



Libertarians Should Make More Use of Referendums

Libertarianism is far from wildly popular, overall. But libertarian causes have done well in referenda in recent years. We can build on that.

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There is plenty of dispute about the meaning of the 2020 election. But one thing that's clear is that it wasn't a "libertarian moment." Both major parties ran on distinctly non-libertarian platforms on most issues (the Democrats' position on immigration being a major exception). At least on economic policy, both have been drifting further away from libertarian ideas in recent years, rather than close to them. The Trump-era GOP has embraced protectionism and big spending, while the Democrats have become more interventionist on a variety of fronts, as well. Though Libertarian Party candidate Jo Jorgensen had a good showing by the very modest standards set by previous LP candidates, no one can see argue that the LP is about to become a serious competitor for power at the national level, or even in state and local government.

There was, however, one major electoral bright spot for libertarians: our positions did extremely well in numerous votes on referendums. In California, voters rejected rent control, racial preferences, and property tax increases, while simultaneously approving a rollback of AB 5—a state law that was set to cripple ride-share services and other parts of the "gig" economy. In four other states, including two deep red ones, they voted to legalize recreational marijuana. Oregon voters went much further, and approved an initiative that decriminalizes possession of virtually previously illegal drugs. Economist John Cochrane and Walter Olson of the Cato Institute describe a number of other notable referendum victories for libertarian causes.

This is far from the first time that libertarian causes have done better in referendum votes than in legislative and executive elections. The cause of marijuana legalization has long benefited from referendums, going back at least to Colorado and Washington's landmark legalization votes in 2012. In my book on the *Kelo* case and post-*Kelo* eminent domain reform, I describe how reforms adopted by referendum generally gave more protection to property owners than those enacted by state legislatures. There is also a long history of tax limitation initiatives prevailing in referendum votes to a far greater extent than in state legislatures. In recent years, criminal justice reform policies have also done well in referendum votes, especially in blue states.

Referendum votes are far from an unalloyed good for libertarians. Both liberals and conservatives have sometimes used initiatives to push through distinctly unlibertarian policies. Liberals have had some success with policies that increase spending, and impose higher minimum wages, among other things. In the 2000s, numerous states enacted referendums imposing state-constitutional bans on same-sex marriage.

Still, a good many libertarian causes have enjoyed success in referendum votes. That is especially true in the fields of drug legalization, property rights, and tax limitation. Libertarians may benefit disproportionately from referendums because such votes can cut across conventional divisions between the two major parties. That's important for adherents of an ideology that

doesn't fit easily within either the "red" or "blue" camps. Partisan bias and polarization is less of a force in referendum votes, and openness to new ideas may—as a result—be a big greater.

Libertarian organizations and activists should do all they can to learn from this history and build on it. Here are a few tentative suggestions:

First, libertarian think tanks and other public policy research organizations should do a survey of each state with an initiative process, and how well various libertarian causes have done there in recent years. The next step would be to determine which policy areas might be ripe for progress in future referendums, by studying public opinion in the state in question, and identifying potentially vulnerable statist policies.

Such inquiries should especially focus on areas where libertarian ideas have fared well in referendums in the past. These include property rights, tax limitation, and drug legalization, among others.

When it comes property rights, we should consider whether success on such issues as eminent domain and rent control can be extended to impose tighter limitations on exclusionary zoning. The latter is the single biggest property rights issue of our time, because it harms so many millions of people. There is already an active zoning reform movement underway in many parts of the country. Perhaps additional progress can be achieved by referendum initiatives. That approach might circumvent opposition by powerful interest groups that has so far stymied reform in California, among other key states.

Along related lines, we should consider whether victories against measures seeking to expand rent control can be leveraged into future initiatives cutting it back where it already exists. In 1994, voters in very liberal Massachusetts approved a referendum question severely restricting rent control in that state. If it can happen in the Bay State, perhaps it can be done elsewhere, as well.

We should also consider whether we can build on the dramatic drug decriminalization breakthrough in Oregon by promoting similar initiatives in other states. Perhaps the time has come to attack the War on Drugs on multiple fronts, not just marijuana.

There may also be opportunities to promote tax limitation initiatives in states where they have not been seriously tried so far. At the federal level, the "starve the beast" tax limitation strategy is a poor way of limiting government, because Uncle Sam can easily keep spending high by relying on debt. Things tend to be different at the state and local level, where governments aren't able to borrow as easily, and many are constrained by balanced-budget rules.

Another area worth investigating is immigration policy. With the aid of recent pro-immigration swings in public opinion, particularly among Democrats, it might be possible to use referendum initiatives to enact stronger "sanctuary" policies than have so far been adopted by state and local governments. We know sanctuary policies can substantially reduce deportations, without increasing crime. At the very least, sanctuary referendums may stand a good chance of success in liberal and moderate states.

With each of these causes, libertarians should also give more thought on how to seek out relevant allies on the left and right, as appropriate. On immigration and drug legalization, that means primarily left-wing and moderate allies. On tax limitation and some property rights issues

(zoning is an exception), allies may be easier to find on the right. One of the advantages of referendum initiatives over legislation is that such alliances are easier to build outside the straitjacket of conventional partisan divisions that tend to dominate legislative bodies.

The above is far from an exhaustive list of possible referendum ideas for libertarians. My goal is to start a conversation on this issue, not end it. I hope and expect that others will come up with more and better ideas than I have.

Referendums are far from a panacea for libertarians. Among other things, they cannot directly change federal-government policies (though they can make some of them harder to enforce, as in the case of federal drug laws and immigration restrictions). And some libertarian ideas simply aren't popular enough to prevail in referendums—at least so far. Widespread voter ignorance can lead to bad outcomes in referendum votes, as is also true of conventional representative elections.

But the best should not be the enemy of the good. Referendums are a promising tool for libertarian progress, one with a proven record of success. Much can be done to build on that record and extend it.

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