



The War on the Initiative

Jenna Spinelle: If I'm being honest, this series was partially born out of jealousy and maybe a little bit of FOMO. My interest in ballot initiative started because I live in a state that doesn't have citizen led initiatives at all. The only time people in Pennsylvania get to vote directly on policy is when the state legislature puts a question on the ballot. This has happened only 22 times since 1995 and all of those ballot measures were approved.

Spinelle: Unlike California, Michigan, Florida, and the other states we've covered in this series, citizens who are not also legislators can't organize and collect signatures to put measures on the ballot in Pennsylvania. If I could help organize an initiative in Pennsylvania, it would be around opening up the state's primaries so that people who are registered independent's can vote in them. Over in Colorado, open primaries passed via ballot initiative back in 2016. My husband is an independent and this is a conversation that comes up a lot in our house. The fact that I can't participate in something like this makes me sympathetic to people in states where the legislature is making it harder for them to use ballot initiatives.

Spinelle: In my view, it's the people who already have a lot of political power trying to take it from the people who don't have as much. It makes me angry to hear about some of the stories in this episode. This is When the People Decide. I'm Jenna Spinelle. In this episode, we'll take a deep dive into the battle over ballot initiatives being an option at all.

Spinelle: The fight is playing out in state capitals across the country. In 2022 alone, in Arkansas and Arizona, Missouri and Florida, 12 states in total, legislators have introduced bills to restrict people's access to this tool of direct democracy. Luke Mayville is the co-founder of Reclaim Idaho who explained in the last episode, how he helped pass Medicaid expansion in Idaho via ballot initiative in 2018. In 2021, the Idaho legislature passed a bill to make it harder to use the initiative process in his state. It required signature gatherers to get 6% of registered voters in each of the state's 35 districts. Previously initiatives only needed to have signatures from 6% of registered voters in 18 of those 35 districts. Luke said that they expected it to come through as a constitutional amendment, which would've required voters to approve it.

Luke Mayville: In this case, it was "wow, no, what?" They're really just going to ram through the legislative process a bill that makes future initiatives virtually impossible?" But that's in fact exactly what they did.

Spinelle: An earlier version of the bill that would've required more signatures and given organizers less time to gather them, failed.

Mayville: The first time around they barely got it through the Senate, but by one vote they got it through the House by a lot of votes and then the governor vetoed it. So that was a massive victory for us.

Spinelle: In 2021, the legislature passed the new version and the governor signed it.

Mayville: We're in a big fight out here.

Spinelle: When I spoke with Luke in June 2021, his organization was in the throes of a lawsuit against the bill changing the initiative process in his state. They were also prepared to launch an initiative to save the initiative. When the lawsuit got all the way to the Idaho Supreme Court, Luke's side won. The Idaho Supreme Court overturned the Ballot Initiative law in August 2021. The justices said it created, "dramatic check on the ballot qualification process without showing a compelling need for such a check." In other words, Idahoans could keep the process that Luke and Reclaim Idaho had used to pass Medicaid expansion, intact.

Spinelle: But not every state's story has a happy ending. David Daley is a journalist who has covered grassroots political organizing for years. He published his first book in 2016.

David Daley: I'm the author of "Ratf**ked: Why Your Vote Doesn't Count" and "Unrigged: How Americans are Battling Back to Save Democracy."

Spinelle: David also used to write about music and we share an interest in the band R.E.M. But that's not all we have in common. Let's just say, this was how our conversation got started.

Spinelle: So you have spent a lot of time with these grassroots initiative campaigns, more than any other journalists that I've come across, anyway. Can you talk a little bit about what it takes, the people that do this work, what motivates them? Is there a common thread, so to speak, that unites them all?

Daley: This really heroic work and it is so difficult. It's oftentimes just regular citizens who are pushed to frustration by either the inaction or the extremism of their own legislatures, who decide one day that they want to do something about it. It is our politics at its best.

Spinelle: Unlike me, David grew up with ballot initiatives as a familiar part of his political landscape in Massachusetts. His book on gerrymandering was one of the first I read when I started working at the McCourtney Institute for Democracy at Penn State. I've interviewed him about his work on redistricting and grassroots politics and I admire how he uses his reporting and writing to uphold democracy. I called him up this time to talk about the battle or where the initiative.

Daley: Legislators who have seen themselves checked by citizens on independent redistricting, on expanding Medicare, on raising the minimum wage, on legalizing marijuana, are not always happy that this happens. And what they have done, in state after state, is pass or propose efforts that would make it much more difficult for citizens to enact a ballot initiative campaign. Something that is already really, really hard.

Spinelle: In our very first episode we heard from Katie Fahey, who tackled redistricting in Michigan. Her organization's successful ballot initiative established a citizen-led redistricting commission for the state. David points out even for a success story like this, and this is a pretty famous story in democracy wonk circles, it was an uphill battle.

Daley: This is backbreaking and difficult work, and even the people who you talk about who have been successful, had tried previously and had not gotten anywhere. So sometimes you just have to be really, really lucky. I mean, Katie Fahey sends out her famous Facebook post two days after the 2016 election saying that she wants to take on partisan gerrymandering in Michigan. And that post goes viral and connects her with thousands of people across the state who decide to form Google groups and begin meetings and ultimately win an independent redistricting commission there. But she'd sent out a similar Facebook note before and nobody noticed it and it went nowhere.

Spinelle: There are so many steps to a successful initiative, from getting the language right and approved by the right state authority, to canvassing for all the signatures to get it on the ballot, to campaigning for it once it's in the next election. Now in some states, the very starting point is blocked off. Just in 2021 there were more than 20 of these bills passed or put before voters in state legislatures around the country, according to the Ballot Initiative Strategy Center. David described the kinds of efforts legislators are undertaking to limit the initiative. There are bills in states like Florida and Arizona making it harder to collect signatures.

Daley: They might require that signatures be collected in a shorter window of time, and they might limit that time to the coldest winter months of the year.

Spinelle: In South Dakota legislators set odd requirements on how to print the petition that canvassers have to carry around door to door, to present to voters, like that it needs to be in 14 point type, so it's hard to make it fit on one page.

Daley: In addition to making the canvasser at the door look ridiculous, what this also does is it raises the cost of the kind of paper, or the kind of clipboard, that people might need to have and take out.

Spinelle: These restrictive bills sometimes set new rules on the percentage of signatures needed, and where, like the bill legislators tried in Idaho, 6% of voters in every district in the state.

Daley: And that number is being ratcheted higher and higher to not only a larger number of people, but in more places.

Spinelle: Plus there's a simple way legislators are trying to make initiatives harder to pass in states like Arizona and Missouri, by requiring a greater percentage of voters to approve a measure in order for it to be successful.

Daley: So instead of needing 50% of the vote to pass an initiative, you might need a supermajority of 60%.

Spinelle: This is something the Arkansas State Legislature tried. In 2022, they put before voters a state sponsored measure to raise the threshold of votes needed to pass an initiative. Back in 2015, lawmakers in Arkansas tried another tactic that struck down citizen-led initiatives. David called it almost a master stroke.

Daley: What they did is they said a signature gatherer, for an initiative in the state of Arkansas, needs to undergo a state and federal background check conducted by the Arkansas State Police. Well, the Arkansas State Police is not authorized to conduct a federal background check. They can't do it. This sets up a standard that cannot be met.

Spinelle: In 2020 a State Circuit Court judge ruled that the law setting this standard violated Arkansan's constitutional right to propose measures for the ballot. The decision would come into play for measures put forth in the 2022 election cycle. David calls all these laws and efforts, a war on the ballot initiative.

Daley: So there are a lot of new structures and barriers that are being put in place of citizens that make an already hard and expensive process that much more difficult and challenging.

Spinelle: Like David indicated it's already hard to get measures on the ballot, let alone get them approved. That first step, getting the signatures to put forth an initiative, is a challenge former South Dakota Republican state Senator Don Frankenfeld is familiar with first hand.

Don Frankenfeld: The process is cumbersome. It was clear to us at the beginning that we needed a bipartisan effort to make this work.

Spinelle: Don was in the state legislature from 1977 to 1984. He's a forensic economist who, for decades, observed big money dominating elections in his state.

Frankenfeld: Even though we're a small state, fewer than 1 million people total population, we have been the scene of many bitter political contests.

Spinelle: Don cited the US Senate election in South Dakota in 1980, incumbent Democrat George McGovern against Republican James Abdnor, where McGovern was the target of an ultra conservative political movement that spent millions in today's dollars nationwide to unseat liberal incumbents in Washington. One New York Times reporter covering the campaign described the hundreds of thousands of dollars spent against McGovern as quote, "a lot of political money in South Dakota." Where did that money go? Radio, television and newspaper ads and hundreds of thousands of campaign leaflets in a state whose population was just 690,000 at that time. Don also spoke to me about an election in more recent memory when Democrat Tom Daschle lost two Republican John Thune in a US Senate race in 2004. The candidates raised a combined 30 million dollars and South Dakotans saw as many as 10 TV commercials per evening.

John Thune Campaign Ads:

"I'm John Thune and I approve this message. I think what makes South Dakota so unique is its people. They understand the value. I believe that the way that you grow the economy is to cut taxes on families. About 1600 miles away from here, there's a place called Washington DC." "We're back! I'm Brittany, I'm Larissa. And by now you really know our dad, John Thune."

Spinelle: Don remembers those ads well.

Frankenfeld: It's that proliferation of money and the fact that money seemed, more often than not in my judgment at least, to determine the outcome of the election, that led me to think we were ripe for reform in this state.

Spinelle: That reform came in the form of a ballot initiative. In 2016, Don was the Republican Chair of a bipartisan campaign for Initiated Measure 22, or IM 22, the South Dakota Government Accountability and Anti-Corruption Act.

Frankenfeld: South Dakota, by the way, claims to have invented the initiative and the referendum, whether we really invented it or not, we were the first state to put into practice the initiative.

Spinelle: IM 22 proposed greater transparency and regulation of campaign fundraising and spending. It created an independent ethics commission, placed limits on gifts from lobbyists and made lobbying reports available online. It outlawed the personal use of campaign funds. It even proposed the creation of public financing of campaigns through a process they called "democracy credits", all in an effort to combat the opaque campaign financing habits in the state, which ranked 47th, basically got an F in the 2015 State Integrity Investigation.

Spinelle: That's a data driven assessment of government transparency and accountability by the Center for Public Integrity and Global Integrity. Don felt that getting campaign finance reform done in South Dakota would inspire similar initiatives in other states around the country.

Frankenfeld: My belief is that the playing field is not level, that democracy flourishes when there are two parties, perhaps more than two parties, able to contest the big ideas of the day. And in South Dakota I thought that meant some kind of ethics reform would be required, so that everyone, every potential candidate for office, would have a reasonable chance of success, would not be constrained by financial limitations.

Spinelle: Don and his colleagues garnered the support of Represent Us, a national advocacy group that fights corruption in government. And in 2016, they obtained the signatures required to put IM 22 on the ballot in South Dakota.

Frankenfeld: We ultimately got something over 20,000 signatures with 15,000 as a minimum statutory requirement. So we were well ahead of the minimum.

Spinelle: And began campaigning in earnest for their victory in November 2016. South Dakota Initiated Measure 22 passed with 52% of the vote. Don said nearly everyone expected the measure to lose, especially because of the public financing mechanism.

Frankenfeld: So I think it was a shock. I know it was a shock to the Governor who opposed this measure when it finally passed. I think he had been dismissive of it, and I don't mean to gloat, but we caught him flat footed. The day after the election, I think, was a shocking day for him.

Spinelle: But by January 2017, mere months later, the state legislature had introduced a bill to repeal it.

Frankenfeld: The truth is we had our lunch handed to us. The Governor was not only disappointed and shocked by the result, he thought it was not legitimate, and he tried to reverse it.

Spinelle: Don said there were two ways opponents to the measure tried to do this.

Frankenfeld: They took it to court alleging that the bill, or parts of IM 22, were unconstitutional and they acted in the legislature, they started a movement very quickly, more Republican than Democrat, to repeal everything that had happened in IM 22.

Spinelle: The Governor signed the bill in February 2017. The case in court was dropped. South Dakota's Campaign Finance Reform was basically dead on arrival. Don said he was amazed that the legislature and the Governor had reacted in this way. The state's politicians had really undone what the people said they wanted.

Frankenfeld: I didn't expect them to applaud it. I did expect them to live with it, at least for a while. And my feeling was, once it was allowed to work people would not want to repeal it. People would see it as a worthwhile reform.

Spinelle: Five years later, South Dakota's legislators are trying to limit the initiative process itself. And in 2021, the state legislature passed a constitutional amendment in South Dakota that would require a three fifth super majority, or 60% of the vote, instead of 50% plus one vote, to pass any ballot measures that would increase taxes or fees, or that would require the state to appropriate \$10 million or more in the subsequent five fiscal years. This means making it harder for citizens to pass initiatives that require the state to spend money. None of the state's Democrats voted for the 60% threshold and Republicans were split.

Spinelle: Since constitutional amendments require approval by voters in a statewide election, it was set to go before voters on the ballot in November 2022. In other words, legislators had to ask voters directly whether or not they wanted to limit their own access to ballot measures. Senate president Pro Tempore Lee Schoenbeck, a Republican, amended the measure to place it before voters in June's primary election, instead of waiting for November's general election. He said he did it so that the new rule would apply to a Medicaid expansion initiative that would be on the November ballot, basically making it harder for Medicaid expansion to pass in the state.

Spinelle: The co-founder of Dakotans for Health, a group supporting Medicaid expansion, said "this is another assault by a one party dominated state legislature, with no checks and balances, to thwart the will of the voters and intentionally stop our grassroots effort." He continued in a statement which I found copied in the South Dakota Standard, "placing a constitutional amendment on a primary ballot, when only a third of registered voters cast ballots, that would require Medicaid expansion to pass in the general election

by 60%, is nothing more than a cynical attempt to take from South Dakotans their traditional right to enact measures such as Medicaid expansion by a simple majority."

Spinelle: A traditional right, in a state that prides itself on having the longest history with ballot initiatives. The amendment was rejected by voters in the primary on June 7th 2022, 67% to 33%. But again, this is happening in 12 states across the country. In Arizona and Arkansas lawmakers are putting bills on their 2022 ballots to make it harder to pass initiatives. One in Arizona would make it easier for lawmakers to reverse voter approved decisions.

Spinelle: In some places, the courts step in to save the initiative, like in Michigan. Just a couple months after the citizens redistricting measure inspired by Katie Fahey passed, the Republican led legislature passed a law limiting the initiative process with added requirements for signatures, an extra step with an affidavit and a check box that would let voters know which measures used paid circulators. The Michigan Supreme Court struck down most of the law keeping the check box requirement, but declaring the other provisions unconstitutional. In Mississippi, the state constitution says initiatives have to get signatures from all five congressional districts, but it only has four since losing one after the 2000 census. So the state Supreme Court in Mississippi struck down initiatives that voters approved, like medical marijuana legalization, which was on the ballot in 2020. Even though the legislature has known about this discrepancy for years they still haven't fixed it

Spinelle: All around the US supporters of the initiative are fighting back. There's the Fairness Project that has pledged 5 million to protect the initiative in states where it's under attack, and there's individuals doing this work state by state.

Benjamin Singer: I'm Benjamin Singer and I'm the Executive Director of Show Me Integrity, Missouri's Good Government and Political Reform organization.

Spinelle: Benjamin is active in what we call the democracy reform movement. These are people, like me, who believe in the power of ballot initiatives and direct democracy to enact political change and break out of partisan gridlock. He's got a relatable approach to politics that we've heard from other people in this series.

Singer: I didn't grow up in a very political or partisan household. I've got family members all across the political spectrum who just generally want things to work. I mean, that's all we really want.

Spinelle: Legislators in Missouri debated nearly 20 bills in 2022 to make changes to the initiative process. One of the potential new laws would increase signature requirements for constitutional amendments from 8% of voters who cast ballots in the previous gubernatorial election, to 10%. Benjamin's organization is pushing back. Show Me integrity, held a rally on the steps of the state capital in Jefferson City, in April 2021.

Singer: Alright! Let's protect that ballot initiative process. It is the check we have on those special interests and those lobbyists who have taken over our political system, and it's time for us to take the power back for the people and protect our ability to reform Missouri politics.

Spinelle: The rally was to voice opposition to the legislation restricting the initiative in Missouri and also included groups like the ACLU and the League of Women Voters. Benjamin told me he is trying to protect more than just access to policy making, it's about reminding voters that they have power.

Singer: The ballot initiative is a huge part of showing the American public that change is possible. This is what I always say is our fundamental challenge in the democracy movement, 90% of people agree with us, but 90% of people are also resigned to the fact that change is not possible. So it's our job to show them that actually it is and it's happening and we can do it here, where we have ballot initiatives. And the power of the ballot initiative, in the 24 states, including Missouri, that have it, will be key to repairing the fabric and strengthening the fabric of American democracy.

Spinelle: I believe that defending the ballot initiative is very closely linked to defending the demos in democracy. Here's our initiative expert, David Daley.

Daley: In many states it is the only avenue for people to make themselves heard, because such a small slice of the electorate is driving power in all of these places. And when that avenue itself gets blocked off, it can feel like checkmate. You throw up your hands and wonder what country you are living in and how much impact you can possibly have as you what? Craft an angry tweet? But if you live in some of these states, an angry tweet might be the best you've got, unfortunately.

Spinelle: Is an angry tweet the best everyday citizens can hope for? Are residents of other states destined to become like me, wishing my state of Pennsylvania gave me the right to organize around a ballot initiative? In the final episode of the series we'll look ahead to the future of the ballot initiative.

Spinelle: When the People Decide is produced by LWC Studios for the McCourtney Institute for Democracy at Penn State. The podcast is reported and hosted by me, Jenna Spinelle. Our producer is Paulina Velasco, Veralyn Williams edited this episode, Cedric Wilson mixed this episode, fact checking by Mark Betancourt. Follow When the People Decide on social media at People Decide Pod and leave us a review so more people can find us. I'm Jenna Spinelle. Thanks for listening.

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