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Testimony on the Subject of Initiative and Referendum,
in support of Proposal No. 96,
introduced by Delegate Michael Liu

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My testimony on the question of initiative and referendum is offered not from any particular position of expertise, but rather as the view of a private citizen who has lived in California for seven years (1969-76) and who observed how the initiative process has worked there.

The initiative option provides citizens with an opportunity to address directly fundamental and important issues, even if the legislature is reluctant to vote on these subjects. Although a substantial percentage of initiative attempts go down to defeat, the process nonetheless ventilates community sentiments and offers the citizens an opportunity to gauge public opinion on subjects of controversy. Frequently, an initiative leads to a healthy symbiotic relationship between the citizen and the legislature. In other words, even though an initiative attempt may lose, the legislature will see what the community view is and adopt a compromise or alternate position.

A few examples can illustrate how the initiative brings the citizens and the legislature closer together:

1. The coastal zone initiative. In 1972, the California voters overwhelmingly approved a strong initiative measure protecting the coastal zone of the state. This measure was one

of the first steps taken anywhere to protect the coastal zone, and it has led to considerable action in other jurisdictions. The California initiative, however, only laid out the ground work whereby the difficult decisions involving coastline management must be made. A sophisticated system of local and statewide commissions now looks at coastal zone questions in order to resolve the competing desires of citizens for using these areas. The voters were able to begin the process, but the legislature and other state administrative agencies have stepped in to work on the details of this matter.

2. The marijuana question. The question of decriminalizing marijuana use was put on the California ballot in 1973. Although only about one-third of the voters supported complete decriminalization, the legislature nonetheless came to realize that a substantial percentage of the California population did not think that marijuana use was a serious criminal matter. Within three years, the California Legislature had adopted a compromise position, whereby small amounts of marijuana are treated as "offenses" rather than misdemeanors or felonies. The usual sentence for a first offender caught with marijuana in California now is a small fine.

3. Nuclear power plants. In 1976 an initiative was put on the California ballot that would have prevented the construction of nuclear power plants unless they met rigid safety standards which presently seem unattainable. Prior to

the vote on this initiative, the legislature enacted a series of statutes on the question of nuclear power plants which increased the safety requirements for the plant, but were not as restrictive as the initiative proposal. The initiative was subsequently defeated by the voters, and many commentators thought that the voters had felt that the legislative compromise was appropriate. This example shows how the legislature and the voters work together within the initiative process.

4. Proposition 13--limiting property tax. Proposition 13, which was passed ^{in 1978} this year by the California voters, has been one of the most controversial initiative matters in that state. Once again, we see how the initiative process allows the citizens to work together with the legislature. Although Governor Brown and the leaders of the legislature had committed themselves to tax reform during earlier election campaigns, no action has been taken in recent years. This inaction was viewed by the voters as a dereliction of duty because the state had a vast surplus of money and because property tax assessments were rising rapidly. This initiative was thus passed by the electorate to prod the legislature into action. Since its enactment, the legislature and the Governor have acted boldly to meet this problem.

These examples all show that the initiative provides an outlet for voters who are discontented with the actions of their elected representatives. The initiative itself, however,

is only a signal. It is not a means whereby these citizens take legislation into their own hands. Almost always, legislative action is necessary after an initiative. Frequently, even an initiative that loses will produce legislative action on the subject. The interaction between the citizens and their elected representatives has proved to be a healthy one in California.

Because Hawaii's citizens are generally well informed and interested, it would be probable that the initiative would work well here also. Several of the counties now have a procedure for initiative, and the voters are used to passing specifically on the constitutional amendments offered by the periodic constitutional conventions. The voters here take their assignments seriously and would probably treat the initiative process with the respect it deserves. I would favor Proposal 96 offered by Delegate Michael Liu to add an initiative and referendum option for the voters of Hawaii.

Some concerns have been raised about the lack of citizen deliberation on initiative proposals. The best way to meet this concern, in my judgment, is to provide for public financing of initiative proposals. If both the proponents and opponents were given a fixed sum to spend educating the voters, then we could be sure that both sides of the question would be fully understood. In addition, the campaign committees supporting and opposing the initiative could be required to adhere to

spending limitations as the trade-off for accepting public funds. (See Buckley v. Valeo, 424 U.S. 1 (1976).) Private citizens would still be free to express their views on the initiative proposal without limitation (See Buckley v. Valeo, supra, and First National Bank of Boston v. Bellotti, 46 U.S.L.W. 4371 (U.S. 1978).)

Concern has also been expressed about the protection of minority rights within the initiative process. Initiative proposals, like other enacted legislation, must adhere to constitutional standards, and our courts are open to protect minority groups whose rights might be trampled upon by an initiative. The U.S. Supreme Court, for instance, struck down an initiative proposal approved in California in 1964 that would have barred anti-discrimination laws affecting housing. See Reitman v. Mulkey, 387 U.S. 369 (1967). Proposition 13 is likewise certain to be considered by the courts, and the judiciary will protect any rights that may be improperly affected by this initiative proposal.

In conclusion, I view the initiative as a healthy part of democracy. In California, it has given the citizens an opportunity to interact with their legislature. In Hawaii, it would work well to give the citizens a greater role in determining their future.