
Democracy denied: the barriers to citizen use of the ballot initiative on Maui

An Analysis of Maui County Charter Commission Proposal Fourteen: *Reduce the signature requirements for Initiative and Recall.*

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SUMMARY

The Charter Commission's proposed amendments to the Maui County Charter regarding signature requirements for ballot initiatives are improvements upon the current Charter, but still leave Maui's requirements 20% more stringent than most stringent of the 50 States for Statute initiatives. Maui's requirements for Charter Amendment initiatives are left unamended, and are orders of magnitude more stringent than the most stringent State. The severe limits on the powers of Statute initiatives are left unamended, and represent a paternalistic attitude toward the public, with an implied trust of politicians greater than the trust of the voters.

It is recommended that the proposed Charter amendment be changed so that Maui sets its initiative requirements to those typical of the other States, with:

- **A one-year circulation period,**
- **A signature requirement of 8% of the actual voters in the last general election for statute initiatives,**
- **A signature requirement of 10% of the actual voters in the last general election for Charter amendment initiatives,**
- **Deletion of the restriction on the powers of initiatives, so that any statute which may be enacted by the County Council may also be enacted through citizen's ballot initiative.**

Introduction

Hawaii and New Mexico are the only two among the fifteen States admitted to the Union since the Civil War that do not have state-wide citizen ballot initiatives. In Hawaii, however, ballot initiatives may be

placed at the County level. A brief history of ballot initiatives in Hawaii is taken from David D. Schmidt's book, [Citizen Lawmakers The Ballot Initiative Revolution](#):

Hawaii's territorial Democratic Party convention of 1907 passed a resolution favoring initiatives and referenda (I & R), but the territorial government was dominated by anti-Initiative Republicans until the 1950s. After the Democrats gained power, however, most of them turned against I & R, which was not included in the state constitution when Hawaii became a state in 1959. Initiative advocates were narrowly defeated in their attempt to pass an I & R amendment in the state's 1978 constitutional convention.

Until 1982 the county of Honolulu (island of Oahu) allowed Initiative charter amendments, but not ordinances. State Sen. Mary Jane McMurdo, who routinely sponsored bills in the legislature to get statewide I & R (and won approval for one by the state senate in 1987), led a campaign for a Honolulu Initiative charter amendment to authorize citizens to pass ordinances by Initiative. Voters approved it in November 1982 by a 55 percent margin, despite strong opposition from labor unions.

In Maui County, a process permitting citizen ballot initiatives for statues and Charter amendments exists on the books, but its requirements for the collection of signatures are so severe that no initiatives have been on the ballot for years.

The Maui County Charter Commission had proposed the following proposed amendment to the Maui County Charter to ease the signature requirements for citizen statute initiatives:

- (Articles 11 & 12) Initiative and Recall - revise these provisions to enable citizens to utilize these procedures more readily by requiring the signatures of 10% of the number of persons who actually voted in the last general election (rather than the current requirement of 20% of the registered voters) and increasing the time limit to obtain the signatures from 30 to 90 days.

Pros:

- By reducing the number of signatures required and extending the time period in which such signatures can be obtained, these proposed changes will make it easier for citizen groups to put questions on the ballot through the initiative process and to require that a vote be taken on elected officials through the recall process.
- The existing protections against abuse of the initiative process will be retained - i.e., topics related to financial matters, personnel matters, and emergencies cannot be addressed through the initiative process and the Council will still be authorized to enact legislation concerning an initiative topic before the initiative is put on the ballot.

Cons:

- The initiative and recall process can be abused by special interest groups utilizing financial resources (sometimes from outside the County) to hire persons to obtain signatures and conduct advertising campaigns.

Keeping the Status Quo

At its April 10, 2002 meeting, the Maui County Charter Commission voted against its own Proposal 14, hence voting to keep the status quo for citizen initiatives on Maui. What will this mean for the political process in Maui? Here is an analysis of the existing provisions in the County Charter.

In both Articles 11 and 12, citizens must collect signatures within 30 days from filing the petition (11-4.1, 12-4.1) from a number not less than 20% of the voters registered in the previous election (11-3.2, 12-3.2). The requirements as to the number and the time allotted are so burdensome as to make it difficult for any group of citizens to successfully file a petition for ballot initiative or recall. The striking absence of citizen ballot initiatives in Maui elections affirms the deterrent of these regulations.

First of all, the requirement for 20% of the number of registered voters is onerous on its face. Since 1996 the voter turnout Maui County elections has not been greater than 65% of registered voters. Thus, the number of signatures must be $20\%/65\% = 31\%$ of the actual voters. In order to become law, an initiative must receive greater than 50% of the actual vote. Thus, the petitioners must gather signatures equal to $31\%/50\% = 62\%$ of the number of votes needed to actually pass the initiative. To expect a citizen or group of citizens to obtain the signatures of 2/3 of the voters they will need to pass the initiatives can only be construed as an onerous burden on the citizenry, precluding success at the outset.

The severity of these requirements can be further discerned by comparison with those in other states. In California, petitioners must gather signatures equal to 5% of the number of voters in the previous gubernatorial election. In the 1998 election, this was 56% of the registered voters. Therefore the number of signatures required for an initiative was $5\% \times 56\% = 2.8\%$ of the registered voters. Maui's requirement of 20% is therefore $20\%/2.8\% = 7.1$ **times as stringent** as California's.

In addition, in California, petitioners have 150 days to gather signatures, compared to 30 days for Maui citizens, a factor of **5 times the stringency** in the time requirement. Combined with the numbers requirement, Maui petitioners must gather signatures at $5 \times 7.1 = 36$ **times the rate** of California petitioners. A group or organization of Maui citizens must therefore be 36 times per capita the size of a group in California in order to successfully gather the signatures for a ballot initiative within the time constraints. Clearly, this is a great inequity imposed on the citizenry of Maui against their right to petition the government to place an initiative on the ballot.

An additional inequity can be found in Article 11-3, which denies citizen initiatives any power to over the capital program, property taxes, appropriations, bonds, appointments, or emergencies. In contrast, in California, *citizen initiatives may enact any law that the State Legislature itself can enact*.

A comparison of the initiative requirements of different States (see <http://www.iandrinstute.org/table3!1.htm>) shows that California is typical, and Maui is at least three times as stringent as the most stringent among the States in both its signature number requirements and the time period available to gather the signatures.

The Proposed (and now rejected) Charter Amendment

Proposal 14 of the Maui County Charter Commission (which the Charter Commission at its April 10

meeting has now rejected) was gratifying in that it would reduce the levels of stringency proposed for signature gathering in Articles 11 and 12. The reduction in the number of signatures from 20% of *registered* voters to 10% of *actual* voters is equivalent to a change from 20% to about 6.7% of registered voters (= 67% of 10%, since voter turnouts have been around 67% in recent years), a threefold decrease in the difficulty placed upon signature collectors.

Also, the increase in the time to gather signatures from 30 to 90 days is another threefold decrease in the difficulty placed upon signature collectors. In terms of the fraction of voters per day of signatures required, the combined effect is a 9-fold reduction in stringency.

Where does this put Maui County with respect to the signature requirements of other places with ballot initiatives? The proposed change would take Maui from being 36 times as stringent as California for the rate of collecting signatures, to only 4 times as stringent. We must ask, however, why Maui should be 4 times as stringent as California?

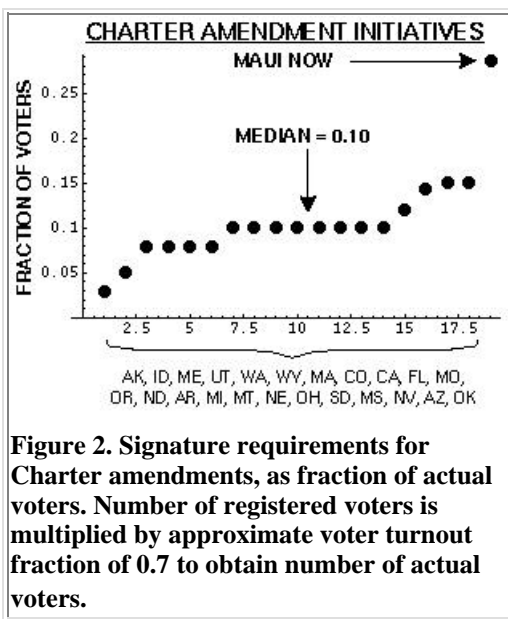
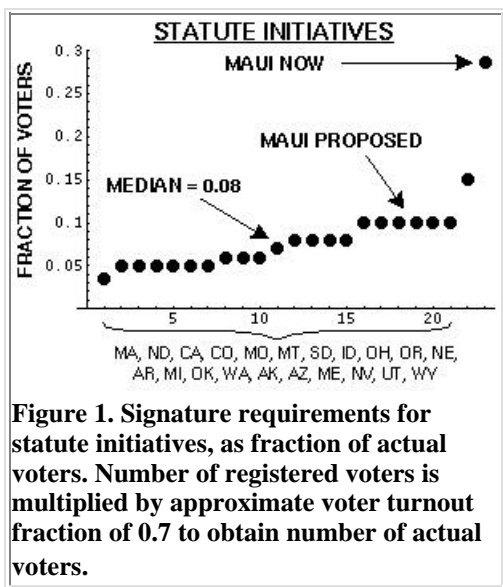
Comparisons with other States

We can look more closely at where the proposed change stands among other states. The following data are taken from [The Initiative and Referendum Institute](#). These are the signature collecting requirements for statewide initiatives. These States also have local initiative processes with their own signature requirements, but detailed data on them is not readily available.

In Figures 1., 2., and 3., it can be seen that Maui's current signature requirements, and circulation period, are far beyond the range of any of the states. Proposal 14 would put Maui within this range for statute initiatives and circulation period, but just barely. It still leaves Maui beyond the range of other states for Charter Amendment initiatives.

Signature Numbers Required

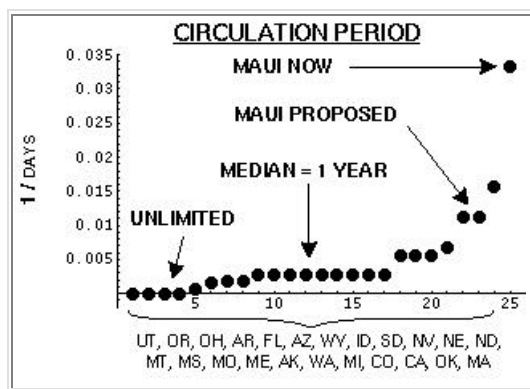
Figures 1 and 2 show the distribution among the States of the signature numbers required to get an initiative on the ballot. Figure 1 is for statute initiatives, and Figure 2 is for amendments to the State constitutions (compared with Charter amendment requirements on Maui). As can be seen, Maui's current requirements are far outside the distribution of the other States. Proposal 14 would bring the requirements for statute initiatives within the range, but in the upper 78th percentile. For circulation period, Proposal 14 would rank Maui in the toughest (i.e. shortest time) 96th percentile.



Circulation Period

The circulation period is the amount of time that a citizen has to gather the required signatures to place an initiative on the ballot. As Figure 3 shows, the 30 day circulation period for Maui is nowhere near what any other State allows. Seventeen of the 23 States with initiatives (74%) have circulation periods of one year or more. One year is the median. Maui is currently 1/12th of that. Proposal 14 would bring the circulation period to 90 days, or 1/4 of the median circulation period. The only other State with a shorter circulation period would be Massachusetts with a period of 64 days, putting Maui in the lowest 4th percentile.

Figure 3. Circulation Period for signature gathering. The y axis is 1/(number of days), so an unlimited period plots as 0, a period of 30 days plots as 1/30, one year plots as 1/365, etc.



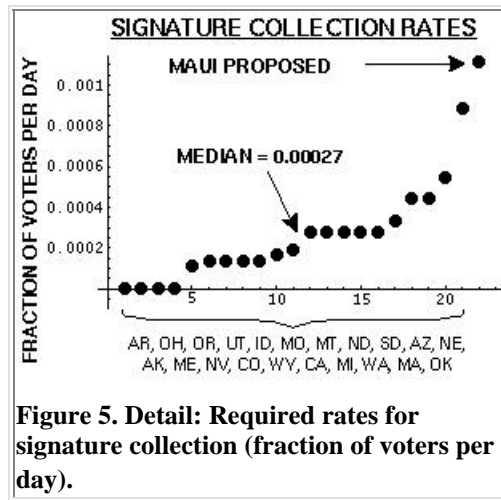
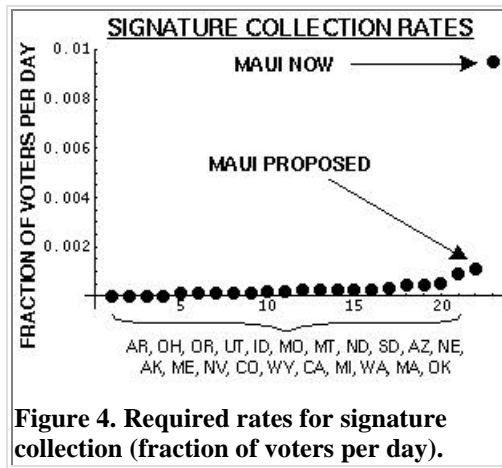
Rates of Signature Collection

The requirements on the number of signatures and the circulation period together determine how many

signatures must be gathered per day to get an initiative on the ballot. This *required signature collection rate* is obtained by dividing the number of signatures that must be gathered by the circulation period.

In Figure 4, we can see that Maui today is far far beyond all other states in the rate that signatures must be collected. The highest required rate of signature gathering is for Oklahoma, with a rate of 0.089% of the voters per day. The current rate for Maui is 0.95% per day, which is 10.7 times as high as the most stringent of the other States, Oklahoma. Compared to the median rate for other states, 0.027% per day, Maui is 35 times as high. This means that a citizen on Maui must recruit 35 times the resources needed by a citizen from a mainland state in order to collect enough signatures in time.

Figure 5 shows a close-up of Figure 4, and one can see that the signature rate that would result from the proposed Charter Amendment, 0.11% of the voters per day, still leaves Maui 25% more stringent than the most stringent of the other States, Oklahoma.



The "Sandbox" Clause

The current Maui County Charter has a clause which limits the power of citizen ballot initiatives:

ARTICLE 11. Section 11-1.

3. The initiative power shall not extend:

- a. To any part or all of the capital program or annual budget;
- b. To any property tax levied;
- c. To any ordinance making or repealing any appropriation of money;
- d. To any ordinance authorizing the issuance of bonds;
- e. To any ordinance authorizing the appointment of employees; or,
- f. To any emergency ordinance.

This clause says that when it comes to money---how much is collected, how it is spent, what jobs it may be used for---the people are not to be trusted to decide about it directly, but all powers shall go to the politicians. Because power over money is a fundamental power of government, by denying that power to the voter, the voter is "kept in the sandbox" and left to play with less decisive matters.

Section 11-1 is the embodiment of the "plantation paternalism" that kept Maui citizens powerless for decades. That the Charter Commission would describe Section 11-1 as "the existing protections against abuse of the initiative process" reveals its paternalistic attitude in regards to the powers of the citizenry.

In California, one state that is renowned for the scope of its ballot initiatives, the citizens may enact

through initiative any statute that the legislature can enact.

(Part f. restricting emergency ordinances would appear to be a moot measure, since by Article 4 and Article 9, it is the County Council that defines what is an "emergency ordinance". Moreover, Article 4 Section 4-2, states "6. Every emergency ordinance, including any amendments made therein after its adoption, shall automatically stand repealed on the ninety-first day following the date on which it became effective." If a legal opinion concluded that Part f was not a moot point, it would be sensible to retain it.)

"Abuse of the Initiative Process"

And what about this fear of "the abuse of the initiative process", is there any merit to it?

The argument against Proposal 14 is that, "The initiative and recall process can be abused by special interest groups utilizing financial resources (sometimes from outside the County) to hire persons to obtain signatures and conduct advertising campaigns." A well funded signature gathering effort could put the advantage in the hands of monied interests in getting initiatives on the ballot. And conceivably, the citizenry could be fooled to vote for something against the public interest by a massive and deceptive media campaign. Although this latter possibility is reflects a paternalistic toward Maui's citizens, perhaps there is objective merit to it?

A [comprehensive recent study](#) of the initiative process in California by Elisabeth R. Gerber found that monied interests did have an advantage over citizen groups in *defeating* initiatives. However, well-financed corporate campaigns to *pass* initiatives were found to be no more effective than those of citizen groups. In other words, if there is any abuse of the initiative process, it is by monied interests unfairly *defeating* initiatives they opposed.

In my analysis, this is precisely what the Charter Commission has done: it has abused the legislative process by unfairly denying the citizens a chance to vote on a Charter amendment, so as to continue to deny citizens any success in passing ballot initiatives. The Charter commission has saved the monied interests many thousands of dollars by defeating in advance the possible initiatives that might threaten their interests.

The California study concluded this about the abuse of the initiative process:

The study's findings have several implications for political reform. They suggest that those who are concerned about the role of money in the initiative process should worry less about trying to limit the amount of money that special interest groups spend and focus instead on (1) empowering citizen interests in the face of economic group opposition and (2) limiting the power of economic interests in the legislative process.

Conclusions

For the Charter Commission to recommend these signature gathering requirements, there needs to be some explanation of why signature number and circulation period should be in the 78th and 96th percentiles of stringency compared to the States. I do not see any reason for this excessive stringency. If the Charter were amended to put Maui exactly mid-way in the range of stringencies among the states, it would

1. require signatures totalling 8% of the voters in the last general elections for statute initiatives,
2. require signatures totalling 10% of the voters in the last general elections for Charter amendment initiatives, and
3. allow a circulation period of one year for both statute and Charter amendment initiatives.

A Proposed Amendment to Bring Maui in Line with the Rest of America

To bring the Maui Charter in line with the regulations for citizen initiatives in other States, I propose the following amendment to the County Charter. All it does is replace the current signature and circulation period requirements with the median values for the other States, and repeals the "sandbox clause":

Article 11 Section 11-1.3 is repealed.

Article 11 Section 11-3.2 is amended to read:

"Such petitions must be signed by registered voters numbering not less than eight percent (8%) of the number of votes cast for Mayor in the last regular Mayoral election."

Article 11 Section 11-4.1 is amended to read:

"1. Within one (1) year after the filing with the clerk of the affidavit described in Section 11-2, all papers forming an initiative petition shall be assembled and filed with the county clerk as one instrument."

Article 14 Section 14-1.3 is amended to read:

"3. By petition presented to the council, signed by registered voters numbering not less than ten percent (10%) of the number of votes cast for Mayor in the last regular Mayoral election, setting forth the proposed amendments."

If these amendments are put to the voters and become law, they would work a profound transformation of Maui politics and Maui society generally. By making the citizen ballot initiative a practical possibility in Maui County for the first time, the voters of Maui will be able to engage their hopes for a better future and pull out of the resignation that so many feel about the political process. There is no better tonic for social health than the ability of people to act on their hopes for their community.

The experience of other States is that often very contentious issues are brought to the ballot by citizen initiatives. This contention, however, is extremely beneficial for the community, because it gets people engaged in discussions with their neighbors about issues that really matter, and propels the mass of citizenry to become educated about issues that are within their hands to decide. Such engagement stimulates the political imagination to seek and create solutions to societal difficulties that become neglected when the people are resigned out of a feeling of powerlessness. I hope that the Commission will discuss this set of amendments during their meetings in the Maui communities, and offer them to the voters in the November election.

References:

- [The Initiative and Referendum Institute](#)
- <http://www.state.hi.us/elections/facts/facts.htm>

- <http://www.state.hi.us/elections/facts/fsvs505b.pdf>
 - http://uhfamilydata.hawaii.edu/datasearch/cfi_results.asp?indicator=042e
 - http://uhfamilydata.hawaii.edu/datasearch/cfi_results.asp?indicator=067e
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