tax* website.

¹¹ Liz Farmer, "The Week in Public Finance: Tax Hike for Teachers Kicked Off Arizona Ballot," *Governing*, Aug. 31, 2018.

⁶ Joe Kovac Jr., "How the 5 Constitutional Amendments on Georgia's 2018 Ballot Fared at the Polls," *The Telegraph*, Nov. 6, 2018.

⁷ Maryland Question 2, 2008.

⁸ Maryland Question 7, 2012.

where the real average teacher salary was lower in 2016-2017 than in 1999-2000.¹² Teachers across the state staged a walkout in 2018, and the ballot initiative arose from that effort.¹³ If the ballot measure had been retained and passed, it would have “made Arizona the first red state to pass a millionaire’s tax.”¹⁴

A Utah ballot measure to increase the gas tax to free up funds for education went down decisively (65 percent to 35 percent). Utah’s school funding ballot measure, Question 1, was a nonbinding opinion question meant to advise the Legislature. That question asked voters if they approved of a 10-cent-per-gallon increase in the gas tax to pay for road construction and maintenance, thereby freeing up additional funding for education. Utah is notable for having the lowest school spending per pupil in the nation.¹⁵

Finally, a modest change in school funding in Oklahoma was defeated by a small margin (50.4 percent to 49.6 percent). Question 801 did not seek to increase school funding revenue but to give school districts additional flexibility in spending revenue they are already entitled to raise. Question 801 would have amended the Oklahoma Constitution to allow property taxes raised by school districts to fund operations as well as construction. Although the failure of Question 801 can be viewed as a defeat for Oklahoma educators, those same educators scored a big victory in March 2018 when the Legislature approved the state’s first tax hike in 28 years to pay for higher teacher salaries.¹⁶

Two other school funding news items bear mentioning. Kansas has been involved in a long-standing battle with the state’s supreme court over the amount of and distribution of state aid. In response to a Kansas Supreme Court ruling in 2018, the Legislature enacted a

\$500 million school funding increase and the court has retained jurisdiction to ensure that the state meets its funding requirements.¹⁷ The gubernatorial race pitted Republican Kris Kobach, who said he would fight the supreme court’s ruling and seek further tax cuts, against Democrat Laura Kelly, who said she would comply with the ruling and seek more revenue for schools. Kelly won, earning 48 percent of the vote to Kobach’s 43 percent.

Finally, Hawaii’s Surcharge on Investment Properties measure appeared on the ballot, but because of a last-minute Hawaii Supreme Court ruling, the votes won’t count. Hawaii is the only state where the state provides all the funding for education and where, because of the constitution, the state cannot impose a property tax. The effective property tax rate in the state is very low. The state also has a high share of expensive tourism-related property. The surcharge proposal would have allowed the Legislature to establish a state-level property tax on investment properties to fund public education. The city and county of Honolulu and three counties, which have the sole authority to levy property taxes in the state, filed a lawsuit charging that the text of the measure was misleading and it should be removed from the ballot.¹⁸ One claim in the lawsuit was that using the term “surcharge” rather than “tax” in the description of the levy was misleading for voters.¹⁹ The supreme court ruled in October that the ballot language was not sufficiently clear and that the votes on the measure should not be counted.

III. Tax Limits

A. California’s Ballot Measure 5

The “People’s Initiative to Protect Proposition 13 Savings,” is one name for California ballot measure Proposition 5, the

¹² National Center for Education Statistics, *Digest of Education Statistics*. Colorado is the only state with a greater real decline in average teacher salary over the period (-15 percent) than Arizona (-10.4 percent).

¹³ Dana Goldstein, “After Teacher Walkouts, Arizona Republicans Jostle Onto Education Platform,” *The New York Times*, Oct. 27, 2018.

¹⁴ Farmer, *supra* note 11.

¹⁵ Education Week Research Center, 2015 Education Spending Per Student.

¹⁶ Farmer, “The Week in Public Finance: Teacher Protests and Strikes are Winning Historic Tax Hikes,” *Governing*, Mar. 30, 2018.

¹⁷ Kansas, “Recent Events,” SchoolFunding.info.

¹⁸ For more about Hawaii’s unique system of property taxation, see James Mak, “Hawaii” (2018) in *State-by-State Property Tax at a Glance*. In 2014 the estimated effective property tax on owner-occupied homes in Hawaii ranked the lowest among the 50 states and the District of Columbia.

¹⁹ Paul Jones, “Hawaii High Court Agrees to Review Property Tax Ballot Measure,” *State Tax Today*, Oct. 11, 2018.

Property Tax Transfer Initiative. Widespread opposition defeated the measure, with 60 percent voting against it. This measure sought to mitigate the impact of Proposition 13 for homeowners seeking to relocate, by allowing seniors and others to transfer their “tax savings” under more lenient conditions.

Under Proposition 13, homes are reassessed at market value when they are purchased, and for the duration of the owner’s tenure this base value increases no more than 2 percent each year. Over the years, long-term homeowners build up a tax savings when market values increase substantially more than the base value.²⁰ Proposition 5 would have allowed homeowners over the age of 55 who are or disabled to transfer their base values to any residence regardless of the value of the new home, anywhere in the state, and as many times as they wanted. This is in contrast to the current amendments, propositions 60, 90, and 110, that allow those homeowners to transfer the base one time to properties of same or lesser value either within their counties or to one of the 10 counties that currently permit intercounty transfers.²¹

Proposition 5 was initiated by the California Realtors Association and was supported by the Howard Jarvis Taxpayers Association and a few newspaper editorial boards. In supporting the measure, they contended it would ease the tight housing market and provide senior homeowners with more opportunities to move.²² However, the editorial boards of papers in most major cities opposed the proposal. Typical of the editorial objections were those expressed by *The Sacramento Bee*: the proposal “would make property taxes in California even

less fair while devastating the budgets of local schools and governments. Voters should reject it.”²³

This was the first constitutional initiative generated by citizens rather than the Legislature since the original Proposition 13, and one of only five proposed amendments to Proposition 13 to fail (see Table 1). However, the sponsors are trying again. Their initiative for the 2020 ballot has been approved for gathering signatures.²⁴ The 2020 version is much the same, allowing seniors and other homeowners unlimited transfer of their tax savings. However, in hopes of garnering greater public approval, the new proposal would close some loopholes by imposing new restrictions on transfers between family members and on the transfer of property through transferring controlling interests.²⁵

B. Georgia’s Referendum A

Voters in Georgia approved Referendum A 57 percent to 43 percent, providing a new homestead exemption for homeowners in Atlanta for city taxes beginning January 1.²⁶ The exemption would apply to any increase in assessed value of a homeowner’s primary residence over 2.6 percent per year. Creating the exemption for Atlanta falls under the constitutional provision that requires two-thirds of each house of the General Assembly to approve a proposal, which then must be approved by a majority of voters.²⁷

²⁰ When market value falls below base value, the lower value is the taxable value until the market value exceeds the Prop. 13 value.

²¹ All counties except Fresno allow for intracounty transfer under Proposition 60. Under propositions 90 and 110, 10 counties allow intercounty transfers for the elderly and severely disabled: Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, Tuolumne, and Ventura. El Dorado County recently withdrew accepting transfers as it created too great a tax loss. Under Proposition 171, 11 counties allow for intercounty transfers for homeowners whose property has been destroyed by natural disaster: Contra Costa, Los Angeles, Modoc, Orange, San Diego, San Francisco, Santa Clara, Solano, Sonoma, Sutter, and Ventura.

²² *Orange County Register* and *The San Diego Union-Tribune* published editorials supporting the measure on September 12, 2018. *The Fresno Bee* endorsed it on August 10, 2018.

²³ Editorial Board, “Supporters Say Proposition 5 Would Help California’s Housing Crisis. That’s a Sham,” *The Sacramento Bee*, Sept. 17, 2018. Other papers that opposed the measure include *The San Jose Mercury News*, *Los Angeles Times*, *Santa Cruz Sentinel*, *San Francisco Chronicle*, and *The Press Democrat* (Sonoma County).

²⁴ The number of signatures is based on the number of voters for all candidates for governor in the last gubernatorial election: 8 percent (585,407) for initiative constitutional amendments and 5 percent (365,880) for initiative statutes. Cal. Election Code section 9035.

²⁵ California Secretary of State, “Initiatives and Referenda Cleared for Circulation,” No. 1857 (18-0006A1).

²⁶ Atlanta is located in two counties — 95 percent in Fulton County and 5 percent in DeKalb County.

²⁷ “Except as otherwise provided in this Constitution, no property shall be exempted from ad valorem taxation unless the exemption is approved by two-thirds of the members elected to each branch of the General Assembly in a roll-call vote and by a majority of the qualified electors of the state voting in a referendum thereon.” Ga. Const. Art. VII, Section II, para. II(a)(1).

**Table 1. All California Ballot Measures Related to Proposition 13 Assessments*
(unsuccessful measures are in italics and shaded gray)**

| Year | Proposition | Description | Favorable Vote |
|-------------|-------------|---|----------------|
| 1978 | 13 | Assessed value limit and 1 percent rate limit | 64.8 |
| 1978 | 8 | Temporary reduction in assessment to market value when below factor value; following natural disaster, reconstruction does not increase assessed value if reconstruction is comparable in value to what is being replaced | 78.5 |
| <i>1980</i> | <i>5</i> | <i>Exclusion of improvements to comply with seismic safety laws (passed in 1984 Prop. 23, 1990 Prop. 127, and 2010 Prop. 13)</i> | <i>42.3</i> |
| 1980 | 7 | Exclusion of construction of or additions to active solar energy system; improvement not considered new construction | 65.5 |
| 1982 | 3 | Transfer of base value when property is taken by eminent domain | 56.5 |
| <i>1982</i> | <i>7</i> | <i>Exclusion of fire sprinkler or alarm system not required by law (passed in 1984 Prop. 31)</i> | <i>41.3</i> |
| 1984 | 31 | Construction of fire protection systems excluded from value | 50.8 |
| <i>1984</i> | <i>34</i> | <i>Construction on a homeowner's certified historic structure excluded from value if alterations are historically accurate</i> | <i>47.4</i> |
| 1986 | 50 | After a disaster, assessed value for comparable replacement property can be transferred within same county without triggering reassessment | 70.5 |
| 1986 | 58 | Transfer of residential property or first \$1 million of other property between parents and children or between spouses does not trigger reassessment | 75.7 |
| 1986 | 60 | Homeowners over the age of 55 allowed a single transfer of base value to new home of equal or lesser value within the same county | 77 |
| 1988 | 90 | Homeowners over the age of 55 allowed a single transfer of base value to new home of equal or lesser value in a different participating county if county approves | 69.1 |
| 1990 | 110 | Severely disabled can transfer base value to new home of equal or lesser value without triggering reassessment; accessibility construction not considered improvement | 80.2 |
| 1993 | 171 | Homeowners whose primary residence is more than 50 percent damaged by a natural disaster may transfer existing assessed value to comparable replacement property in another county | 52 |
| <i>1994</i> | <i>178</i> | <i>Installation of water conservation equipment for agricultural use not considered an improvement</i> | <i>45</i> |
| 1994 | 177 | Exclusion of construction for access for disabled; improvement not considered new construction | 60.7 |
| 1996 | 193 | Transfer of residential property or first \$1 million of other property between grandparents and grandchildren does not trigger reassessment | 63.7 |

**Table 1. All California Ballot Measures Related to Proposition 13 Assessments*
(unsuccessful measures are in italics and shaded gray) (Continued)**

| Year | Proposition | Description | Favorable Vote |
|---|-------------|--|----------------|
| 1998 | 1 | Transfer of base value from property with environmental problem to one of comparable use | 71.1 |
| 2010 | 13 | Exclusion of all seismic retrofitting; improvement not considered new construction and excluded from value (replaces 1984 Prop. 23 and 1990 Prop. 127) | 85 |
| 2018 | 72 | Exclusion of rainwater capture systems designed for on-site use | 84.6 |
| 2018 | 5 | <i>Property Tax Transfer Initiative</i> | 42.2 |
| *Details of the two successful measures related to earthquake repairs and retrofitting (1984 Prop. 23 and 1990 Prop. 127) have been replaced by 2010 Prop. 13. | | | |
| <i>Source: Compiled by author from California Secretary of State, UC Hastings Scholarship Repository and Legislative Analyst's Office, Understanding California Property Taxes, 2012.</i> | | | |

The state constitution also allows the legislature to authorize local jurisdictions to adopt homestead exemptions upon approval by local voters.²⁸ When the legislature approved the statewide referendum for Atlanta, it also approved legislation for local voting that would provide a homestead exemption for increases in value above 3 percent (or the rate of inflation if lower) for the Fulton County school district and five communities in Fulton County.²⁹ All these measures were approved by local voters. Many counties, including Fulton and DeKalb, have previously implemented similar 3 percent caps on values for county taxes.³⁰

One reason for such widespread adoption of exemptions, or assessment limits, is that the Fulton County assessor's office, which is responsible for assessing all property taxes for all jurisdictions in the county, had not adequately

reassessed properties for over 10 years.³¹ Because of these inconsistencies, the Georgia Department of Revenue rejected the county's 2017 tax roll. Assessments for that year were frozen, and as a result, some residential properties faced steep increases in 2018. These proposals and that for Atlanta set the base year, adjusted for inflation, as the lowest assessed value in 2016, 2017, or 2018. It is perhaps the stunning increases in assessed values, estimated by some to be as much as 50 percent, that led 65 percent of voters in Fulton and DeKalb counties to support the measure, compared with 57 percent of voters in the rest of the state.³²

²⁸Homestead exemptions from ad valorem taxation levied by local taxing jurisdictions may be granted by local law conditioned upon approval by a majority of the qualified electors residing within the limits of the local taxing jurisdiction voting in a referendum thereon." Ga. Const. Art. VII, Section II.

²⁹The municipalities that approved the exemption are Alpharetta, Johns Creek, Milton, Mountain Park, and Roswell (H.B. 708-712). The homestead exemption for the Fulton County School System was enacted by S.B. 317. An additional measure (S.B. 485) increases the homestead exemption for taxes for the Atlanta Independent School District from \$30,000 to \$50,000; however, the first \$10,000 of assessed value is now taxed.

³⁰Ga. Code Ann. section 48-5-50.1.

³¹According to *The Atlanta Journal-Constitution*, a report by the Department of Revenue stated that a complete reevaluation of property had not been carried out by Fulton County since 2006. Also, the county was fined \$1.72 million in 2013 because of problems with its tax digest. Arielle Kass, "Five Things to Know About Fulton County Property Assessments," *The Atlanta Journal-Constitution*, May 20, 2018.

³²Mitchell Northam and Alaa Elassar, "Fulton Property Tax Values Could Jump 28 Percent, Board Says," *The Atlanta Journal-Constitution*, Apr. 26, 2018.

C. Louisiana's Innovative Assessment Limit: Amendment 6

Louisiana voters adopted the state's first-ever state-imposed limit on property tax assessments.³³ A legislatively referred question on the ballot asked voters to support a constitutional amendment requiring a four-year phase-in of large residential property value increases due to reappraisal.³⁴ Voters approved Amendment 6 by a vote of 58 percent to 42 percent.³⁵ The new limit will phase in, by 25 percent per year, any reappraisal that raises a property's value by more than 50 percent, excluding increases attributable to construction or improvements.³⁶ A few other states authorize the state or local governments to phase in assessment increases, but Louisiana is unique in restricting the phase-in to properties with assessment growth over a set threshold.³⁷ The measure protects qualifying properties from subsequent reappraisal during the four-year phase-in and prohibits taxing districts from shifting the tax loss to other properties either by a subsequent reappraisal or by adjusting the tax rate.³⁸

Prompted by neighborhood associations in areas experiencing large value increases, the

proposed legislation originally called for phasing in appraisal increases over 35 percent.³⁹ The Senate raised the threshold to 50 percent to reduce the potential impact on local taxing districts.⁴⁰ The likelihood of reappraisal exceeding the 50 percent threshold over four years is doubtful. An analysis by the Louisiana Tax Commission said that even a 35 percent assessment increase "is not typical" and an independent analysis of residential property tax increases in three parishes between 2015 and 2018 found the average increase in value during the four years ranged from 13.8 to 36.9 percent.⁴¹

D. Florida's Amendment 2: Repeal of Sunset

With the passage of Amendment 2, growth in the assessed value of Florida non-homestead property is permanently capped at 10 percent per year for non-school taxes.⁴² Florida has capped homestead assessment growth at 3 percent per year since 1992, and in 2008, voters first approved a 10 percent limit on annual assessment growth for non-homestead property (all property other than a homeowner's primary residence) including apartments, second homes, businesses, and vacant land.⁴³ In approving Amendment 2, voters repealed the sunset clause that would have repealed the cap, causing non-homestead assessments to revert to full value beginning January 1, 2019. The measure, favored by 66 percent of voters, has no effect on school district revenues, which are excluded from the assessment limit. If voters had allowed the cap to lapse, owners of non-homestead property would have owed local governments about \$700 million more per year in property taxes beginning in 2019.⁴⁴

³³ An assessment limit could be classified either as a tax limit or as residential property tax relief. Whether a tax measure is described as a tax limit or tax relief depends on if you are paying or collecting the taxes. An assessment limit imposes a constraint on how much the taxable value of a property can increase in a single year. Any growth in excess of that level is not taxable, creating an exemption for the taxpayer. But for the taxing jurisdiction, the tax base cannot increase above the constrained level regardless of market value. This makes the measure a tax limit as well.

³⁴ S.B. 164. The measure amends La. Const. Art. VII, section 18(A) and (F).

³⁵ Louisiana Secretary of State, Voter Portal.

³⁶ Louisiana sets the assessed value of residential property at 10 percent of market value, so a home with a market value of \$200,000 is assessed at \$20,000 (State-by-State Property Tax at a Glance). Under Amendment 6, if an assessor increased the value of a \$200,000 property to \$350,000, a 75 percent increase, the assessed value would increase to \$35,000. The additional \$15,000 in value would be phased in over four years, so the assessment would increase to \$23,750 in the first year following reappraisal, to \$27,500 in year 2, to \$31,250 in year 3, and to the full value, \$35,000 in year 4.

³⁷ Lincoln Institute of Land Policy and George Washington Institute of Public Policy, *Significant Features of the Property Tax*, "Tax Limits." Bethany Paquin, "Chronicle of the 161-Year History of State-Imposed Property Tax Limitations" (Apr. 2015).

³⁸ Louisiana Secretary of State, *supra* note 35.

³⁹ Bureau of Governmental Research, "BGR Examines Proposed Property Tax Phase-In Amendment," Oct. 24, 2018.

⁴⁰ House Floor Amendment No. 4328.

⁴¹ Louisiana Legislative Fiscal Office, Fiscal Note on S.B. 164 (Apr. 25, 2018).

⁴² Florida Division of Elections.

⁴³ Significant Features of the Property Tax, State-by-State Property Tax at a Glance.

⁴⁴ Florida Revenue Estimating Conference (2017).

IV. Residential Relief

A. Expanded Homestead Exemptions

Floridians who own homesteads valued \$100,000 and over will not receive a larger homestead exemption beginning in 2019 after voters narrowly defeated Amendment 1. Fifty-eight percent of voters approved the measure, but Florida requires a 60 percent vote to pass constitutional amendments.⁴⁵ The proposed exemption would have been the third for homesteaders with assessed value between \$100,000 and \$125,000, beginning with the 2019 tax roll.⁴⁶ This \$25,000 exemption for all non-school taxes would have applied on top of a similar size exemption for homes assessed over \$50,000⁴⁷ and the initial exemption of \$25,000 from all taxes including school taxes. This proposed amendment, which received broad legislative support, would not have provided any additional relief to 40 percent of homeowners — those with property assessed under \$100,000.⁴⁸

B. Expanded Exemptions for Military Service

Forty-two states offer homestead exemptions or credits based on military service.⁴⁹ Veterans are targeted for tax exemptions and credits more than any other group of homeowners.⁵⁰ Historically these benefits have enjoyed broad political support: since 2010, voters have approved all tax relief measures for veterans. In 2018 all three approved measures — Louisiana Amendment 5, Virginia Question 2, and Utah Constitutional

Amendment A — incrementally expanded previous exemptions.

In recent years, Louisiana has approved multiple measures, first increasing the exemption for disabled veterans (2010), then expanding eligibility to the un-remarried spouses of deceased disabled veterans (2012), and then clarifying the definition of disabled veteran (2014).⁵¹ In 2016 voters began to expand the notion of service to include first responders by approving an exemption for the surviving spouses of veterans, law enforcement officers, and fire protection personnel, and in 2017 expanded the exemption to surviving spouses of emergency medical responders, paramedics, and volunteer firefighters.⁵² In 2018 Louisiana voters passed Amendment 5 to extend these property tax benefits to properties owned in trust occupied by qualifying elderly persons, disabled veterans, and surviving spouses of military, law enforcement, and public safety officers killed in the line of duty.⁵³

Virginia Question 2 now allows the un-remarried surviving spouse of a qualifying disabled veteran to continue to receive an exemption if he or she moves to a different home within the state.⁵⁴ Utah Amendment A modified the way military service is calculated.⁵⁵ Previously, to qualify for a full property tax exemption, an individual had to have served at least 200 days of active duty out of state within a calendar year. Amendment A modifies the requirement to 200 days of active duty outside the state within a 365-day period, making it easier for individuals to qualify.

V. Water, Water, Everywhere — But Never in the Right Places

Both California and Virginia passed ballot measures in 2018 to use property tax exemptions to address water issues — but on opposite ends of the

⁴⁵This ballot measure amends Article VII of the Florida Constitution and adds schedule 37 to Article XII. 2017 House Joint Resolution 7105 to amend the Florida Constitution Article VII, section 6, and Article XII, section 37, passed both houses by the required three-fifths vote: Senate 28-10 and House 83-35. H.J.R. 7105 Increased Homestead Property Tax Exemption Bill History, May 17, 2017.

⁴⁶House of Representatives Final Bill Analysis on H.B. 7107 and H.J.R. 7105.

⁴⁷The second exemption of \$25,000 for homesteads with assessed value between \$50,000 and \$75,000 was adopted in 2008 with a 64 percent vote.

⁴⁸Florida Association of Counties, “Amendment 1.”

⁴⁹Lincoln Institute of Land Policy and George Washington Institute of Public Policy, Significant Features of the Property Tax.

⁵⁰Adam H. Langley, “How Do States Spell Relief?” *Land Lines* (Apr. 2015).

⁵¹La. Const. Art. VII, section 21(K).

⁵²La. Const. Art. VII, section 21(M).

⁵³La. S.B. 163 Act 721 and La. Const. Art. VII, sections 18(C)(6), 21(K)(4), and 21(M)(4).

⁵⁴This question amended section 6-A(a) of the Virginia Constitution.

⁵⁵H.J.R. 7 Proposal to Amend Utah Constitution — Active Military Property Tax Exemption.

spectrum: flooding in Virginia and droughts in California. To deal with flooding, Virginia's Question 1 was a proposed constitutional amendment to extend exemptions for property improvements to mitigate chronic flooding. The specific proposal allows the legislature to create a program so that local governments may choose to provide an exemption for property improvements to abate flooding or to support resilience.⁵⁶ While often associated with the coastal areas of Virginia, inland areas also experience flash floods, particularly from severe storms. Because of the wide potential for flooding, the measure received widespread support, dominated by the Virginia Beach-Newport News area, as well as areas in the southwestern part of the state that recently experienced significant flooding from tropical storms.⁵⁷

In June California voters gave Proposition 72 an 84 percent favorable vote to exclude new rainwater capture systems from property values. This proposition provides yet another amendment to the original Proposition 13 to exclude some improvements. This proposition amends section 2 of Article XIII A to exclude the value of constructing rainwater capture systems from property values.⁵⁸ This exemption is limited to systems installed after January 1, 2019, and remains in place until December 31, 2028, when the amendment is automatically repealed, or upon the sale of the property if before then.

The swing between long-term drought and water restrictions followed by years of ample rain gave impetus to this proposal. By encouraging property owners to provide on-site water supplies, the new equipment may relieve some drought conditions as the homeowners use rainwater rather than potable water for uses other than drinking and reduce the rain runoff from

streets into rivers and streams.⁵⁹ It was not until 2013 that California property owners were even allowed to capture rainwater;⁶⁰ previously state permits were required to collect such water. Many western states have strict water rights that make it illegal to capture and use precipitation as it would divert water from either groundwater or streams.⁶¹

VI. Conclusion

In 2018 school finance issues and property tax ballot measures were front and center again as voters had a chance to decide on a range of issues. Five measures designed to increase funding for K-12 education made it to the ballot as well as one measure to allow increased flexibility in spending current tax revenue. Revenue options ranged widely from gaming revenues to income and sales taxes, with only two measures involving property taxes. Voters overwhelmingly approved two ballot measures with modest impacts, but decisively rejected other school funding ballot measures, including Colorado's Amendment 73.

More property tax ballot measures appeared on state ballots in 2018 than in any year since 2010. Residential relief and tax limit measures, which are perennially important, were common ballot topics in 2018, but so were other measures, such as those on mitigating the vagaries of weather. Perhaps the most visible property tax measure, California's Proposition 5, which sought to modify the provisions of Proposition 13, did not pass. However, a modification of that measure has already been approved to gather signatures to appear on the 2020 ballot. Because ballot measures are more prevalent in even years than in odd years, we predict that the next big year for school finance and property tax ballot measures will be in 2020.

⁵⁶The amendment is required as the constitution requires that all property be taxed. Va. Const. Art. X, section 1.

⁵⁷Henri Gendreau, "Heavy Rainfall From Tropical Storm Michael Inundates Roads Around Roanoke, New River Valleys," *The Roanoke Times*, Oct. 11, 2018.

⁵⁸Cal. Stat. Ch. 1 (S.B. 558) (2018).

⁵⁹Los Angeles County had a related measure on the November ballot. The proposal, which passed with a 70 percent favorable vote, approved a tax of 2.5 cents per square foot of impermeable space with the funds dedicated for recapturing rainwater on public property. Other localities have a similar fee for impermeable surfaces, including the District of Columbia. The District program was adopted to recover costs for the federally mandated Clean Rivers Project and was designed to reduce the discharge into local waterways. The fee is imposed on water bills based on the impervious area, with a discount for adopting best management practices such as rain gardens, rain barrels, green roofs, and stormwater reuse.

⁶⁰Rainwater Recapture Act of 2012 (Ch. 537, section 2) and Water Code section 10574.

⁶¹According to the California Water Boards, all Western states have enacted laws that require water users to get a permit from the state. Most Eastern states do not have such permitting systems.

Why Ballot Measures? and Their History

Property tax measures perennially appear on statewide ballots. Because state constitutions require property taxes to be imposed uniformly throughout the state, any deviation from uniformity requires a constitutional amendment, and that in turn requires a public referendum.^a If the proposal makes an incremental change to a previously adopted program, an additional referendum is required. Ballot measures also allow voters a voice in either adopting or repealing statutes.

Ballot measures, whether initiative, referendum, or question, require citizens to vote, reflecting the notion of direct democracy. States began to adopt the citizen initiative process at the turn of the 20th century, as the idea of allowing voters to have more control over laws spread, mainly in the West and Midwest.^b Now, 24 states have provisions for individuals to initiate either statutory or constitutional amendments, bypassing both the legislature and governor.^c In addition to proposals submitted by individuals, ballot measures may be legislatively referred. As shown in Appendix B, the initiative and referendum processes vary from state to state.

Citizen initiatives may not be as citizen-directed as they appear. Financing of campaigns often pits big-moneyed corporations and associations against grass-roots coalitions.^d The two citizen-initiated measures discussed in this article, California's Proposition 5 and Colorado's Amendment 73, both of which failed, demonstrate the role money can play. Proposition 5 was initiated by the California Association of Realtors and financed almost exclusively by its political action committee and the National Association of Realtors. Together these two organizations contributed more than \$13 million in support of the proposition. A more grassroots coalition, including education organizations, labor unions, and charitable foundations, raised less than \$3 million to oppose the amendment.^e

Colorado Amendment 73, on the other hand, was launched primarily by Great Schools, Thriving Communities and received strong community support, raising \$1.3 million, with almost a third coming from individual and grassroots supporters.^f While the remaining contributions were from corporations, businesses, and labor unions, they made up only 15 percent of the donor list. The opposition, Blank Check, Blatant Deception, was heavily financed by a small group of donors. Although the group raised slightly more, \$1.4 million, only 10 percent of the donors were individuals, compared with 85 percent supporting the initiative. As a result, the average contribution was five times larger than for Great Schools, Thriving Communities.^g

^aMost states have some sort of uniformity clause; depending on interpretation, anywhere from 45 to 48 states include them. Jack Stark, "The Uniformity Clause of the Wisconsin Constitution," 76 *Marq. L. Rev.* 577, at 579 (1993); and Wade J. Newhouse, *Constitutional Uniformity and Equality in State Taxation* 11 (1959). Delaware is the only state in which the legislature can amend the constitution without voter approval.

^bNational Conference of State Legislatures, "Initiative Process 101."

^cIn some states, a voter initiative proposal must also be submitted to the legislature. This process is identified as indirect. The legislative action that is required varies by state.

^dThe role of money in ballot initiatives was the subject of Miriam Pawel's opinion, "Ballot Initiatives Are Powerful. The Powerful Have Noticed," *The New York Times*, Nov. 5, 2018.

^eThe four groups opposed to Proposition 5 were No on Prop 5, Sponsored by Educators, Public Safety and Health Care Organizations (\$2,650,607); Million Voter Project Action Fund, No on 5, Yes on 10, Sponsored by Social Justice Organizations (\$323,887); Million Voter Project Action Fund, No on 5, Sponsored by Social Justice Organizations (\$200,000); and East Bay Housing Organizations — Yes on Props 1, 2 & 10 & No on Prop 5 (\$11,390). California Secretary of State, "Campaign Finance: Yes on 5 Committee, Sponsored by the California Association of Realtors."

^fAlso known as "Vote Yes on Amendment 73."

^gThe average contribution to committees opposing Amendment 73 (Fix Our Damn Roads; and Blank Check, Blatant Deception) was \$10,541 and to Great Schools, Thriving Communities, \$2,110.

Appendix A. School Finance and Property Tax State Ballot Measures, 2018

| State | Measure | Percent of Yes Votes/ Status | Description |
|------------|----------------|---------------------------------|--|
| California | Proposition 5 | 40.2 Defeated | Amends Proposition 13 to allow specific homeowners to transfer the “base value” to a new home, regardless of value, anywhere in the state, without limit on number of times. |
| | Proposition 72 | 84.6 Approved | Excludes new construction of rainwater capture systems added to properties after Jan. 1, 2019, from property value; the improvement is not considered new construction. |
| Colorado | Amendment 73 | 46.4 Defeated | Reduces the residential assessment rate to 7% for property taxes levied by school districts and freezes that rate. Reduces the nonresidential assessment rate to 24% for property taxes levied by school districts. For property taxes levied by all other local governments, current law determines the residential assessment rate. Additional income tax brackets are also included with the additional revenues dedicated to state spending for education. |
| Florida | Amendment 1 | 58.1 Defeated* | Exempts up to \$25,000 of assessed value from property taxes other than school taxes for homes valued between \$100,000 and \$125,000. This increases the maximum total homestead exemption to \$75,000. |
| | Amendment 2 | 66.5 Approved* | Makes permanent the 10% limit on annual increases in the assessed values of non-homestead properties. The limit was scheduled to sunset Jan. 1, 2019. This applies to all property taxes except school district taxes. |
| | Amendment 5 | 65.7 Approved* | Prohibits the Legislature from imposing, authorizing, or raising a state tax or fee except through legislation approved by a two-thirds vote of each house in a bill containing no other subject. This proposal does not authorize a state tax or fee otherwise prohibited by the Constitution and does not apply to fees or taxes imposed by a county, municipality, school board, or special district. The only property-related state taxes are the documentary stamp tax and mortgage documentary stamp tax. |
| Georgia | Amendment 3 | 62.2 Approved | Revises the method for establishing the value of forest land conservation use property and related assistance grants. The proposal also permits the subclassification of qualified timberland property for property tax purposes. |
| | Referendum A | 57.1 Approved | Authorizes a new homestead exemption from municipal property taxes in Atlanta. The exemption caps growth in assessed value at 2.6%. |
| | Referendum B | 76.9 Approved | Clarifies that the existing exemption from ad valorem taxation for nonprofit homes for the mentally disabled applies even when financing for the construction or renovation of the homes is provided by a business corporation or other entity. |
| | Amendment 5 | 71.2 Approved | Allows school districts or groups of school districts within a county to levy a sales and use tax for education. |

Appendix A. School Finance and Property Tax State Ballot Measures, 2018 (Continued)

| State | Measure | Percent of Yes Votes/ Status | Description |
|--|----------------------------|---------------------------------|---|
| Louisiana | Amendment 5 | 71.5 Approved | Allows special assessment levels on a home in trust for disabled veterans or the surviving spouse of a person who died while performing their duties as a first responder, active duty member of the military, or law enforcement or fire protection officer. |
| | Amendment 6 | 57.6 Approved | Requires that a reappraisal of a residential property resulting in an assessment increase of more than 50% be phased in over four years, during which time no additional reappraisals can occur. |
| Maryland | Question 1 | 89.1 Approved | Allows for specific revenue derived from video lottery operation licenses and other commercial gaming to be dedicated to public education. |
| Montana | Legislative Referendum 128 | 62.9 Approved | Renews the existing 6 mill levy to support public colleges and universities until Jan. 1, 2029. |
| Oklahoma | Question 801 | 49.6 Defeated | Allows the revenue from specific ad valorem taxes levied by a school district, currently placed in a building fund, to be used for operations. |
| Utah | Constitutional Amendment A | 78.9 Approved | Modifies the period that a person in the military needs to serve out of state on active duty in order to qualify for a property tax exemption for that person's residence. The measure allows the person to qualify if the period of service is at least 200 days in a continuous 365-day period. The exemption was previously available if the period of service was at least 200 days in a calendar year or 200 consecutive days. |
| | Constitutional Amendment B | 28.4 Defeated | Authorizes the creation of a property tax exemption for real property that the state or a local government leases from a private owner. |
| | Question 1 | 65.4 Approved | Increases the gas tax by 10 cents to fund road construction and maintenance, thereby freeing up additional revenue for education funding. |
| Virginia | Question 1 | 70.7 Approved | Authorizes counties, cities, and towns to provide a partial tax exemption for real property that is subject to recurrent flooding if flooding resiliency improvements have been made. |
| | Question 2 | 84.4 Approved | Amends the property tax exemption to allow the surviving spouse of a veteran who had a 100% service-connected disability to continue to claim the exemption when he/she moves to a different residence. |
| *Florida requires 60% approval for measures to pass. | | | |
| <i>Sources:</i> List of ballot measures came from Ballotpedia. Voter totals were confirmed using websites of the state commissioners of elections, secretaries of state, and boards of elections/canvassing. | | | |

Appendix B.
Direct Democracy Processes by State

| | Legislative Referendum (50 states) | | Citizen Initiative and Referendum (26 states) | | |
|-----------------------|--|--|---|--|-----------------------|
| | Legislatively Referred Constitutional Amendment | Legislatively Referred State Statute | Ballot Initiative (24 states) | | Popular Referendum |
| | | | Initiated Constitutional Amendment (Direct or Indirect ^a) | Initiated State Statute (Direct or Indirect ^a) | |
| States | 49 | 23 | 18 | 21 | 23 |
| Alabama | X | | | | |
| Alaska | X | | | Indirect | X |
| Arizona | X | X | Direct | Direct | X |
| Arkansas | X | X | Direct | Direct | X |
| California | X | X | Direct | Direct | X |
| Colorado | X | | Direct | Direct | X |
| Connecticut | X | | | | |
| Delaware ^b | | X | | | |
| Florida | X | | Direct | | |
| Georgia | X | | | | |
| Hawaii | X | | | | |
| Idaho | X | X | | Direct | X |
| Illinois | X | X | Direct ^c | | |
| Indiana | X | | | | |
| Iowa | X | | | | |
| Kansas | X | | | | |
| Kentucky | X | X | | | |
| Louisiana | X | | | | |
| Maine | X | X | | Indirect | X |
| Maryland | X | X | | | X |
| Massachusetts | X | X | Indirect | Indirect | X |
| Michigan | X | X | Direct | Indirect | X |
| Minnesota | X | | | | |
| Mississippi | X | | Indirect | | |
| Missouri | X | X | Direct | Direct | X |
| Montana | X | X | Direct | Direct | X |
| Nebraska | X | X | Direct | Direct | X |

Appendix B.
Direct Democracy Processes by State (Continued)

| | Legislative Referendum (50 states) | | Citizen Initiative and Referendum (26 states) | | |
|---------------------|--|--|---|--|-----------------------|
| | Legislatively Referred Constitutional Amendment | Legislatively Referred State Statute | Ballot Initiative (24 states) | | Popular Referendum |
| | | | Initiated Constitutional Amendment (Direct or Indirect ^a) | Initiated State Statute (Direct or Indirect ^a) | |
| States | 49 | 23 | 18 | 21 | 23 |
| Nevada ^d | X | X | Direct | Indirect | X |
| New Hampshire | X | | | | |
| New Jersey | X | | | | |
| New Mexico | X | X | | | X |
| New York | X | | | | |
| North Carolina | X | X | | | |
| North Dakota | X | X | Direct | Direct | X |
| Ohio | X | X | Direct | Indirect | X |
| Oklahoma | X | X | Direct | Direct | X |
| Oregon | X | | Direct | Direct | X |
| Pennsylvania | X | | | | |
| Rhode Island | X | | | | |
| South Carolina | X | | | | |
| South Dakota | X | X | Direct | Direct | X |
| Tennessee | X | | | | |
| Texas | X | | | | |
| Utah | X | X | | Both | X |
| Vermont | X | | | | |
| Virginia | X | | | | |
| Washington | X | X | | Both | X |
| West Virginia | X | | | | |
| Wisconsin | X | | | | |
| Wyoming | X | | | Indirect | X |

Sources: Initiative and Referendum Institute and National Conference of State Legislatures.

^aIn states with direct initiative, qualifying measures go directly to the ballot. In states with indirect initiative, qualifying measures go to the legislature for consideration before, depending on the legislature's action, moving to the ballot.

^bDelaware is the only state that does not require voter approval for legislatively proposed constitutional amendments.

^cSome analysts do not classify Illinois as an initiative state because the process is so limited and difficult.

^dNevada is the only state that authorizes statute affirmation, a citizen-initiated process in which voters can place a measure on the ballot to affirm an existing state law, thereby preventing the Legislature from amending it in the future.

