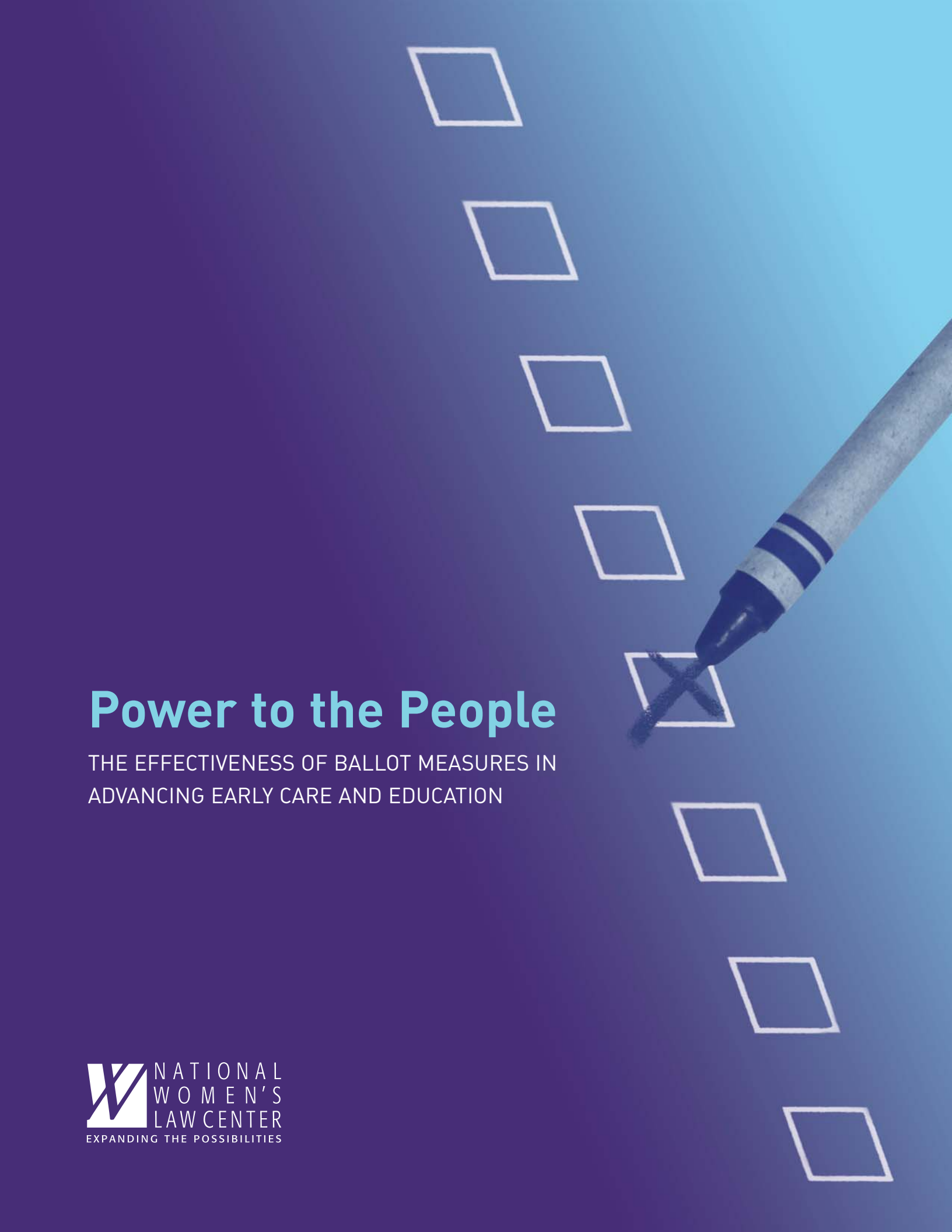

Power to the People

THE EFFECTIVENESS OF BALLOT MEASURES IN ADVANCING EARLY CARE AND EDUCATION

NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

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TABLE OF CONTENTS

Executive Summary

I. Introduction

II. The Initiative and Referendum Landscape

III. Are Ballot Measures a Worthwhile Strategy for Advancing the ECE/AS Agenda?

IV. Ingredients for a Winning Campaign: Lessons from the Front

V. Conclusion

EXECUTIVE SUMMARY

Access to affordable, high-quality child care is critical to women's ability to participate and be productive in the paid labor force and essential to their children's development and well-being. Nonetheless, high-quality child care is too often unaffordable or simply unavailable, and the public investment needed to address these problems has been insufficient. Thus, advocates are always on the lookout for successful ideas and strategies that can preserve and expand hard-won investments in early care and education and after-school (ECE/AS) programs.

Increasingly, ECE/AS advocates from Seattle, Washington to the state of Florida have taken their case directly to the public—in the form of ballot initiatives and referendums. But are ballot measures an effective way to advance the ECE/AS agenda? And if so, how can advocates maximize their chances for success? This report analyzes ECE/AS ballot measures as a group to assess whether some proposals are more successful on the ballot than others, evaluate the accomplishments of the winners and their success in increasing ECE/AS investments over the long term, weigh how these accomplishments stack up against the costs of achieving them, and compare some of the advantages and disadvantages of ballot measures with legislation. It concludes that ballot campaigns can be an effective strategy for ECE/AS advocates and provides lessons from past ballot campaigns that can enhance the chances that a ballot measure will be successful, both on election day and beyond.

Scope and Methodology

This report examines several ballot measures aimed at improving the quality, affordability, and availability of programs that provide children and youth with care and enrichment for those hours when they are not in the care of parents and not in school. The measures analyzed include both initiatives and referendums, and statewide as well as local measures. While not exhaustive, the analysis encompasses most of the measures that have appeared on the ballot through 2003 in which increased investment in ECE/AS programs was either central to the measure's purpose or at least a significant component of a more comprehensive proposal. Thirteen separate ballot measures (referred to collectively as the "core-analysis" measures) and eighteen very similar proposals in several Florida counties (referred to collectively as the Florida Children's Services Councils, or CSC, referendums) met these criteria. The ballot measures studied are summarized in the chart at the end of this Executive Summary.

This analysis draws on a combination of legal research and research into public records, a review of a representative sampling of academic and other literature, and consultations with numerous experts and advocates. Because much of the story behind ballot campaigns is not found in publications, central to the research were thirty-two in-depth telephone interviews conducted

during 2003 and 2004 of individuals who were the main proponents, key players, and influential advocates involved in eight of the ballot campaigns studied.

Since the universe of ballot measures on ECE/AS programs is relatively small and complete information on all of the ballot measures studied was not always obtainable, some conclusions are supported more by examples than by a more complete quantitative analyses. Still, because the study encompasses much of the ECE/AS ballot measure universe, it is possible to detect patterns and reach some conclusions about ballot campaigns as a worthwhile advocacy strategy and ways to maximize the chances for waging successful ballot campaigns.

Prevalence and General Concerns about Ballot Measures

There are two general types of ballot measures that offer citizens the opportunity to take a direct role in lawmaking: initiatives and referendums. Initiatives are measures proposed by members of the general public, whereas referendums are measures passed by a legislative body that are submitted to the voters for approval or rejection. Both types of ballot measures can be used to enact statutes or constitutional amendments. In general, measures that amend a state constitution or a local charter cannot be amended or repealed except through another ballot measure, whereas in most cases lawmakers retain the power to modify a statute created through initiative or referendum.

Ballot measures are not a strategy that is available everywhere, however. Only twenty-four states permit their citizens to propose statewide ballot initiatives, although thousands of cities and counties permit local ballot initiatives. Only twenty-three states permit their state legislatures to place proposed statutes on the ballot, although all states but one not only permit but require constitutional amendments passed by the legislature to be submitted to the voters for approval in a referendum.

Despite the fact that ballot measures have been in existence in the United States for about 100 years and are now a regular feature of the electoral landscape, "direct democracy" through ballot initiatives is not without controversy. Many political observers have expressed concerns about the process, particularly about undue influence by moneyed interests, the soundness of the public policies that are produced without the input and deliberation provided by the legislative process, and the cumulative effects of budgeting by ballot. The legislative process, however, shares some of the same or similar pitfalls. Legislatures can be dominated by wealthy special interests, and the legislative process offers no guarantees that the "right" priorities will be funded. Whether, in the end, ballot initiatives make a beneficial or detrimental contribution to democracy, ECE/AS advocates have already compiled a significant record and are increasingly considering and deploying this strategy, making this an opportune time to evaluate the effectiveness of ballot measures in furthering the ECE/AS agenda.

The Effect of ECE/AS Ballot Measures' Content on Success at Polls

Ballot measures on ECE/AS issues have enjoyed a fairly high rate of success. Nine of the thirteen core-analysis measures—roughly 67%—triumphed on election day, as did eight of the eighteen (44%) Florida CSC referendums. Based on election results, the type of ECE/AS policy or program proposed does not seem to have driven a measure's success or failure at the polls. In contrast, the type of financing mechanism proposed does seem to have had some effect on a measure's success.

A wide range of ECE/AS policies proved they could be popular with the public, with no particular ECE/AS policy a sure winner or a sure loser. For example, measures that contained proposals to expand pre-kindergarten won in three jurisdictions (Florida, Colorado, and Tennessee) but lost in two others (Alabama and Seattle). Measures containing expansions of after-school programs won in four jurisdictions (Seattle, Tennessee, California and Portland), lost in one (Denver, twice), and both won and lost in Florida. And measures that included improved access to, or quality in, child care won in four jurisdictions (Aspen, San Francisco, California and Portland), lost in one (Denver, twice), and both won and lost in two jurisdictions (Seattle and Florida).

Moreover, looking at ways of presenting ECE/AS policies—either by themselves or as part of a package of children's services or education reforms—shows mixed results as well: both ways of presenting ECE/AS measures had some successes and some failures. Measures containing only one or more ECE and/or AS policies won in California (Prop. 49 initiative) and Florida (Universal Pre-kindergargten (UPK) initiative), but lost in Denver (2001 initiative) and Seattle (Latte Tax initiative). Measures in which ECE and/or AS policies were packaged with other, non-ECE/AS programs won in Seattle (Families and Education (F&E) Levy referendum), Aspen, San Francisco, California (Prop. 10 initiative), Colorado, Tennessee, and Portland, but these "package deals" lost in Denver (2000 referendum) and Alabama. In the case of the Florida CSC referendums, the *very same proposal* to improve a range of children's services won about half the time and lost the other half. Thus, the way in which the policy proposals were packaged also does not seem to have been particularly determinative of their success. Although more proposals that combined ECE and/or AS with other proposals won (seven of nine of the core-analysis measures and eight of the eighteen Florida CSC referendums) than proposals that were restricted to ECE and/or AS issues (two of the four core-analysis measures), the much smaller size of the latter group, and the lack of issue-specific exit poll data to determine whether ECE/AS issues or the other issues in the package drove the vote, make firm conclusions perilous.

By contrast, the way in which a ballot measure proposes to fund the proposed ECE/AS policy or program does seem to have had some effect on a measure's success at the polls. Although a range of financing schemes was successful at the ballot box, some had more difficulty than others. A small but uniformly successful group of proposals that earmarked funds from existing revenues, with protections for existing funding of the same or related programs, suggests there is probably some advantage in being able to tell the public that EAS/AS goals can be accomplished with no new taxes and no diminution in support for other similar programs. Three of the thirteen core-analysis measures contained this type of earmark (the San Francisco Children's Fund, Colorado Pre-K-12, and California Prop. 49 initiatives), and all were approved by the voters. There may or may not

be an advantage to including no funding mechanism—the one measure that left financing to the state legislature to determine, the Florida UPK initiative, was also successful at the polls. However, winning voter support for raising new revenues is also possible; ballot measures that increased broadly shared sales or property taxes, taxed specific products, and established lotteries were successful about half the time. Eight of the eighteen Florida CSC referendums and three of the five core-analysis measures that proposed increased sales or property taxes were approved by the voters (Seattle F&E Levy referendum, Aspen Day Care referendum, and Portland Children's Investment Fund referendum), but the two Kids' Tax measures in Denver and ten of the Florida CSC referendums were rejected. The Seattle Latte Tax initiative, which proposed taxing espresso drinks, lost, and the California Prop. 10 initiative, which proposed taxing tobacco products, just barely squeaked by, in part because the taxation of specific products contained in these measures targeted identifiable business interests that had the incentive and resources to mount effective opposition. The two measures that proposed raising non-tax revenues from state lotteries also generated controversy, with the opposition grounded in objections to gambling revenue as a financing mechanism. One (Tennessee Lottery referendum) passed, but the other (Alabama Lottery referendum) did not.

All of the ballot measures studied contained one or more other financing-related provisions—sunsets, segregated accounts, and various anti-supplantation provisions—that may have contributed to the success of the winning measures but were no guarantee of success.

Six of the thirteen core-analysis measures (Seattle F&E Levy referendum, Aspen Day Care referendum, San Francisco Children's Fund initiative, Portland Children's Investment Fund referendum, and two Denver Kids' Tax measures) and one of the Florida CSC referendums contained sunset provisions, which cause the measures to expire unless renewed by the voters. Such provisions, especially when they accompanied proposals to raise taxes, may have contributed to victory at the polls in some instances by reassuring voters they would have a chance to evaluate the results before agreeing to their continuation. Five of these seven measures (all but the two Denver measures) won at the polls and three of them (Seattle, Aspen, and San Francisco) have reached their sunset dates (Seattle more than once) and been renewed by the voters.

Six of the thirteen core-analysis measures (San Francisco Children's Fund initiative, California Prop. 10 initiative, Alabama Lottery referendum, Colorado Pre-K-12 initiative, Portland Children's Investment Fund referendum, and Seattle Latte Tax initiative) contained a requirement to place any revenues raised in a fund that is segregated from the rest of the treasury, which may have helped garner support for the measure by reassuring voters that the funding will be spent as intended and as promised. Four of these six (all but the Alabama and Seattle measures) were successful at the polls; the San Francisco measure was also renewed by the voters at its sunset date. All of the Florida CSC referendums contained segregated fund requirements as well; eight of these won and ten lost.

Nine of the thirteen core-analysis measures (Seattle F&E Levy referendum, San Francisco Children's Fund initiative, California Prop. 10 initiative, Alabama Lottery referendum, Colorado Pre-K initiative, Tennessee Lottery referendum, California Prop. 49 initiative, Florida UPK initiative, and Seattle Latte Tax initiative) and one of the Florida CSC referendums contained provisions prohibiting lawmakers from using new funds to replace their existing expenditures

for ECE/AS programs, to help make sure any newly allocated funds actually added to ECE/AS investment rather than supplanted existing spending. Eight of these ten measures won on election day.

In sum, a fairly wide range of ECE/AS issues and ways of packaging them were represented and most were successful, suggesting that the type of ECE/AS policy put forward and the way it was presented were not particularly decisive to the outcome on election day. In contrast, the financing mechanism contained in the ballot proposal appears to have had an impact on the outcome. Finally, the inclusion of structural devices such as sunset provisions, segregated funds and various anti-suppplantation provisions may have increased the odds of winning for several measures but was not a guarantee of success.

The Effectiveness of ECE/AS Ballot Measures in Accomplishing Their Goals

Winning on election day is a good start, but it is not the whole story. To assess whether ballot measures constitute an effective strategy for winning ECE/AS improvements, it is important to determine what they have accomplished and whether they are achieving their goals. All of the ECE/AS ballot measures studied sought to increase the total amount of public funds invested in ECE/AS programs and services in order to increase the quantity and/or improve the quality of ECE/AS programs. And most of the winning measures have been successful in achieving their objectives.

The fourteen ballot measures that both won at the polls and have been fully implemented—six of the thirteen core-analysis measures and eight of the eighteen Florida CSC referendums—have delivered increased funding for ECE/AS programs, producing hundreds of thousands to millions of dollars in new funding annually. Both the twelve measures containing dedicated tax increases (Seattle F&E Levy referendum, Aspen Day Care referendum, California Prop. 10 initiative, Portland Children's Investment Fund referendum, and eight Florida CSC referendums) and the two measures containing earmarks from existing funds (San Francisco Children's Fund initiative and Colorado Pre-K-12 initiative) have been effective in producing increased investments for ECE/AS programs.

Not only have the ballot measures that have been fully implemented been successful in increasing ECE/AS investments, they have also been successful in protecting and preserving their increased funding streams over time—the more recent ones for only short periods of time but the older ones for fifteen years or more. As described above, most of these measures contained structural devices such as segregated funds and/or anti-supplantation prohibitions to protect existing funding for the same or similar programs and to protect their new funding streams from being diverted for other purposes. But the extent to which these devices have been responsible for the measure's enduring success is unclear. For example, two measures (Seattle F&E Levy referendum and Aspen Day Care referendum) managed to hold on to their ECE/AS funding over fifteen years with few or no structural safeguards, indicating that a political commitment to the goals of the ballot measure—and a reluctance to contravene the will of the voters—may also be responsible for securing a stable funding stream for ECE/AS programs.

The two ballot measures that won at the polls but have not been fully implemented (California Prop. 49 initiative and Tennessee Lottery referendum) have, not surprisingly, had less impact. The California measure has not yet generated any increased investment in AS programs, though it has helped restore a cut and prevented any further decrease in investment, and the Tennessee measure has just begun to increase investment in ECE/AS programs, albeit modestly. Both of these measures show promise for greater increases in the future, but they also contain design contingencies and/or ambiguities that may hinder their capacity to fully achieve their goals.

Finally, the impact of the Florida UPK initiative, which won at the polls but only begins to take effect in the 2005–06 school year, is unclear at this writing. Although it promises to deliver a substantially increased investment in pre-kindergarten, it does not seem likely that its implementation will fully meet its primary objective of ensuring a high-quality, universal pre-kindergarten program.

Besides generating (or, by losing, failing to generate) new funding for ECE/AS programs or bringing about specific policy changes, ballot campaigns have had other effects, both positive and negative. Advocates interviewed who were key supporters of eight ballot measures (California Prop. 10 initiative, Colorado Pre-K-12 initiative, two Denver Kids' Tax measures, California Prop. 49 initiative, Florida UPK initiative, Portland Children's Investment Fund referendum, and Seattle Latte Tax initiative) reported that the measures that passed had some positive impact on generating additional funding and policy gains, as well as strengthening partnerships and coalitions. They also reported that even some of the ballot measures that lost produced some of these positive side effects. However, there is other evidence that some of the defeated campaigns not only failed to accomplish their objectives, but also may have set back the ECE/AS cause in their jurisdictions.

The Cost-Effectiveness of ECE/AS Ballot Measures

With few exceptions, the advances that ballot measures have produced have not come without substantial investments of both money and time. Based on estimates for the nine measures for which monetary cost and time estimates were available (San Francisco Children's Fund initiative, California Prop. 10 initiative, Colorado Pre-K-12 initiative, 2001 Denver Kids' Tax initiative, Tennessee Lottery referendum, California Prop. 49 initiative, Florida UPK initiative, Portland Children's Investment Fund initiative, and Seattle Latte Tax initiative), local ballot campaigns raised and spent hundreds of thousands of dollars and statewide campaigns more often millions of dollars. They also demanded the "24/7" schedule typical of a political campaign, which meant large investments of unpaid labor over an extended period of time, usually one to two years at a minimum.

Although the costs in both money and time were sizeable, the four ECE/AS ballot measures that won at the polls, have been fully implemented, and for which monetary and time estimates are known, have more than paid off, producing very high returns for those investments. As previously described, they have generated substantial funding increases that have endured, in several cases over long periods of time.

Even the two measures that have been only partially implemented have established their cost-effectiveness. As previously described, one of these measures has just begun to increase ECE/AS investment and the other, although it has not yet generated any increased investment, has helped restore a cut and prevented any further decrease in investment.

A seventh measure has not yet been implemented, and, as previously described, although it will generate substantial new investment, it may not fully live up to its promise, decreasing its cost-effectiveness. The two remaining measures for which cost and time estimates were obtained illustrate, as might be expected, that it certainly is not cost-effective to lose on election day.

The Effectiveness of ECE/AS Ballot Strategies Compared to Legislative Strategies

Ballot campaigns can be a productive and cost-effective means of advancing the ECE/AS agenda, but in evaluating whether to mount such an effort, advocates must consider whether a ballot campaign is more effective than other available advocacy strategies. Traditionally, the primary strategy used by ECE/AS advocates to achieve their policy agenda has been aimed at those who make the laws and their implementing regulations. Thus, it makes sense to weigh the merits of what advocates have been able to accomplish through ECE/AS ballot campaigns—and at what strategic risk—against what advocates typically accomplish, and at what risk, by legislative approaches. On balance, ballot campaigns can be a sound alternative to legislative efforts.

The key advantages ballot campaigns have over legislative campaigns for advocates are all related to getting things done that are not getting done in the legislature. Proponents of several ECE/AS ballot initiatives said they turned to the ballot because they had become impatient with the breadth and/or the pace of legislative action on their issues and believed that an initiative would provide them the means to accomplish the substantive policy changes they wanted, and to accomplish them sooner. They were able to exercise much greater control over the content—to frame the proposal exactly as they wished—and get an up-or-down vote on it, without the political compromises and incrementalism usually inherent in the legislative process. As a result, advocates were able to propose much bolder changes—in degree and in kind—than they realistically would have proposed or been able to obtain in legislation. And winning ballot measures—especially initiatives—have features that legislation typically lacks that seem to contribute to making them more durable, including the fact that they have been expressly approved by the voters.

But ballot measures have drawbacks as well. They are in many ways higher-stakes endeavors than legislation. It takes one lawmaker to introduce a bill, compared to the thousands of signatures needed to qualify for the ballot. Moreover, there are a limited number of "targets" (decisionmakers) to communicate with and persuade in a legislative campaign, and they can often be persuaded by a small cadre of advocates with a representative demonstration of grass roots support. In contrast, ballot campaigns require communications with many more "targets" (voters), and grass roots support cannot be merely symbolic or representative—it must be broad and it will be tested on election day. Moreover, compared to legislation, losing a ballot measure is usually higher-profile and carries more risk of political setback. There are also legitimate concerns about

the wisdom of lawmaking by ballot and its cumulative effects. Ballot initiatives in particular limit the legislature's ability to weigh a proposal against competing needs and priorities, and may not produce sound public policy. And the fact that ballot measures may be legally or politically harder to change may make them harder than legislation to correct if they produce unintended effects.

In the end, however, although ballot measures require a significant investment of resources and are not without risk, they are often attractive alternatives to legislation for advocates seeking significant ECE/AS advances.

Ingredients for a Winning Ballot Campaign

More often than not, the ECE/AS advocates who have mounted ballot campaigns have met with success at the polls. However, there have also been disappointments. Based on the analysis in this report and the interviews with key supporters of eight of the ECE/AS ballot measures, both the wins and the losses are instructive, and some lessons emerge for how to maximize a campaign's chances for electoral success.

The key ingredients for mounting a successful campaign include effective assessment of legal considerations, a political-campaign approach that includes hiring professionals and raising significant sums of money, a well-developed and popular proposal, good timing, and an effective mobilization of supporters that includes early coalition-building and well-designed and well-implemented communications and grass roots organizing strategies.

- **Legal Considerations.** Every phase and aspect of ballot campaigns—from determining what ballot options are available, to drafting a measure that will withstand challenge and navigating the qualification requirements, to fundraising and otherwise assessing the degree to which an advocate's organization can and should be involved in a ballot campaign—raise legal issues that advocates must consider and address. As an initial matter, ECE/AS advocates must assess whether and what types of ballot measures are permitted in their jurisdiction and the legal requirements for initiating and advancing the desired measure. In addition, and especially if advocates work for a non-profit, charitable organization, there may be organizational legal issues to consider, such as whether a high level of involvement in a ballot campaign runs afoul of any state or federal requirements.

- **A Political-Campaign Approach.** Ballot campaigns are no place for amateurs. Advocates may be adept at navigating their legislature, but a ballot campaign is a political campaign, and it must be waged as such. That means hiring the requisite professionals early on, especially political professionals, and it means raising much more money than ECE/AS advocates may be accustomed to raising for other advocacy campaigns. Campaign professionals play an important role in developing overall campaign strategy and managing the campaign, including by directing communications, fundraising, and voter-turnout activities. To raise the kind of money needed to hire professionals, gather the signatures needed to place the measure on the ballot, and wage an effective campaign,

there is a particular need for "heavy hitters" who will contribute substantially themselves and raise funds from other large contributors.

- **A Well-Developed and Popular Proposal.** In light of the significant investment and effort entailed in waging a ballot campaign, advocates should make full use of the opportunity to pursue the policies and programs that they really want. They should draft the ballot measure with both voter support and implementation in mind, heeding the lessons of the particular campaigns studied in this report, so that victory is both attainable and meaningful. They should use early polling and, if possible, focus groups to test the measure's appeal and to craft messages to support it. The proposed measure needs to garner a very high level of initial public support, preferably at 65% or higher, because once the measure is unveiled, that support can be eroded by criticism or opposition. Perhaps surprisingly, it is not at all clear that a prerequisite for public support is prior public awareness of ECE or AS issues—the ballot campaign itself may provide the means of expanding public awareness.

- **Good Timing.** Assuming the proposal is well-developed and has broad support, an essential next part of the calculation is deciding the best time for a vote. This calculus involves strategically combining what is learned about particular voters' support for, or opposition to, the proposal with what is known about voting patterns and election-cycle options. Factors to be weighed include how many and which types of voters turn out for what types of elections and what the likely impact will be if there are other issues on the ballot at the same time. The goal is to identify likely supporters and assess other demographics that can help predict which election cycle is likely to attract the most supporters and least opponents and try to time the proposal's appearance on the ballot accordingly.

- **Effective Mobilization of Supporters.** A successful campaign must engage in smart coalition-building from the very start—beginning with developing and drafting the ballot proposal. The process used from the onset can have a large effect not only on the content of the measure but also the ways in which the internal and external politics of the campaign play out, including the likelihood that a broad group of individuals and organizations will actively support and actually campaign for the measure. In addition to seeking the input and buy-in of supporters early on, it is crucial to anticipate and take steps to win over or neutralize potential opponents. The ECE/AS ballot campaigns that were successful at the ballot box also often had an effective, well-connected "champion" leading the charge, someone who was passionate about the issue, was a credible spokesperson, and had business or political connections that could be parlayed into concrete expressions of support. At the same time, these campaigns worked to make their efforts as bipartisan or nonpartisan as possible. Finally, effective mass communication efforts and grass roots organizing were essential to the success of most ballot campaigns, although in some instances a strong communications effort compensated for weak grass roots organizing, and vice versa.

Conclusion

The costs of spearheading a ballot campaign in both time and money are sizeable, and losing at the polls can have repercussions beyond election day. However, ECE/AS ballot measures have a good record of prevailing at the polls, and when they do, they can be remarkably effective both in generating increased public investments in ECE/AS programs and protecting newly allocated funds from being raided or used simply to supplant previous spending. The time and money required to win a ballot measure, stacked up against the money and stability that can result from passage, reveal that ballot measures can be not only a cost-effective but highly profitable approach, and thus a potentially valuable tool in the strategic arsenal of ECE/AS advocates. For advocates who undertake such an effort, there is much to learn from those who have been through ballot campaigns. Heeding these lessons will significantly enhance the possibility that an ECE/AS ballot proposal is successful, both on election day and beyond.

ECE/AS Ballot Measures Studied*

Name & Jurisdiction	Type of Measure	Election Date	Outcome	Brief Description	Funding Mechanism	Implementation Status
Florida Children's Services Councils (CSCs)	Statutory referendums (except Miami-Dade was a charter amendment referendum)	Oldest in 1946 (Pinellas), most recent in 2002 (Miami-Dade, with 2008 sunset)	8 referendums passed; 10 referendums failed	Fund, as part of wide range of children's services, child care-related, school-readiness, and/or after-school programs to varying degrees.	Half-mill property tax levy, except Pinellas and Palm Beach County, which sought from the voters and won increase to one mill.	Fully implemented. Vary in amount of funding and allocations; e.g., Broward spent 37% of its $25.2 million in 2003 on "out-of-school" programs and 15% on child care and school readiness programs.
Seattle Families & Education Levy	Statutory referendum	1990 with 7-year sunset (renewed in 1997; and again in 2004)	Passed 56%–44% (1997: passed 61%–39%. 2004: passed 62%–38%)	Funds early childhood development, including child care, preschool, and out-of-school activities, as well as school-based services. (2004 renewal places greater emphasis on ECE and includes career wage ladder program for ECE teachers from defeated 2003 Seattle Latte Tax initiative).	Property tax levy of nearly a quarter-mill, up to a maximum of $69.2 million over 7 years. (1997 renewal maximum was also $69 million but 2004 renewal increased maximum to nearly $117 million over 7 years. No specific millage rate was specified in the two renewal measures.)	Fully implemented. In 2003, about $1.5 million was allocated for child care programs, including subsidies for low-income families, teacher training, and school-age care, and about $1.3 million was allocated for after-school-related activities.
Aspen Affordable Housing/Day Care	Statutory referendum	1990 with 10-year sunset (renewed in 1999)	Passed 53%–47% (1999: passed 66%–34%)	Funds "day care" services such as financial aid for parents, grants for infant and toddler care, several quality improvements, in-home care start-up help, and resource and referral.	Sales tax increase of .45%.	Fully implemented. Generated over $10 million for ECE in 1994–2004.
San Francisco Children's Fund	City charter amendment initiative	1991 with 10-year sunset (renewed in 2000 with 15-year sunset)	Passed 54%–46% (2000: passed 73%–27%)	Funds broad range of children's services, including ECE/AS programs, with required allocation of 25% for child care for first 4 years.	Set-aside of 2.5¢/$100 of property taxes for Children's Fund, and "base amount" of spending on children's services required from general funds. (Renewal by referendum increased set-aside to 3¢/$100 and strengthened baseline budget.)	Fully implemented. No breakdown of expenditures on ECE/AS programs is available, but in FY 2002–2003, of the $85.5 million in combined Children's Fund/Baseline Budget funds, about $16 million was budgeted for ECE programs (amount for AS programs unavailable).
California Proposition 10	Statutory initiative	1998	Passed 50.5%–49.5%	Funds wide range of early childhood development programs, with 3% of state commission's 20% share of total funds reserved for ECE. Key ECE components include quality improvements (education, training for child care providers) and increased access to child care services.	Dedicated 50¢-per-pack tobacco tax. 20% of revenues allocated to state commission and 80% allocated to county commissions.	Fully implemented. No breakdown of expenditures on ECE programs is available, but in FY 2001–2002, the state commission appears to have spent $19 million on ECE-related programs, and in FY 2002–2003, county commissions spent more than $11.2 million on ECE programs.
Alabama Lottery	Constitutional amendment referendum	1999	Failed 54%–46%	Proposed to first "fully fund" college scholarships, then to "fully fund" voluntary pre-kindergarten.	Proceeds from state lottery.	N/A
Colorado Pre-K-12	Constitutional amendment initiative	2000	Passed 53%–46%	Increases annual per-pupil spending for grades pre-kindergarten–12 by inflation+1% for 10 years (and at inflation rate thereafter), and increases general fund appropriations by at least 5%/year, with escape hatch. Also permits use of earmarked funds to expand preschool availability.	Set-aside of state revenue equal to .33% of federal taxable income in the state plus general fund appropriation.	Fully implemented. Resulted in base per-pupil spending increases for preschool of inflation+1% annually through FY 2005–2006. Also resulted in the addition of 1,000 preschool slots over two years for FY 2001–2002 and FY 2002–2003, temporarily suspended for next two years, but restored and increased by 1,310 slots in FY 2005–2006. All increases paid for in part out of increase in general education fund appropriation by at least 5% in every year except FY 2002–2003.

Name & Jurisdiction	Type of Measure	Election Date	Outcome	Brief Description	Funding Mechanism	Implementation Status
2000 Denver Kids' Tax	Statutory referendum	2000	Failed 56%–44%	Proposed to fund health services, early education, and after-school programs.	Sales tax increase of .2% for 10 years.	N/A
2001 Denver Kids' Tax	Statutory initiative	2001	Failed 62%–38%	Proposed to fund services for "unattended children" (defined in ordinance but not on ballot as child care and after-school programs).	Sales tax increase of .2% for 10 years.	N/A
Tennessee Lottery	Constitutional amendment referendum	2002	Passed 57%–43%	First funds post-secondary school scholarships; any excess net proceeds go to capital outlays for education facilities and early learning and after-school programs.	Proceeds from state lottery.	Partially implemented. Lottery launched Jan., 2004 and generated $296 million in net proceeds and small additional amount in unclaimed prize monies by FY 2004–2005; no appropriation of these proceeds was made for ECE/AS until FY 2005–2006, when a maximum of $25 million was allocated for pre-kindergarten and $4 million for after-school programs.
California Proposition 49	Statutory initiative	2002	Passed 57%–43%	Establishes funding floor for after-school programs; requires funding of up to $550 million subject to specified growth in general, non-education fund appropriations.	Set-aside from general funds other than those already earmarked for education.	Partially implemented. Funding floor took effect in FY 2004–2005, but as of mid-2005 funding increases not yet triggered by sufficient growth in general fund appropriations.
Florida Universal Pre-Kindergarten (UPK)	Constitutional amendment initiative	2002	Passed 59%–41%	Requires state to provide free, voluntary, high-quality pre-kindergarten to all 4-year-olds.	To be determined by legislature, but must not use funds allocated as of 1/1/02 for child or adult education, health care, or development programs.	Takes effect beginning in 2005–2006 school year. State legislature passed implementing legislation at the end of 2004 and appropriated $378.1 million for FY 2005–2006.
Portland Children's Investment Fund	Statutory referendum	2002 with 5-year sunset	Passed 53%–47%	Funds "cost-effective, proven" programs for child care and early education, after-school and mentoring, and child abuse prevention.	Property tax increase of $.4026/$1,000 in property value.	Fully implemented. Generated $8.7 million in available program funds in FY 2003–2004, of which $1.6 million was allocated for child care and $2.2 million for after-school programs in first year.
Seattle Latte Tax	Statutory initiative	2003	Failed 31%–69%	Proposed to fund several programs to improve child care quality and help reduce its cost, and expand pre-kindergarten.	10¢-per-espresso drink tax.	N/A

*Measures in italics are those on which in-depth interviews with key supporters of the measure were conducted.
The eight wins include Miami-Dade County, in which the referendum passed in 2002; the ten losses include Pasco County, in which the CSC referendum failed twice, and Miami-Dade County, in which the referendum failed once (in 1988).

I. INTRODUCTION

A. Purpose of the Report

As workers and as parents, women have a tremendous stake in public policies that will expand and improve early care and education and after-school programs. Access to affordable, high-quality child care is critical to women's ability to participate and be productive in the paid labor force and essential to their children's development and well-being. Nonetheless, high-quality child care is too often unaffordable or simply unavailable, and the public investment needed to address these problems has been insufficient.

Child care programs are chronically underfunded. The Child Care and Development Block Grant[1] is the most significant source of federal support for child care. It provides federal funds to the states to help low- and moderate-income families pay for child care. However, it reaches only one in seven children who are eligible to receive assistance.[2] Similarly, despite the longstanding, recognized effectiveness of the Head Start program[3] in providing young children with comprehensive early education and support services, it reaches only about half of eligible preschoolers,[4] and Early Head Start, targeted to children ages three and under, reaches only 3% of eligible infants and toddlers.[5] After-school programs also reach only a fraction—about 6.5 million—of the children who need them.[6] The parents of another 15 million-plus children say they

[1] Child Care and Development Block Grant Act of 1990, 42 U.S.C. §§ 9858–9858q (2004).
[2] National Women's Law Center calculations based on data on the number of children served from U.S. Office of Management and Budget, Analytical Perspectives, Budget of the United States Government, Fiscal Year 2005, at 361, Table 24.4: Beneficiary Projections for Major Benefit Programs (2004), and data on the number of children eligible from Office of the Assistant Secretary for Planning and Evaluation, U.S. Dep't of Health and Human Services, as presented by Julie B. Isaacs at the State Administrators Meeting in Washington, D.C., Aug. 13, 2001.
[3] Head Start Act, 42 U.S.C. §§ 9831-9852 (2004).
[4] National Women's Law Center calculations based on data on the number of preschoolers served by the Head Start program from the Head Start Bureau, U.S. Dep't of Health and Human Services, Head Start Program Fact Sheet, Fiscal Year 2003 (2004), *available at* http://www.acf.dhhs.gov/programs/hsb/research/2004.htm (last visited Apr. 12, 2005) [hereinafter FY 2003 Head Start Fact Sheet], and data on the number of poor three- and four-year-olds from the Bureau of the Census, U.S. Dep't of Commerce, Current Population Survey, 2004 Annual Social and Economic Supplement, Table POV34: Single Year of Age—Poverty Status: 2003, *available at* http://ferret.bls.census.gov/macro/032004/pov/new34_100_01.htm (last visited Apr. 12, 2005).
[5] National Women's Law Center calculations based on data on the number of infants and toddlers served by the Early Head Start program, FY 2003 Head Start Fact Sheet, *supra* note 4, and data on the number of poor children under age three from the Bureau of the Census, U.S. Dep't of Commerce, Current Population Survey, 2004 Annual Social and Economic Supplement, Table POV34: Single Year of Age—Poverty Status: 2003, *available at* http://ferret.bls.census.gov/macro/032004/pov/new34_100_01.htm (last visited Apr. 12, 2005).
[6] *See* Afterschool Alliance, America After 3 PM: A Household Survey on Afterschool in America, Executive Summary 2, 4 (2004), *available at* http://afterschoolalliance.org/press_archives/america_3pm/Executive_Summary.pdf (last visited Apr. 12, 2005).

want and would enroll their children in after-school programs if a program were available in their community.[7]

Understandably, advocates are searching for successful ideas and strategies that can help to maintain and expand hard-won investments in early care and education and after-school programs. Ballot measures—policy proposals submitted to the voters for adoption—on topics such as taxes, election reform, gambling, and social issues have been a familiar fixture of elections in many states for 100 years. However, not until relatively recently have advocates for families with children stepped into this arena and begun utilizing the ballot process to generate increased financial resources for child care, preschool, and after-school programs.

Over the past seven years in particular, advocates in several jurisdictions from Seattle, Washington to the state of Florida have increasingly taken their case directly to the public—in the form of ballot initiatives and referendums. Although much has been written for and against ballot measures generally,[8] and a few reports have analyzed specific child care, preschool, and after-school programs measures,[9] no source has yet examined these measures as a group to assess their effectiveness as an advocacy strategy in support of child care, early education and after-school programs for children and youth.[10]

The purpose of this study is to analyze ballot campaigns on child care, early education, and after-school programs in an effort to determine whether and, if so, how advocates for women, children, and families should use the ballot to pursue their policy agendas. This report is not intended to be a "how-to manual" or step-by-step guide on how to run a ballot campaign; for that, there are many good resources and political consultants available.[11] Rather, this report will assess whether ballot measures are a worthwhile strategy for advancing the early care and education and after-

[7] *Id*. at 3.

[8] *See, e.g.*, David Schmidt, *Citizen Lawmakers: The Ballot Initiative Revolution* (1991) (for) [hereinafter *Citizen Lawmakers*]; David Broder, *Democracy Derailed*: *Initiative Campaigns and the Power of Money* (2000) (against) [hereinafter *Democracy Derailed*].

[9] *See, e.g.*, Erin C. O'Hara, Afterschool Alliance, Winning Combinations: The Passage Of Proposition 49 (undated), *available at* http://www.afterschoolalliance.org/prop_49_paper.doc (last visited Apr. 12, 2005) [hereinafter Winning Combinations]; Jim Hampton, Foundation for Child Development, How Florida's Voters Enacted UPK When Their Legislature Wouldn't (2003), *available at* http://fcd-us.org/news/publications.html (last visited Apr. 12, 2005) [hereinafter Florida's Voters]; Margaret Brodkin & Coleman Advocates for Children and Youth, From Sand Boxes to Ballot Boxes: San Francisco's Landmark Campaign to Fund Children's Services (1994) [hereinafter Sand Boxes]; Coleman Advocates for Children and Youth, Making a Difference for San Francisco's Children: The First Nine Years of the Children's Amendment (undated) [hereinafter First Nine Years].

[10] A few publications have discussed early care and education and after-school ballot measures but not provided detailed analysis. *See, e.g.*, Anne Mitchell & Louise Stoney, Alliance on Early Childhood Finance, Public Engagement: Are Ballot Initiatives an Effective Tool to Raise Funds for Early Care and Education (2004), *available at* http://www.earlychildhoodfinance.org/handouts/4.pdf (last visited Apr. 12, 2005); Anne Mitchell, Louise Stoney & Harriet Dichter, Financing Child Care in the United States: An Expanded Catalogue of Current Strategies, 2001 Edition 15–26 (2001), *available at* http://www.kauffman.org/pdf/childcare2001.pdf (last visited Apr. 12, 2005) [hereinafter Financing Child Care].

[11] The Ballot Initiative Strategy Center, for example, provides training and technical assistance, *see* Ballot Initiative Strategy Center, About Us: Major Programs, *available at* http://www.ballot.org (last visited Sept. 27, 2005), as well as a list of campaign consultants, *see* Ballot Initiative Strategy Center, Campaign Resources: Consultants, *available at* http://www.ballot.org (last visited Apr. 12, 2005). Selected resources for advocates are listed in Appendix B.

school agenda by examining whether some proposals are more successful on the ballot than others, evaluating what the winners have accomplished and whether they have been successful in increasing ECE/AS investments over the long term, weighing how those accomplishments stack up against the costs of achieving them, and comparing some of the advantages and disadvantages of ballot measures with legislation. Drawing on advocates' collective experiences in these ballot campaigns, the report also identifies some of the key ingredients for a winning campaign. The hope is that this analysis will help advocates weigh whether to mount a ballot campaign, and if so, how to increase the likelihood of success.

B. Scope of the Report and Brief Description of Ballot Measures Studied

This report examines several ballot measures aimed at improving the quality, affordability, and availability of programs that provide children and youth with care and enrichment for those hours when they are not in the care of parents and not in school (kindergarten – grade twelve). There is not yet a consensus about a single umbrella term that encompasses child care, early education, and out-of-school youth programs, so in this report, early care and education (ECE) and before- and after-school (AS) programs and issues will be collectively referred to as ECE/AS programs and issues, for short.

While not exhaustive, this inquiry encompasses most of the measures that have appeared on the ballot through 2003 in which increased investment in ECE/AS programs was either central to the measure's purpose—the engine that drove the measure[12]—or at least a significant component of a more comprehensive proposal.[13] Thirteen separate ballot measures and a set of very similar

[12] For example, this analysis does not encompass a statewide initiative in Missouri in 2002 that would have allocated 7% of an increased tobacco tax to early care and education and the rest to health-related services. Mo., Proposition A, Tobacco Tax, § 2.3(4) (Nov. 5, 2002), *available at* http://www.sos.mo.gov/elections/2002petitions/ip200226.asp, http://www.sos.mo.gov/elections/2002ballot/2002ballotmsr.asp (last visited Apr. 12, 2005). The measure failed narrowly. Office of Sec'y of State, Mo., Ballot Issues, Official Election Returns, State of Missouri General Election, Nov. 5, 2002, *available at* http://www.sos.mo.gov/enrweb/ballotissueresults.asp?arc=1&eid=87 (last visited Apr. 12, 2005). According to one active supporter, ECE was included only because it had been included in Missouri's tobacco litigation settlement and the ballot proposal was drafted to mirror the terms of that settlement. ECE was so peripheral that ECE advocates were not at all involved and, according to some Missouri advocates, ECE issues were totally invisible during the campaign. As a result, this ballot measure would have contributed little to an analysis of whether ECE/AS ballot measures are an effective strategy.

[13] In addition, the analysis does not include two of the earliest measures and four recent measures, even though ECE/AS programs were a significant or even the main component of these proposals.

The two earliest ECE/AS ballot measures were voted on in 1989. Because the votes occurred so long ago and because both failed at the polls, the text of the proposals and other information about them were limited and difficult to obtain. The two ballot measures were:

- *Fremont, Cal.*: Measure B, a referendum, would have imposed a $12/year tax on homeowners and a 20% tax surcharge on businesses to fund "portable child care centers, subsidize day care for low-income families and provide grant money to develop innovative child care programs." Sharon McCormick, *Fremont to Vote on Child-Care Subsidy Tax*, S. F. Chron., Feb. 13, 1989, at B8. The measure needed to pass with a two-thirds majority, but failed 22%–78%. Associated Press, *City Voters Defeat Tax for Day Care*, Wash. Post, June 8, 1989, at A3.

measures in several Florida counties met these criteria. The measures analyzed include both initiatives and referendums, and statewide as well as local measures.

footnote cont'd

- *Washington*: In 1989, Washington state voters rejected an initiative, the Children's Initiative (I-102), that would have raised the sales tax to fund a variety of services and programs for children, reportedly including child care. *See* Sand Boxes, *supra* note 9, at 17; John Carlson, *Do Higher Sales Taxes = Better Schools*, King County Journal, Feb. 8, 2004.

The four recent ballot measures included two San Francisco referendums, a referendum in Oklahoma and an initiative in Washington that were voted on after the research for this report was well along or nearing completion:

- *San Francisco, Cal.*: In November 2003, San Francisco voters approved with 60% of the vote, City & County of San Francisco, Cal., Dep't of Elections, Election Results, Consolidated Municipal Election, Nov. 4, 2003, *at* http://sfgov.org/site/election_index.asp?id=19601 (last visited Mar. 23, 2005), Proposition I, a statutory referendum that requires the City to establish a new "Smart Start" program to help certain low-income families pay for child care and preschool for children ages three to five. San Francisco, Cal., Proposition I, Child Care for Low Income Families, *in* Dep't of Elections, City & County of San Francisco, Voter Information Pamphlet: Consolidated Municipal Election, Nov. 4, 2003, at 125–130 (2003) (authorized by San Francisco, Cal., Initiated Ordinance Proposed by Four Supervisors (Aug. 4, 2003) (codified at San Francisco Admin. Code art. V, §§ 20.100–20.107 (2004)), *available at* http://sfpl.org/pdffiles/November4_2003.pdf (last visited Sept. 29, 2005) [hereinafter Proposition I Full Text]. The program is funded by an earmark of annual, automatic appropriations from general funds, *id*. at 130, and is separate from the San Francisco Children's Fund initiative that is analyzed in this report, *see infra* notes 56–70 and accompanying text. Unlike the latter measure, which amended the City Charter, the mayor and city council retain the power to amend or repeal the 2003 referendum. Proposition I Full Text, *supra.*
- *San Francisco, Cal.*: In March 2004, San Francisco voters approved with 71% of the vote, City & County of San Francisco, Cal., Dep't of Elections, Election Results, Consolidated Primary Election, Mar. 2, 2004, *at* http://sfgov.org/site/election_index.asp?id=20232 (last visited Apr. 12, 2005), Proposition H, a charter amendment referendum to increase city spending on public education out of general funds over an eleven-year period. San Francisco, Cal., Proposition H, Public Education Fund, *in* Dep't of Elections, City & County of San Francisco, Voter Information Pamphlet: Consolidated Primary Election, Mar. 2, 2004, at 86 (2004) (authorized by San Francisco, Cal., Proposed Charter Amendment, File No. 031405 (Nov. 4, 2003) (amending San Francisco Charter art. XVI, §§ 16.123–1 to 16.123–10 (2004)), *available at* http://sfpl.org/pdffiles/March2_2004.pdf (last visited Apr. 12, 2005) [hereinafter Proposition H Full Text]. One-third of the increased spending is required to be funneled to the County's First Five Commission (created by the earlier Proposition 10 initiative that is analyzed in this report, *see infra* note 77 and accompanying text), earmarked for preschool programs. Proposition H Full Text, *supra.*
- *Washington*: In November 2004, Washington voters rejected an initiative that would have raised state sales taxes by one percentage point in order to fund education from preschool through college. Washington, Complete Text of Initiative Measure No. 884, *in* Wash. Sec'y of State, 2004 Online Voters' Guide: Measures (2004), *available at* http://www.secstate.wa.gov/elections/guide/text/884.pdf. (last visited Apr. 12, 2005) [hereinafter Measure 884 Full Text]. The initiative lost by a vote of 60% against, 40% for. Wash. Sec'y of State, Washington State 2004 General Elections: Measures Results (2004), *available at* http://vote.wa.gov/general/measures.aspx (last visited Apr. 12, 2005). In particular, the initiative would have created a new Great Beginnings Preschool Partnership Program to help fund and improve the quality of preschool for low-income children. Measure 884 Full Text, *supra.*
- *Oklahoma*: In November 2004, Oklahoma approved two referendums, State Question 705, Oklahoma, State Question 705 (authorized by Enrolled H.B. 1278, 49th Leg., Reg. Sess. (Okla. 2003) (codified at Okla. Stat. tit. 3A, §§ 701–735 & as amended at tit. 21, §1051 (2004)), *available at* http://www.sos.state.ok.us/documents/Questions/705.pdf (lasted visited Mar. 8, 2005) [hereinafter Question 705 Full Text], and State Question 706, Oklahoma, State Question 706 (authorized by S.J. Res. 22, 49th Leg., Reg. Sess. (Okla. 2003) (amending Okla. Const. art. X (2004)), *available at* http://www.sos.state.ok.us/documents/Questions/706.pdf (last visited Mar. 8, 2005), creating a state lottery to fund education, including early learning programs. State Question 706 amended the state constitution to create an Education Lottery Trust Fund and specified that "early childhood development programs" be among the ten education-related programs funded. *Id*. at § 1 (amending Okla. Const. art. X, § 41(B)(2)). The state legislature was left in charge of appropriating the funds, but the referendum prohibited the use of the new lottery funds to supplant existing education funding. *Id.* (amending Okla. Const. art. X, § 41(C). State Question 705 was a statutory referendum that created the lottery apparatus. Question 705 Full Text *supra*. Both measures were approved by a 2:1 margin. Okla. State Election Bd., General Election, November 2, 2004, Summary Results (2004) *available at* http://www.state.ok.us/~elections/04gen.html (last visited Sept. 29, 2005).

Finally, it is difficult to track local initiatives and referendums, so not all of them may have been uncovered.

Below is a brief description, in chronological order, of the ballot measures examined for this report. (A chart that summarizes the key facts and provisions of each measure is part of the Executive Summary.)

1. Florida Children's Services Council Referendums

In 1986, the Florida legislature passed a law authorizing counties to create independent "special taxing districts" that can levy property taxes solely for the purpose of funding children's services.[14] The first step is for the county to adopt an ordinance to create a council with the authority to levy a small increase in the property tax annually in order to fund children's services.[15] However, to establish the taxing district, the property tax levy must be approved by county voters via a referendum.[16] Once the referendum is approved, the Children's Services Council (CSC) and its funding stream become wholly independent of the county: the funds are paid directly to a separate account for the CSC to spend for the services it designates.[17]

Over the years, very similar referendums to create CSCs have been voted on in eighteen elections in sixteen Florida counties, with mixed success. (The CSCs have different names in different counties, but in this report are referred to generically as Florida CSCs.) In nine counties (and

[14] 1986 Fla. Laws ch. 86-197 (codified as amended at Fla. Stat. ch. 125, § 125.901 (2004)) [hereinafter CSC Statute]. Pinellas County received special authorization from the state legislature to create a taxing district for children's services in 1945, Act of June 11, 1945, 1945 Fla. Laws ch. 23483 [hereinafter Original Pinellas Statute], but it was not until 1986 that this authority was bestowed on all counties. *See* Financing Child Care, *supra* note 10, at 15.

[15] *See* CSC Statute, *supra* note 14, § 125.901(1). In general, it is the counties that create the CSCs; however, in Broward county, the Florida state legislature created the CSC, Act of June 7, 2000, 2000 Fla. Laws ch. 2000-461, as it had earlier done for Pinellas county, Original Pinellas Statute, *supra* note 14. In Florida, the legislature can bypass the county commission and adopt "local laws"—laws that apply only to one locality. *See* Fla. Const. art. III, § 10 (2004). In Pinellas and Broward, those "local" laws created the CSC and directed the placement on the ballot of the referendums creating the special taxing districts. Pinellas and Palm Beach counties were also able to increase their CSC levies to one mill (a tax rate equal to $1 for every $1,000 of property value), which is higher than the statutory limit of a half-mill (a tax rate equal to 50 cents for every $1,000 of property value) imposed by the state CSC legislation, *see* CSC Statute, *supra* note 14, § 125.901(3)(b), by convincing the legislature to adopt a "local" law exception to that state law. *See* Act of May 23, 1979, 1979 Fla. Laws ch. 79-555, § 2 (codified as amended at Pinellas County, Fla., Code of Ordinances art. 6, § 2-239 (1995) (Pinellas); Act of June 7, 2000, 2000 Fla. Laws ch. 2000-433, § 1 (codified at Palm Beach County, Fla., Code of Ordinances § 2–42 (2004)) (Palm Beach). These increases were then submitted to and approved by the voters. *See* Children's Services Referendum, Official Ballot, Juvenile Welfare Board of Pinellas County Referendum Election (Sept. 4, 1990) (authorized by Act of May 23, 1979, 1979 Fla. Laws ch. 79-555, § 3) (Pinellas) [hereinafter Pinellas CSC Increase]; Children's Services Council of Palm Beach County Referendum, Official Ballot, General Election (Nov. 7, 2000) (authorized by Act of June 7, 2000, 2000 Fla. Laws ch. 2000-433, § 2 (codified at Palm Beach County, Fla., Code of Ordinances § 13-105 (2004)) (Palm Beach) [hereinafter Palm Beach CSC Increase].

[16] CSC Statute, *supra* note 14, § 125.901(1). There are many county Children's Services Councils in Florida, but not all of them have created special taxing districts and won referendums to levy property taxes in order to fund services for children. Those that have not created special taxing districts are subject to the control of their county commission and are supported with county funds using the regular budget process. Telephone Interview with harry a. yates [*sic*], Executive Director, Children's Services Council of Martin County (Mar. 10, 2004).

[17] *See* CSC Statute, *supra* note 14, § 125.901(3)(c)–(e).

ten elections), the electorate voted down the referendum.[18] (One county, Pasco, rejected the referendum twice.) In eight counties (and eight elections), voters approved the referendum.[19] (Miami-Dade County is counted as both a winner and a loser: voters there rejected the referendum in 1988, but approved it in 2002.[20])

[18] The ten counties in which CSC referendums were defeated are: Polk, Polk County, Fla., Polk County Supervisor of Elections Office, County Referendums, Juvenile Welfare Board, General Election, November 4, 1986 [hereinafter Polk Results]; Sarasota, Sarasota County, Fla., Supervisor of Elections, Creation of Juvenile Service District, General Election and Special Elections, Sarasota County, Florida, November 4, 1986 [hereinafter Sarasota Results]; Pasco (twice), Pasco County, Fla., Pasco County Supervisor of Elections, Pasco County Children's Services Council Ad Valorem Tax Authorization, General Election, Pasco County, Florida, November 6, 1990 [hereinafter Pasco 1990 Results]; Pasco County, Fla., Pasco County Supervisor of Elections, Pasco Children's Services Council Ad Valorem Tax Authorization, Presidential Preference Primary, Pasco County, Florida, March 10, 1992 [hereinafter Pasco 1992 Results]; Duval, Duval County, Fla., Duval County Supervisor of Elections, Special Ref. No. 1—Fund "Save Our Children Act," Final Duval County, General Election, Duval County, Florida, November 6, 1990 [hereinafter Duval Results]; Leon, Leon County, Fla., Leon County Supervisor of Elections Office, Leon County Children's Services Council Ad Valorem Tax Authorization, Sample Ballot, Special Property Tax Millage Referendum, Leon County, Florida, May 8, 1990 [hereinafter Leon Results]; Lee, Lee County, Fla., Lee County Supervisor of Elections, Children's Services Funding, Referendum Archives, Local Taxes (undated) [hereinafter Lee Results]; Collier, Collier County, Fla., Collier County Supervisor of Elections, Children's Services Tax, County Wide Elections, 1958 to Present, Referenda Issues (undated) [hereinafter Collier Results]; Miami-Dade, Miami-Dade County, Fla., Miami-Dade County Elections Dep't, County Question, Independent Juvenile Welfare Special District, General Election, 11/8/88 [hereinafter Miami-Dade 1988 Results]; and Alachua, Alachua County, Fla., Alachua County Supervisor of Elections, Support for Children—Authority to Levy One-Half Mill Ad Valorem Taxes, Official Election Results, November 5, 2002, Alachua County, All Races, All Precincts Including All Legal Ballots, after Manual Recount [hereinafter Alachua Results].

[19] The eight counties in which CSC referendums were approved are Pinellas, *see* Juvenile Welfare Board Referendum, *in* Minutes of Juvenile Welfare Board, Pinellas County, Fla. (undated) (on file with National Women's Law Center) [hereinafter Pinellas Results]; Palm Beach, Palm Beach County, Fla., Palm Beach County Supervisor of Elections, Children's Services Council, General Election, November 4, 1986, Palm Beach County, Florida [hereinafter Palm Beach Results]; Hillsborough, Hillsborough County, Fla., Hillsborough County Supervisor of Elections, Children Services Authority Referendum, Cumulative Results, Second Primary Election, Hillsborough County, Florida, October 4, 1988 [hereinafter Hillsborough Results]; Martin, Martin County, Fla., Martin County Supervisor of Elections, County Propositions, #12, Children's Services, Record of Elections by Precinct, Martin County, Florida, General Election, November 8, 1988 [hereinafter Martin Results]; St. Lucie, St. Lucie County, Fla., St. Lucie County Supervisor of Elections, Referendum—Children's Services Council of St. Lucie County Ad Valorem Authorization, Unofficial Cumulative Report, Second Primary Election, Tuesday, October 2, 1990, St. Lucie County, Florida [hereinafter St. Lucie Results]; Okeechobee, Okeechobee County, Fla., Okeechobee County Supervisor of Elections, Children's Services Council of Okeechobee County Ad Valorem Authorization, Record of Elections by Precinct, Okeechobee County, Florida, General Election, November 6, 1990 [hereinafter Okeechobee Results]; Broward, Broward County, Fla., Broward County Supervisor of Elections, Creation of Children's Services Council of Broward County and Authorization of Taxation, Cumulative Votes Cast, Primary Election, Broward County, Florida, September 5, 2000 [hereinafter Broward Results]; and Miami-Dade, Miami-Dade County Elections Dep't, County Question 13, Amendment to Name "The Children's Trust," Votes Cast, Primary and Special Elections, Miami-Dade County, Florida, September 10, 2002 [hereinafter Miami-Dade Results]. As previously described, the voters also approved second referendums in Pinellas and Palm Beach Counties that increased the amount of their levies. Pinellas County, Fla., Pinellas County Supervisor of Elections, Juvenile Welfare Board of Pinellas County, Referendum Election, Children's Services Referendum, Certificate of County Canvassing Board, State of Florida, Pinellas County (Sept. 4, 1990) [hereinafter Pinellas 1990 Results]; Palm Beach, Palm Beach County, Fla., Palm Beach County Supervisor of Elections, Children's Services Council, General Election, Palm Beach County, Fla., November 7, 2000. [hereinafter Palm Beach 2000 Results].

[20] *Compare* Miami-Dade 1988 Results, *supra* note 18, *with* Miami-Dade Results, *supra* note 19.

By statute, the CSCs have discretion to fund a broad array of "preventive, developmental, treatment, and rehabilitative services for children."[21] The Miami-Dade CSC referendum, for example, proposed to use its levy proceeds to fund "improvements to children's health, development, and safety" and to "promote parental and community responsibility for children."[22] Similarly, the Broward County CSC was charged by its referendum to "fund the improvement of children's developmental, health, and other children's services…."[23] As part of their expansive mandates, all of the CSCs fund child care-related programs, school-readiness programs, and/or after-school programs to varying degrees.[24] For instance, the Broward County CSC in 2003 spent about 37% of its $25.2 million on "out-of-school" programs and about 15% on child care and school readiness programs.[25] Further, the state legislation authorizing CSCs specified that the levy, once approved, is permanent and need not be renewed by the voters,[26] and that "it is the intent of Legislature" that the funds raised and spent by virtue of any CSC referendum are not to be used to "substitute for existing resources…that would otherwise be available for children's services."[27] Nonetheless, one of the CSC referendums, in Miami-Dade County, contained a self-imposed sunset provision.[28] It is also the only CSC referendum to specifically include a provision that the funds raised by the property tax levy be used "to supplement current county expenditures for children's services."[29]

[21] CSC Statute, *supra* note 14, § 125.901(2)(a).

[22] Miami-Dade County, Fla., County Question 13, Charter Amendment: Children's Trust for Children's Health, Safety and Development, Miami-Dade Supervisor of Elections, Sample Ballot, Primary Election (Sept. 10, 2002) (authorized by Miami-Dade County, Fla., Res. R-552-02 (2002))[hereinafter Miami-Dade CSC Ballot Question]. The ballot question read as follows:

> Shall the Charter be amended to name the Independent Special District for Children's Services "The Children's Trust" with authority to: fund improvements to children's health, development and safety; promote parental and community responsibility for children; levy an annual ad valorem tax not to exceed one-half (1/2) mill to supplement current County expenditures for children [sic] services (this levy requires voter renewal in 2008); and have membership provided in state law for home rule charter counties?

Id.

[23] Broward County, Fla., County Referendum, Creation of Children's Services Council of Broward County and Authorization of Taxation, Official Ballot, Primary Ballot (Sept. 5, 2000) (authorized by Act of June 7, 2000, 2000 Fla. Laws ch. 2000-461). The question that appeared on the ballot is illustrative of the way in which CSC referendums were typically worded: "An independent district known as 'The Children's Service [*sic*] Council of Broward County' is created to fund the improvement of children's developmental, health, and other children's services by the levying each year of an ad valorem tax not to exceed one-half (1/2) mill for services for children." *Id*.

[24] *See* Financing Child Care, *supra* note 10, at 15 ("[c]hild care is funded by each of the boards in differing amounts…."). The annual reports of the various CSCs also reveal that they fund various ECE and/or AS services. *See, e.g.*, Children's Services Council of Broward County, CSC Accomplishments 1-2, 4 (2003), *available at* http://www.cscbroward.org/todate.cfm (last visited Apr. 14, 2005).

[25] *See* Children's Services Council of Broward County, 2003 Annual Report 7 (undated), *available at* http://www.cscbroward.org/PDFs/ARpt2003.pdf (last visited Sept. 29, 2005) [hereinafter Broward CSC 2003 Annual Report]. For further information about how some of the Florida CSCs spent their revenues, *see* Financing Child Care, *supra* note 10, at 15-18.

[26] CSC Statute, *supra* note 14, § 125.901(1).

[27] *Id*. § 125.901(8).

[28] Miami-Dade CSC Ballot Question, *supra* note 22. The Miami-Dade levy remains in effect until 2008.

[29] *Id.* The original statute authorizing the counties to create CSCs declares that "the intent of the legislature" is not to supplant local spending with CSC funds. CSC Statute, *supra* note 14, § 125.901(8).

2. Seattle Families and Education Levy Referendum: Proposition 1

In 1990, the City Council of Seattle, Washington proposed a statutory referendum that was approved by 56%[30] of the voters called the "Families and Education Levy" (hereinafter Seattle F&E Levy referendum).[31] Written to sunset after seven years, the referendum increased property taxes by about 23¢ per $1,000 of property value, with the total amount raised not to exceed $69.2 million over seven years, for the purpose of funding "educational and developmental services for students and families in conjunction with Seattle public schools…."[32] The ordinance placing the referendum on the ballot specified that "educational and developmental services" had four components: early childhood development (including child care and preschool education), school-based student/family services, comprehensive student health services, and out-of-school activities.[33] Because the levy funded some programs previously financed by the school district, the ordinance required schools to redirect funds freed up by the levy to other specific educational priorities, so that the new funds added to, rather than replaced, the total previously spent on levy-related programs.[34]

In accordance with the referendum's seven-year sunset, a proposal to renew the levy was submitted to the voters in 1997,[35] and it passed with 61% of the vote.[36] It did not contain a set millage rate,

[30] *See* King County, Wash., Records, Elections & Licensing Services Div., King County—General Election, Official Canvass, Nov. 6, 1990 (Dec. 3, 1990) [hereinafter Original F&E Levy Results].

[31] *See* Seattle, Wash., Proposition No. 1, Families and Education Levy, Official Ballot (Nov. 6, 1990) (authorized by Seattle, Wash., Ordinance 115289 (Sept. 17, 1990)) [hereinafter Original F&E Levy Ballot Question]. The question that appeared on the ballot was:

> Shall Seattle increase its regular property tax levy collected in 1991 through 1997 only, by approximately $.23438 per thousand dollars of assessed valuation, over the 106% limitation on levies (the increase thereafter to cease) in order to provide about $69,207,000 ($8,500,000 in 1991) for educational and development services for students and families in conjunction with Seattle public schools, all as described in Ordinance 115289?

Id.

[32] *Id.* The actual rate was $.23438. *Id.*

[33] Seattle, Wash., Ordinance 115289, § 5 (Sept. 17, 1990) (superseded by Seattle, Wash., Ordinance 118557 (Apr. 14, 1997) & Seattle, Wash., Ordinance 121529 (July 12, 2004)) [hereinafter Original F&E Ordinance]. Although this language about the program components was not part of the ballot question itself, *see* Original F&E Levy Ballot Question, *supra* note 31, the full text of the ordinance setting forth these details, and other information about the proposal, apparently appeared in the voters' guide mailed to every registered voter, *Cf.* Seattle, Wash., Muni. Code § 2.14.010(A)(1) (2004).

[34] Original F&E Ordinance, *supra* note 33; *See also* Anne Mitchell, Louise Stoney, & Harriet Dichter, Financing Child Care in the United States: An Illustrative Catalog of Current Strategies (1997), *available at* http://www.nccic.org/pubs/financing-cc/index.html (last visited Apr. 18, 2005) [hereinafter Financing Child Care 1997]. (This is an earlier version of Financing Child Care, *supra* note 10.)

[35] *See* Seattle, Wash., Proposition No. 1, Families and Education Levy, Primary Election Ballot (Sept. 16, 1997) (authorized by Seattle, Wash., Ordinance 118557 (Apr. 14, 1997)) [hereinafter 1997 F&E Levy Ballot Question]. The ballot question read as follows:

> To provide educational and developmental services for Seattle School District students, Seattle youth, and their families, shall Seattle lift the limit contained in Chapter 84.55 RCW on regular property taxes in order to collect Sixty-Nine Million Dollars ($69,000,000) in up to seven (7) years, no more than Fifteen Million Dollars ($15,000,000) in any one year, setting maximum regular property taxes for 1998 collection at $3.78 per $1,000 of assessed value, pursuant to Ordinance 118557?

Id.

[36] Seattle, Wash., Ethics & Elections Comm'n, 1997 Seattle Primary Election Vote Returns, Seattle Proposition No. 1 (Sept. 16, 1997), *available at* http://www.ci.seattle.wa.us/ethics/e197a/votes/p_vote.htm (last visited Apr. 18, 2005) [hereinafter 1997 F&E Levy Results].

but the maximum amount to be collected was set at $69 million over seven years,[37] approximately the same amount (not accounting for inflation) as in 1990. The 1997 ordinance placing the levy on the ballot retained "early childhood development" as one "service component" that encompassed "child care subsidies and quality enhancement…,"[38] as well as an "[o]ut-of-[s]chool activities" component that specifically included AS for "elementary age children."[39] In 2002, approximately $2.5 million of the F&E Levy's annual proceeds were allocated to the ECE/AS-related components, including child care assistance for low-income families, improvements in child care quality through teacher training, and school-age care and after-school activities.[40] In 2003, the total amount of F&E Levy proceeds for ECE/AS was about $2.8 million: about $878,000 for child care and the remainder for AS programs.[41]

The levy was renewed by the voters for a third term in 2004, winning 62% of the vote.[42] Again no millage rate was specified, but the levy was increased to provide almost $117 million in funding over seven years.[43] Besides continuing the "out-of-school activities" component, the 2004 ordinance placing the referendum on the ballot gave greater emphasis to ECE by making

[37] 1997 F&E Levy Ballot Question, *supra* note 35; Seattle, Wash., Ordinance 118557, § 3 (Apr. 14, 1997), *available at* http://www.ci.seattle.wa.us/seattle/ethics/el97a/vp/vp970916/p1_ct.htm (last visited Apr. 18, 2005) (superseded by Seattle, Wash., Ordinance 121529 (July 12, 2004)) [hereinafter 1997 F&E Ordinance].

[38] *Id*. § 5(1). As was the case with the original referendum, language about the program components was not part of the ballot question itself, *see* 1997 F&E Levy Ballot Question, *supra* note 35, but the full text of the ordinance setting forth these details, and other information about the proposal, appeared in the voters' guide mailed to every registered voter, *see* Seattle, Wash., Ethics & Elections Comm'n, 1997 Seattle Primary Elections Voters' Pamphlet (Sept. 16, 1997), *available at* http://www.ci.seattle.wa.us/ethics/el97a/vp/vp970916/vp.htm (last visited Apr. 15, 2005).

[39] 1997 F&E Ordinance, *supra* note 37, § 5(4).

[40] *See* City of Seattle, Dep't of Neighborhoods, Families and Education Levy Progress Report 2003 (Sept. 2, 2003 Draft) 5–6, 17–18, *available at* http://www.ci.seattle.wa.us/neighborhoods/education/FE_Levy_090203.pdf (last visited Apr. 18, 2005) [hereinafter F&E Progress Report].

[41] *See* City of Seattle, Dep't of Fin., 2003 Adopted and 2004 Endorsed Budget 128 (undated), *available at* http://www.seattle.gov/financedepartment/03–04budget/edlevy.pdf (last visited Apr. 15, 2005) [hereinafter F&E Budget].

[42] King County, Wash., Records, Elections & Licensing Services Div., Sept. 14, 2004, Primary and Special Elections, Official Final 24 (Sept. 24, 2004), *available at* http://www.metrokc.gov/elections/2004sep/resPage24.htm (last visited Apr. 15, 2005) [hereinafter 2004 F&E Levy Results].

[43] Seattle, Wash., Proposition 1, Regular Tax Levy Including Families and Education, *in* King County, Wash., Records, Elections & Licensing Services Div., Here Is Your Official Local Voters' Pamphlet 58 (Sept. 16, 2004) (authorized by Seattle, Wash., Ordinance 121529 (July 12, 2004), *available at* http://clerk.ci.seattle.wa.us/~public/CBOR1.htm (last visited Apr. 15, 2005)), *available at* http://www.metrokc.gov/elections/2004sep/pamphlet/pdf/ED01.pdf (last visited Apr. 15, 2005) [hereinafter 2004 F&E Levy Ballot Question]. The ballot question was more detailed than the earlier two versions and read as follows:

> The City of Seattle's Proposition No. 1 concerns funding services, including Educational and Developmental Services supporting academic achievement. This proposition would fund City services, including preschool, early-childhood education, family support, family involvement, middle-school support, out-of-school activities, supporting high-risk youth, student health, program evaluation, and school-crossing guards, under Ordinance 121529. This vote approves, for up to seven years, regular property taxes higher than the limits in Chapter 84.55 RCW, beginning with 2005 total regular taxes limited to $3.20/$1,000 assessed value. Not more than $16,684,000 per year ($116,788,000 total) can be collected for the Educational and Developmental Services. Should this levy be approved?

Id. at 58.

"preschool and early childhood education"[44] a separate "service component" and by expanding the programs encompassed to include: "preschool for low-income four year olds; access for low-income families to high quality childcare; school readiness support for children in home day-care situations, including home visits; a career wage ladder program; and preschool to kindergarten transition services."[45]

3. Aspen Affordable Housing/Day Care Sales Tax Referendum: Question 3

Enacted in 1990 with 53% of the vote,[46] Aspen, Colorado's Affordable Housing/Day Care statutory referendum (hereinafter Aspen Day Care referendum) increased the city sales tax by .45%—up to 1.7% from 1.25%[47]—to help finance "day care" and "affordable housing."[48] The ordinance placing the referendum on the ballot assigned the Aspen City Council the task of deciding how to allocate the revenues raised between the two objectives, as well as how to spend each pot of funds.[49] Although the referendum did not address supplantation, it has reportedly generated more than $10 million in new[50] revenues for child care over the last eleven years,[51] which has been used for 1) child care resource and referral services, 2) financial aid to help parents pay for child care, and 3) grants to programs to support infant and toddler care, child care worker training and wage supplements, capital improvements, assistance to providers in

[44] Seattle, Wash., Ordinance 121529, § 5(1) (July 12, 2004), *available at* http://clerk.ci.seattle.wa.us/~public/CBOR1.htm (last visited Apr. 15, 2005) [hereinafter 2004 F&E Ordinance].

[45] *Id.* Unlike its predecessors, the 2004 referendum listed all of the service components in the language of the ballot question itself, including preschool, early childhood education, and out-of-school activities, *see* 2004 F&E Levy Ballot Question, *supra* note 43, at 58, but the details of what these components covered were still only in the full text of the ordinance in the voters' guide mailed to every registered voter, *see* King County, Wash., Records, Elections & Licensing Services Div., Here Is Your Official Local Voters' Pamphlet 59 (Sept. 16, 2004).

[46] *See* Pitkin County, Colo., Clerk & Recorder, Elections Dep't, Statement and Certificate of Determination of an Election Held in Feb. 13, 1990 (Feb. 20, 1990) [hereinafter Aspen 1990 Results].

[47] Financing Child Care, *supra* note 10, at 22.

[48] Aspen, Colo., Question No. 3, Authorizing Adoption of Ordinance 81, Series of 1989, Imposing an Additional Point Forty-Five Percent (.45%) Sales Tax within the City of Aspen to Be Earmarked for Affordable Housing and Day Care, *in* Statement and Certificate of Determination of an Election Held in Feb. 13, 1990 (authorized by Aspen, Colo., Ordinance 81 (Dec. 18, 1989) (codified in part as amended at Aspen, Colo., Aspen Muni. Code § 23.32.060 (2004)) [hereinafter Aspen Ballot Question]. The ballot question read as follows:

> Shall the City Council adopt Ordinance 81, Series of 1989, which ordinance imposes an additional .45% sales tax upon the sale of personal property and the furnishing of services with the City of Aspen, provides for the earmarking of these revenues and use solely for the purposes of providing affordable housing and day care opportunities within Aspen and Pitkin County, including but not limited to land acquisitions, capital improvements, and payment of indebtedness therefore [*sic*], and providing that this tax take effect July 1, 1990 and automatically terminate on June 30, 2000?

Id.

[49] *See* Aspen, Colo., Ordinance 81, § 5 (Dec. 18, 1989) (codified as amended at Aspen, Colo., Muni. Code § 23.32.060(c)(5) (2004)) (superseded by Aspen, Colo., Res. 99-13 (Mar. 8, 1999)) [hereinafter Aspen Ordinance 81].

[50] E-mail from Shirley Ritter, Director, Kids First, to Deborah Chalfie, Senior Counsel, National Women's Law Center (Sept. 2, 2004) (on file with National Women's Law Center). Ms. Ritter directs the agency that administers the funding generated by the referendum for ECE programs.

[51] Shirley Ritter, Sales Tax Appropriations for Childcare from 1994–2004 (undated) (on file with the National Women's Law Center) [hereinafter Aspen Chart].

obtaining accreditation, and start-up help for in-home child care providers.[52] For instance, in 2002, $990,271 was allocated to these three child care programs, of which $353,073 was allocated to grants, and $214,131 was allocated to financial aid; the rest went to resource and referral and other services.[53] The referendum was scheduled to sunset in 2000; it was renewed in 1999[54] with 66% of the vote.[55]

4. San Francisco Children's Fund Initiative: Proposition J

In 1991, San Francisco children's advocates spearheaded an initiative to create a Children's Fund (hereinafter San Francisco Children's Fund initiative) to increase and stabilize funding for "certain additional services for children,"[56] including child care, health and social services delinquency prevention, and job readiness.[57] The initiative, which amended the city's charter, increased funding in two ways: 1) it required the city to maintain a "base amount" of spending on children's services

[52] *Id.*; *see also* Kids First Childcare Resource Center, Kids First Annual Report/August 2003: The Current Picture of Early Education in Pitkin County 2 (2003), a*vailable at* http://www.aspenpitkin.com/pdfs/depts/50/annualreport.pdf (last visited Apr. 19, 2005).

[53] Aspen Chart, *supra* note 51.

[54] Aspen, Colo., Question No. 2, Authorization to Extend the Existing .45% (.0045) Affordable Housing and Day Care Sales Tax, *in* Aspen, Colo., Statement and Certificate of Determination of an Election Held in May 4, 1999 (authorized by Aspen, Colo., Res. 99-13, § 2 (Mar. 8, 1999), (codified as amended at Aspen Muni. Code § 23.32.060 (2004)) [hereinafter Aspen 1999 Ballot Question]. The ballot question read as follows:

> Shall the City of Aspen .45% sales tax authorized by Ordinance 81, Series of 1989, earmarked for affordable housing and day care, be extended beyond its current expiration date of June 30, 2000, to June 30, 2010, (the maximum amount to be collected in 2000 from the extension of the .45% sales tax is $2,200,000.00)?

Id. The sales tax currently totals 2.2%. *See* Aspen Muni. Code § 23.32.060(a) (2004).

[55] *See* Aspen, Colo., Clerk & Recorder, Statement and Certificate of Determination of an Election Held in May 4, 1999 [hereinafter Aspen 1999 Results]. Supporters of the Aspen Day Care referendum planned to seek renewal at the polls before its scheduled expiration date, as a cushion; in the event the measure was not renewed, there would still be time for a second chance before it sunset. *See* Financing Child Care 1997*, supra* note 34.

[56] *See* San Francisco, Cal., Proposition J, Children's Fund, *in* San Francisco, Cal., Office of the Registrar of Voters, San Francisco Voter Information Pamphlet and Sample Ballot 78 (Nov. 5, 1991), *available at* http://sfpl4.sfpl.org/pdffiles/November5_1991.pdf (last visited Apr. 23, 2005) [hereinafter Prop. J Ballot Question]. The ballot question read as follows:

> Shall the City be required to create a Children's Fund, to be used only for certain additional services for children, by placing a certain amount of property tax revenues in that Fund annually for ten years, and shall the City be required to prepare an annual Children's Services Plan setting goals for the Fund?

Id.

[57] Although the ballot question itself did not spell out the particular children's services eligible for funding, *see* Prop. J Ballot Question, *supra* note 56, they were included in the full text of the charter amendment initiative that appeared in the voter guide sent to every registered voter, *see* San Francisco, Cal., Text of Proposed Initiative Charter Amendment, Proposition J, *in* San Francisco, Cal., Office of the Registrar of Voters, San Francisco Voter Information Pamphlet and Sample Ballot 89 (Nov. 5, 1991) (amending San Francisco Charter § 6.415) (superseded by San Francisco, Cal., Proposition D, Children's Fund (amending San Francisco Charter art. XVI, § 16.108 (2000))), *available at* http://sfpl.org/pdffiles/November5_1991.pdf (last visited Apr. 23, 2005) [hereinafter Prop. J Full Text].

from general revenues[58] (later called a "Baseline Children's Budget"), with some narrow exceptions, and 2) it specified that 2.5¢ of every $100 in annual city property tax collections be set aside in a Children's Fund that is "separate and apart" from all other local funds,[59] to be used to "increase the aggregate City appropriations"[60] for an array of "services for children."[61] Over its first four years, at least 25% of the Children's Fund was required to be spent on "child care."[62] The initiative won with 54% of the vote.[63] Over its first nine years, it increased funding for children's services, including ECE and AS programs, by over $122 million, not counting the appropriations from the Baseline Budget.[64] Originally scheduled to sunset after ten years, the Children's Fund was renewed by referendum in 2000 (Proposition D) with 73% of the vote,[65] this time for fifteen years.[66] Among other improvements, the renewal further increased funds for children's programs by prohibiting the annual Baseline Budget from falling below a more narrowly defined amount of appropriations for children's services in FY 2000–2001 (annually adjusted),[67] and by increasing the property tax set-aside to 3¢ per $100.[68] In FY 2002–2003, the combined revenues for the

[58] Specifically, the city was prohibited from reducing its expenditures below the level appropriated in 1990–1991 or 1991–1992, whichever was higher, adjusted annually by the percentage increase or decrease in total city spending. *Id.* (amending San Francisco Charter § 6.415(g)) (superseded by San Francisco, Cal. Proposition D, Children's Fund (amending San Francisco Charter art. XVI, § 16.108(g))).

[59] *Id.* (amending San Francisco Charter § 6.415(a), (b)) (superseded by San Francisco, Cal., Proposition D, Children's Fund (amending San Francisco Charter art. XVI, § 16.108(a), (c))). For the first year only, the initiative specified a set-aside of 1.25¢ per $100 in property tax collections. *Id.* (amending San Francisco Charter § 6.415(b)).

[60] *Id.* (amending San Francisco Charter § 6.415(d), (g)) (superseded by San Francisco, Cal., Proposition D, Children's Fund (amending San Francisco Charter art. XVI, § 16.108(d), (g))).

[61] *Id.*

[62] *Id.* (amending San Francisco Charter § 6.415(e)).

[63] City & County of San Francisco, Cal., Dep't of Elections, Historical Ballot Measures: Ballot Propositions, *available at* http://www.sfgov.org/site/election_page.asp?id=5877 (last visited Apr. 24, 2005) [hereinafter Historical Ballot Measures].

[64] *See* First Nine Years, *supra* note 9, at 4.

[65] Historical Ballot Measures, *supra* note 63.

[66] San Francisco, Cal., Proposition D, Children's Fund, *in* City & County of San Francisco, Cal., Dep't of Elections, City and County of San Francisco Voter Information Pamphlet and Sample Ballot, Consolidated Presidential General Election P-39 (Nov. 7, 2000) (authorized by San Francisco County Board of Supervisors Action #000952 (July 24, 2000)), *available at* http://sfpl.lib.ca.us/pdffiles/November7_2000.pdf (last visited Apr. 24, 2005) [hereinafter Prop. D Ballot Question]. The ballot question read as follows: "Shall the City extend the Children's Fund until 2016, increase the annual set-aside of property tax revenues for the Fund, create a citizen advisory committee, and add new planning requirements?" *Id.*

[67] Although the ballot question in itself did not contain these details, *see id.*, they were in the full text of the measure that was included in the voters' guide sent to all registered voters, *see* San Francisco, Cal., Children's Fund, Text of Proposed Charter Amendment, Proposition D, *in* City & County of San Francisco, Cal., Dep't of Elections, City and County of San Francisco Voter Information Pamphlet and Sample Ballot, Consolidated Presidential General Election P-54 (Nov. 7, 2000) (amending San Francisco Charter art. XVI, § 16.108 (2000)), *available at* http://sfpl4.sfpl.org/pdffiles/November7_2000.pdf (last visited Apr. 25, 2005) [hereinafter Prop. D Full Text].

[68] *Id.* (amending San Francisco Charter art. XVI, § 16.108(c)). It also expressly added after-school to the list of programs eligible for funding from the Children's Fund, *id.* (amending San Francisco Charter art. XVI, § 16.108(e)(2)), even though after-school programs had been funded under the original initiative. However, the 2000 version of the measure did not contain any set-aside for child care. *See id.*

Children's Fund and Baseline Budget were about $85.5 million,[69] of which nearly $16 million was budgeted for early care and education programs (the amount for AS programs is unavailable).[70]

5. California Children and Families First Initiative: Proposition 10

Actor-director Rob Reiner spearheaded the Children and Families First statutory initiative (hereinafter California Prop. 10 initiative) in 1998,[71] which was narrowly approved by the voters with 50.5% of the vote.[72] The Prop. 10 initiative imposed a 50¢-per-pack tax on tobacco products and directed the proceeds to be placed in a special Trust Fund to support a "comprehensive, collaborative, and integrated" approach to "promote, support and optimize early childhood development"[73] that broadly includes health care, parent education, family services, and early care and education for the first five years of a child's life.[74] (Besides funding the early childhood programs, the tobacco tax was intended to discourage smoking, and in particular to encourage pregnant women and the parents of young children to quit smoking.[75]) The initiative specified that the Trust Fund revenues must be used to supplement then-existing "levels of service," and could not supplant state or local funds "for any purpose."[76] The initiative also specified that the Children and Families First program, since renamed First 5, was to be implemented by a state commission and independent local commissions in every county and the revenues from the cigarette tax were to be divided, with 20% of the funds allocated to the state commission and 80% allocated to the county commissions.[77] Three percent of the state commission's 20% share had to

[69] *See* San Francisco Dep't of Children, Youth, & Their Families, Children's Services Allocation Plan: A Blueprint for the Children's Fund 17 (2003), *available at* http://www.dcyf.org/Pubs/csap/CSAP_final_1125.pdf (last visited Apr. 24, 2005) [hereinafter San Francisco Allocation Plan].

[70] National Women's Law Center calculations based on adding together amounts spent from Children's Fund and Baseline Budget, *id*. Appendix B, at 63–66 [hereinafter NWLC SFCF Calculations].

[71] Cal., Proposition 10, *in* City & County of San Francisco, Dep't of Elections, Voter Information Pamphlet and Sample Ballot, Consolidated General Election, November 3, 1998, at 22, *available at* http://sfpl.org/pdffiles/November3_1998short.pdf (last visited Apr. 20, 2005) [hereinafter Prop. 10 Ballot Question]. (State ballot measures in California appear in locally produced sample ballots.) The ballot question read as follows:

> Creates state and county commissions to establish early childhood development and smoking prevention programs. Imposes additional taxes on cigarettes and tobacco products. Fiscal Impact: New revenues and expenditures of $400 million in 1998–99 and $750 million annually. Reduced revenues for Proposition 99 programs of $18 million in 1998–99 and $7 million annually. Other minor revenue increases and potential unknown savings.

Id.

[72] Cal. Sec'y of State, State Ballot Measures, Statement of Vote, 1998 General Election, Nov. 3, 1998, at 91 *available at* http://vote98.ss.ca.gov/Final/sov/SOV80-91.pdf (last visited Apr. 20, 2005) [hereinafter Prop. 10 Results].

[73] Although these details did not appear in the ballot question itself, *see* Prop. 10 Ballot Question, *supra* note 71, they did appear in the full text of the initiative, which was included in the voters' guide mailed to all registered voters, *see* Cal., Proposition 10, § 2(a), State and County Early Childhood Development Programs, Additional Tobacco Surtax, Initiative Constitutional Amendment and Statute, Proposed Law, California Children and Families First Initiative, *in* Cal. Sec'y of State, 1998 California General Election Voter Information Guide/Ballot Pamphlet 1 (Nov. 3, 1998), *available at* http://vote98.ss.ca.gov/VoterGuide/Propositions/10text.htm (last visited Apr. 20, 2005) [hereinafter Prop. 10 Full Text].

[74] *See id.* § 5 (codified at Cal. Health & Safety Code § 130105(d) (West, WESTLAW through 2005 Sess.)).

[75] *Id.* § 2(i)–(l).

[76] *Id.* § 6 (codified at Cal. Rev. & Tax Code § 0131.4) (West, WESTLAW through 2005 Sess.)).

[77] *Id.* § 5 (codified at Cal. Health & Safety Code § 130105(d)(1), (2)).

be allocated for child care-related services such as "education and training for child care providers, the development of educational materials and guidelines for child care workers, and other areas"[78] related to "the availability and provision of high-quality, accessible, and affordable child care, both in-home and at child care facilities, that emphasizes education, training and qualifications of child care providers, increased availability and access to child care facilities, resource and referral services, technical assistance for caregivers, and financial and other assistance to ensure appropriate child care for all households."[79] The Prop. 10 initiative did not specifically direct the counties how to spend their 80% share of the revenues. Prop. 10's tobacco tax raised about $600–670 million each year—over $3 billion in revenues in its first five years (FY 1999–2000 through FY 2003–2004).[80] Aggregate information is not available on the proportion of these total revenues that was spent on early care and education programs; however, the state commission appears to have spent more than $19 million on ECE-related programs in FY 2001–2002.[81] The county commissions allocated about $11.2 million to child care and preschool organizations in FY 2002–2003, not including the millions more the commissions allocated to other community groups and education organizations for ECE programs.[82]

6. Alabama Education Lottery Referendum: Amendment 1

In 1999, Alabama voters rejected a constitutional amendment referendum that would have established an Alabama Education Lottery (hereinafter Alabama Lottery referendum) to help

[78] *Id.* § 5 (codified at Cal. Health & Safety Code § 130105(d)(1)(C)).
[79] *Id.* § 5 (codified at Cal. Health & Safety Code § 130125(b)(1)(B)).
[80] *See* Cal. Dep't of Fin., Office of State Audits & Evaluations, A Financial Statement Audit: California Children and Families Commission Children and Families Trust Fund and Related Funds for the Fiscal Year Ended June 30, 2004, at 4 (2004), *available at* http://ccfc.ca.gov/PDF/Fiscal/CCFC%2005-4250-140.pdf (last visited Apr. 20, 2005) [hereinafter California Audit FY 2003–2004] ($596 million in FY 2003–2004); Cal. Dep't of Fin., Office of State Audits & Evaluations, A Financial Statement Audit: California Children and Families Commission Children and Families Trust Fund and Related Funds for the Fiscal Year Ended June 30, 2003, at 4 (2003), *available at* http://ccfc.ca.gov/PDF/Fiscal/CCFC%2004-4250-023.pdf (last visited Apr. 20, 2005) [hereinafter California Audit FY 2002–2003] ($597 million in FY 2002–2003); Cal. Dep't of Fin., Office of State Audits & Evaluations, A Financial Statement Audit: California Children and Families Commission Children and Families Trust Fund and Related Funds 4 (2002), *available at* http://ccfa.ca.gov/PDF/Fiscal/CCFC%2003-4250-180.pdf (last visited Apr. 20, 2005) [hereinafter California Audit FY 2001–2002] ($627 million in FY 2001–2002); Cal. Dep't of Fin., Office of State Audits & Evaluations, A Financial Statement Audit: California Children and Families Commission Children and Families Trust Fund and Related Funds 3 (2001), *available at* http://ccfc.ca.gov/PDF/Fiscal/CCFC%2002-4250-161.pdf (last visited Apr. 20, 2005) [hereinafter California Audit FY 2001–2002] ($652 million in FY 2000–2001); Cal. Children & Families Comm'n, Annual Report FY 1999/2000, at 3 (2001), *available at* http://ccfc.ca.gov/PDF/annualreport99-00final.PDF (last visited June 23, 2005) [hereinafter California CCFC Annual Report FY 1999–2000] ($672 million in FY 1999–2000).
[81] *See* Cal. Children & Families Comm'n, First 5 California, Annual Report, Fiscal Year 2001/02, at 2–2, (undated), *available at* http://ccfc.ca.gov/PDF/Fiscal/2001_02_whole%20report1.pdf (last visited Apr. 20, 2005) [hereinafter First 5 2001–2002 Report].
[82] Cal. Children & Families Comm'n, First 5 California, Annual Report: Fiscal Year 2002–03, at 7–6, 7–7 (2004), *available at* http://ccfc.ca.gov/PDF/Fiscal/Annual_Report_02-03.pdf (last visited Apr. 20, 2005) [hereinafter First 5 2002–2003 Report].

fund several education-related programs, including ECE.[83] The legislation placing the referendum on the ballot specified that net proceeds from the lottery in any year—projected to be about $150 million per year[84]—be allocated first to "fully fund" scholarships, grants, and loans for postsecondary education, second "to fully fund a voluntary pre-kindergarten program for Alabama children," and then to fund technology for the public schools and establish a reserve fund for these purposes or programs, in that order.[85] The legislation also required the lottery proceeds to be deposited into a trust fund,[86] and both the legislation and referendum contained an anti-supplantation provision that prohibited use of the lottery revenues to replace any then-existing funds being spent for the same purposes.[87] The initiative failed by a vote of 54% to 46%.[88]

7. Colorado Funding for Public Schools Initiative: Amendment 23

Approved by the voters in 2000 with 53% of the vote,[89] Colorado's Funding for Public Schools Initiative (hereinafter Colorado Pre-K-12 initiative) amended the Colorado state constitution to require the legislature to increase funding for public education, including preschool.[90] The state

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[83] *See* Ala., Proposed Amendment Number One, Alabama Education Lottery, *in* Office of the Sec'y of State, State of Ala. Proposed Constitutional Amendments, Special Election – Oct. 12, 1999 (authorized by Act of Apr. 14, 1999, 1999 Ala. Acts 99–08), *available at* http://www.sos.state.al.us/election/1999/sce99.htm (last visited Apr. 20, 2005) [hereinafter Alabama Lottery Ballot Question]. The ballot language read as follows:

> Proposing an amendment to the Constitution of Alabama of 1901, to establish an Alabama Education Lottery, to fund the Alabama HOPE Scholarship Program for colleges and universities, and junior, technical, or community colleges, to fund voluntary pre-kindergarten programs, to fund technology in the public schools; to create an Alabama Education Lottery Corporation to regulate and administer the lottery; to prohibit the operation of casinos; to limit the expenditure of the proceeds to specified education and school purposes; to require the proceeds to be used to increase funding for education and not to take the place of existing education revenues; and to allow the Legislature to implement the Alabama Education Lottery through appropriate general law. (Proposed by Act. No. 99–08).

Id.

[84] *See* Anne Fawcett, *Alabama Gears Up for Showdown over Lottery Vote*, Wall St. J., Aug. 10, 1999, at A26.

[85] Act of Apr. 14, 1999, 1999 Ala. Acts 99–08, § 1, *available at* http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0000003.pdf (last visited Apr. 20, 2005) [hereinafter Alabama Lottery Full Text]. The ballot question included language referring to funding for all of these programs, *see* Alabama Lottery Ballot Question, *supra* note 83, but did not prioritize among them as the authorizing legislation did, and there does not appear to have been a voters' guide containing the full text of the legislation that was distributed to the voters.

[86] Alabama Lottery Full Text, *supra* note 85.

[87] *Id. See also* Alabama Lottery Ballot Question, *supra* note 83.

[88] *See* Office of the Sec'y of State, State of Ala., 1999 Special Constitutional Amendment Election – County Level Results, Oct. 12, 1999, *available at* http://www.sos.state.al.us/downloads/dl2.cfm?div1=Elections%20Division&types=Data (last visited Apr. 20, 2005) [hereinafter Alabama Results].

[89] *See* Colo. Sec'y of State, Nov. 7, 2000 Colorado General Election Results, Final Certified Official 8, *available at* http://www.sos.state.co.us/pubs/elections/2000ElectionResults.html (last visited Apr. 21, 2005) [hereinafter Amendment 23 Results].

[90] Colo., Amendment 23, Funding for Public Schools, Ballot Title, in Colorado Legislative Council, History of Statewide Ballot Issues Since 1964 (2000), *available at* http://www.state.co.us/gov_dir/leg_dir/lcsstaff/research/CONSTbl.htm (last visited Apr. 21, 2005) [hereinafter Amendment 23 Ballot Question]. The ballot language read as follows:

> Shall there be an amendment to the Colorado Constitution concerning increased funding for preschool through twelfth-grade public education, and, in connection therewith, requiring the statewide base per pupil funding for

was required to increase base, per-pupil funding for preschool through grade twelve and total state funding for specifically defined categorical education programs "by at least the rate of inflation plus one percentage point" each year for a ten-year period (and by at least the rate of inflation thereafter).[91] To help pay for the new inflation-plus-1% funding requirement, the initiative set aside from state income tax revenues an amount equal to .33% of federal taxable income of every individual, corporation, estate, or trust in the state[92] for deposit into a new State Education Fund (SEF).[93] It both prohibited the use of these funds to supplant the level of general fund appropriations for education existing on the date of enactment and required the legislature to increase its specified general fund appropriations for education programs "by at least five percent of the prior year's general fund appropriation" for education for ten years, except when growth in personal income in the previous year was less than 4.5%.[94] The initiative also authorized the legislature to appropriate funds from the SEF for certain specified purposes beyond the inflation-plus-1% mandate,[95] including to expand the availability of preschool.[96] Since its passage, and

footnote cont'd

> public education and funding for specifically defined categorical programs to grow annually by at least the rate of inflation plus one percentage point for fiscal years 2001–2002 through 2010–2011 and annually by at least the rate of inflation for fiscal years thereafter; creating a state education fund and exempting appropriations from the fund and expenditures of said appropriations from constitutional and statutory limitations; requiring the state to deposit in the state education fund all revenues collected by the state from a tax of one-third of one percent on federal taxable income of every individual, estate, trust, and corporation and exempting those revenues from the constitutional limitation on fiscal year spending; limiting the use of moneys in the state education fund to increasing the statewide base per pupil funding for public education and funding for categorical programs and to funding specified education programs, including public school building capital construction; specifying that moneys appropriated from the state education fund shall not be used to supplant the level of general fund appropriations existing on the effective date of the measure for total program education and categorical program funding; and, for fiscal years 2001–2002 through 2010–11, requiring the general assembly to increase annually the general fund appropriation for total program funding under the "Public School Finance Act of 1994," or any successor act, by at least five percent of the prior year's general fund appropriation for total program, except in fiscal years in which personal income grows less than four and one-half percent between the two previous calendar years?
>
> *Id.*

[91] *Id.*; *see also* Colo., Amendment 23, Funding for Public Schools, Text of Proposal, *in* Legislative Council of the Colo. Gen. Assemb., An Analysis of the 2000 Statewide Ballot Proposals 47 (2000) (amending Colo. Const. art. IX, § 17(1)), *available at* http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2000/ballot/Bluebook/HTML/2000bluebook.htm#A23T (last visited Apr. 21, 2005) [hereinafter Amendment 23 Full Text].

[92] Amendment 23 Ballot Question, *supra* note 90; Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, § 17(4)(a)). Because state income taxes are based on federal income taxes, the state is able to compute federal taxable income earned within the state. *See* Colo. Rev. Stat. § 39-22-104 (2004).

[93] Amendment 23 Ballot Question, *supra* note 90; Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, § 17(4)(a)).

[94] Amendment 23 Ballot Question, *supra* note 90; *see also* Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, §§ 17(4)(a), 17(5)).

[95] Amendment 23 Ballot Question, *supra* note 90; Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, § 17(4)(b)).

[96] Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, § 17(4)(b)).The ballot question itself did not include mention of the authority to spend SEF funds to expand preschool, *see* Amendment 23 Ballot Question, *supra* note 90, but this authority was in the full text of the initiative included in the official analysis of ballot measures sent to every voter, *see* Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, § 17(4)(b)).

through FY 2005–2006, the initiative has resulted in base per-pupil spending increases for preschool of inflation plus 1% annually.[97] It has also resulted in the addition of 1,000 preschool slots over the course of FY 2001–2002 and FY 2002–2003,[98] and although funding for these slots was suspended for FY 2003–2004 and FY 2004–2005,[99] it was restored and an additional 1,310 slots were added for FY 2005–2006.[100] The additional preschool slots were paid for out of the revenues set aside by the initiative for the SEF (over and above the inflation-plus-1% increase funded in part by the SEF)[101] and out of general funds (as part of the at-least-5% increase in the general fund that has occurred in every year except FY 2002–2003).[102]

8. Denver Great Futures for Denver's Kids Referendum: Referred Question No. 1A
9. Denver Great Futures for Denver's Kids Initiative: Initiated Question No. 100

For two consecutive years, in 2000[103] and 2001,[104] voters in Denver were presented with and rejected proposals for what was dubbed in the media[105] a "Kids' Tax" (hereinafter 2000 Denver Kids' Tax and 2001 Denver Kids' Tax, respectively)—a .2% increase in the sales tax for a ten-year period—to fund services for children. The 2000 Kids' Tax (Referred Question No. 1A) was a referendum sponsored by then-Denver Mayor Wellington Webb to fund services focused

[97] *See* State of Colo. Joint Budget Comm., Fiscal Year 2004–05 Appropriations Report 64 (undated), *available at* http://www.state.co.us/gov_dir/leg_dir/jbc/FY04–05ApproRpt.pdf (last visited Apr. 21, 2005) [hereinafter Colorado FY 2004–2005 Appropriations Report] (for years through FY 2004–2005); Act of Apr. 29, 2005, 2005 Colo. Sess. Laws ch. 129, § 1 (to be codified as amended at Colo. Rev. Stat. § 22-54-104(5)(a)(XII)) [hereinafter 2005 Colorado School Financing Act] (for FY 2005–2006).

[98] *See* Colo. Rev. Stat. § 22-28-104(2)(d)(I)(A) (2004). (Total slots increased from 9,050 to 11,050, because slots for the state's full-day kindergarten program, which is considered a component of the preschool program, increased by 1,000 slots as well. *Id.)*

[99] *Id.*

[100] 2005 Colorado School Financing Act, *supra* note 97, § 15 (to be codified as amended at Colo. Rev. Stat. § 22-28-104(2)(d)(I)(A)). Total slots increased to 12,360, *id.*, of which 1,500 slots were authorized to be used for the full-day kindergarten component of the preschool program, *id.* (to be codified at Colo. Rev. Stat. § 22-28-104(2)(d)(I)(F)).

[101] Colorado FY 2004–2005 Appropriations Report, *supra* note 97, at 488 (for years through FY 2004–2005); 2005 Colorado School Financing Act, *supra* note 97, § 20(1)(a) (for FY 2005–2006).

[102] *See* Colorado FY 2004–2005 Appropriations Report, *supra* note 97, at 488 (for years through FY 2004–2005); Telephone interview with Deb Godshall, Assistant Director, Colorado Legislative Council (June 13, 2005) (for FY 2005–2006) [hereinafter Godshall Interview].

[103] Denver, Colo., Referred Question No. 1A, Denver Election Comm'n, City & County of Denver, Official General and Special Municipal Elections Ballot – November 7, 2000 (authorized by Denver, Colo., Ordinance 2000–0680, Council Bill 637, Series of 2000 (Aug. 28, 2000)), *available at* http://www.denvergov.org/Election_Archive/template21510.asp (last visited Apr. 27, 2005) [hereinafter Denver Measure I Ballot Question].

[104] Denver, Colo., Initiated Question No. 100, Denver Election Comm'n, City & County of Denver, Official Sample Ballot, Coordinated and Regular Biennial School Elections, November 6, 2001 (authorized by Denver, Colo., Ordinance 2001–0746, Council Bill 704, Series of 2001 (Sept. 4, 2001)), *available at* http://www.denvergov.org/Election_Archive/template22228.asp (last visited Apr. 27, 2005) [hereinafter Denver Measure II Ballot Question].

[105] *See, e.g.*, Dan Luzadder, *Council Backs Vote on Kid Tax*, Rocky Mountain News, Aug. 22, 2000, *available at* http://denver.rockymountainnews.com/election/0822coun1.shtml (lasted visited Apr. 27, 2005); *Monorail, Kids' Tax, Jail Shot Down By Voters*, Denver Bus. J., Nov. 7, 2001, *available at* http://denver.bizjournals.com/denver/stories/2001/11/05/daily24.html (last visited Apr. 27, 2005).

on "health, early educational needs, and before and after school programs."[106] The referendum failed by a vote of 56% to 44%.[107] The following year, another Kids' Tax was placed on the ballot (Initiated Question No. 100),[108] this time as an initiative[109] and the product of a task force appointed by Mayor Webb and chaired by the chancellor of the local university. The .2% sales tax and ten-year sunset did not change; however, the services to be funded were described by the initiative simply as intended to address "the needs of unattended children in Denver."[110] In the ordinance placing the measure on the ballot, these needs were defined as child care, early childhood education, and after-school programs, but "the needs of unattended children" were not defined in the ballot question.[111] That measure also failed, garnering 38% of the vote.[112] Neither measure contained any anti-supplantation language.

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[106] Denver Measure I Ballot Question, *supra* note 103. The ballot question read as follows:

> Shall Denver taxes be increased $30 million annually, in the first full fiscal year of collection commencing January 1, 2001, and by whatever additional amounts are raised annually thereafter through the year 2009, from the adoption of a two-tenths of one percent (0.2%) sales and use tax rate increase, for the purpose of funding services to the children of the City and County of Denver, focusing on their health, early educational needs, and before and after school programs, and shall Denver be authorized to collect and spend all revenue derived from this tax increase as a voter approved revenue change within the meaning of Article X, Section 20 of the Colorado Constitution without limiting or affecting the ability of Denver to collect and spend revenues from other sources?

Id.

[107] Denver, Colo., Election Comm'n, 2000 General and Special Municipal Election, City & County of Denver, Official Final Summary Report, Nov. 14, 2000, *available at* http://www.denvergov.org/Election_Archive/template21514.asp (last visited Apr. 27, 2005) [hereinafter Denver Measure I Results].

[108] Denver Measure II Ballot Question, *supra* note 104. The ballot question read as follows:

> Shall Denver's taxes be increased by $25,000,000 annually, commencing on January 1, 2002, to address the needs of unattended children in Denver, and by whatever additional amounts are raised annually thereafter, through December 31, 2011, from a .2% sales and use tax, to be spent as a voter-approved revenue change and an exception to the limits which would otherwise apply, and to be allocated by a commission on children established to evaluate applications for the use of such revenue according to specified criteria, subject to annual audits of the uses of such revenue and a limitation on the commission's administrative costs to three percent of the revenue collected for this purpose?

Id.

[109] *Id.* The initiative was actually an indirect "initiated ordinance." Citizens initiated a proposed city ordinance and submitted it to the City Council for either adoption or submission to the voters. Because the proposal contained a tax increase, the Council was "not at liberty" to adopt it, and so sent it to the voters. Denver, Colo., Ordinance 2001-0746, unnumbered paragraph 4 (Sept. 4, 2001) *available at* http://www.denvergov.org/CityCouncil/historical/template110347.asp (last visited Apr. 27, 2005) [hereinafter Denver Ordinance II].

[110] Denver Measure II Ballot Question, *supra* note 104, at 3.

[111] Denver Ordinance II, *supra* note 109, § 2. "Unattended children" were defined as

> (a) children who are too young to be enrolled in school and who do not have access to either stable child care during hours when their parents are unavailable or early childhood education opportunities; and (b) children who are enrolled in elementary, middle, or high school but who have significant amounts of unsupervised time outside of regular school sessions.

Id.

[112] Denver, Colo., Election Comm'n, City & County of Denver, Coordinated and Regular Biennial School Elections, Nov. 6, 2001, Official Final Summary Report 2, *available at* http://www.denvergov.org/Election_Archive/template22227.asp (last visited Apr. 27, 2005) [hereinafter Denver Measure II Results].

10. Tennessee Lottery Referendum: Amendment 1

Approved by the voters in a 2002 referendum, Amendment 1 (hereinafter Tennessee Lottery referendum) amended the state constitution to authorize the state legislature to create a state lottery whose net proceeds were to be used to fund several educational programs.[113] The amendment's main emphasis was on funding in-state postsecondary education scholarships and tuition assistance for Tennessee citizens; however, it also provided that any excess net proceeds after such funding were to be devoted to a second tier of programs: capital outlays for education facilities and "early learning programs and afterschool programs."[114] The amendment prohibited supplantation, requiring that the net proceeds from the lottery be used to supplement "non-lottery educational resources."[115] It passed with 57% of the vote.[116] To implement the amendment, the legislature and governor created a state lottery.[117] All net proceeds from the lottery are to

[113] Tenn., Constitution Amendment #1, *in* Tenn. Dep't of State, Div. of Elections, November 5, 2002 Official Election Results (authorized by S.J. Res. 1, 102d Gen. Assemb, 1st Reg. Sess. (Tenn. 2001) (amending Tenn. Const. art. XI, § 5 (2002) (West, WESTLAW through End of 2004 Second Reg. Sess.), *available at* http://www.state.tn.us/sos/bluebook/online/tnconst.pdf (last visited Apr. 27, 2005)), *available at* http://www.state.tn.us/sos/election/results/2002-11/amendment1.pdf (last visited Apr. 27, 2005) [hereinafter Tennessee Lottery Full Text]. The full text of the amendment appeared on the ballot:

> Shall the Tennessee Constitution be amended so that the period (.) at the end of Article XI, Section 5, of the Constitution of Tennessee be changed to a comma (,) and the following new language be added:
>
> except that the legislature may authorize a state lottery if the net proceeds of the lottery's revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state. The excess after such allocations from such net proceeds from the lottery would be appropriated to:
>
> (1) Capital outlay projects for K-12 educational facilities; and
>
> (2) Early learning programs and after school programs.
>
> Such appropriation of funds to support improvements and enhancements for educational programs and purposes and such net proceeds shall be used to supplement, not supplant, non-lottery educational resources for education programs and purposes.
>
> All other forms of lottery not authorized herein are expressly prohibited unless authorized by a two-thirds vote of all members elected to each house of the General Assembly for an annual event operated for the benefit of a 501(c)(3) organization located in this state, as defined by the 2000 United States Tax Code or as may be amended from time to time.
>
> A state lottery means a lottery of the type such as in operation in Georgia, Kentucky and Virginia in 2000, and the amendment to Article XI, Section 5 of the Constitution of the State of Tennessee provided for herein does not authorize games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels, and the like.
>
> The state lottery authorized in this section shall be implemented and administered uniformly throughout the state in such manner as the legislature, by general law, deems appropriate.

Id.

[114] *Id.* (amending Tenn. Const. art. XI, § 5(2)).

[115] *Id.* (amending Tenn. Const. art. XI, § 5).

[116] *See* Tenn. Dep't of State, November 5, 2002, General Election, Constitutional Amendment Questions 3, *available at* http://www.state.tn.us/sos/election/results/2002-11/amendments.pdf (last visited Apr. 27, 2005) [hereinafter Tennessee Results].

[117] Tennessee Education Lottery Implementation Law, 2003 Tenn. Pub. Acts ch. 297 (codified as amended in scattered sections of Tenn. Code Ann.), *available at* http://www.state.tn.us/sos/acts/103/pub/pc0297.pdf (last visited Apr. 27, 2005) [hereinafter Tennessee Lottery Implementation Law].

be deposited into a "lottery for education account,"[118] but the funds are to be allocated in accordance with the legislature's usual budget process.[119] The legislature also created a post-secondary education scholarship program, and in doing so, expressed a preference that, among the three second-tier funding priorities identified in the referendum, "excess net proceeds… be allocated first to early learning programs."[120] Lottery tickets first went on sale in January 2004, and generated approximately $276 million in net proceeds by FY 2004–2005.[121] However, although less than $100 million of these net proceeds were spent on scholarships,[122] no excess net proceeds were allocated to ECE/AS programs for FY 2004–2005[123] and only a maximum of $25 million in proceeds was allocated for FY 2005–2006.[124]

11. California Before- and After-School Programs Initiative: Proposition 49

Actor and now-Governor Arnold Schwarzenegger was the chief proponent of the California Before- and After-School Programs initiative[125] (hereinafter California Prop. 49 initiative) passed in 2002 that was intended to increase funding for before- and after-school programs. The measure

[118] *Id.* § 2 (codified as amended at Tenn. Code Ann. § 4-51-111(b)(1)).
[119] *See id.*
[120] 2003 Tenn. Pub. Acts ch. 298, § 1 (codified at Tenn. Code Ann. § 49-4-901), *available at* http://www.state.tn.us/sos/acts/103/pub/pc0298.pdf (last visited Apr. 27, 2005) [hereinafter Tennessee Scholarship Implementation Law].
[121] National Women's Law Center calculations based on Michelle Elliott, Assistant Dir. Of Fin. Reporting, Div. of Accounts, Tenn. Dep't of Fin. & Admin., Tennessee Lottery Reserve Account, Unaudited Schedule of Revenues, Expenditures and Fund Balances for the Calendar Year Ended December 31, 2004 (undated) (on file with National Women's Law Center) [hereinafter Elliott Calendar Year 2004 Report] & Michelle Elliott, Assistant Dir. Of Fin. Reporting, Div. of Accounts, Tenn. Dep't of Fin. & Admin., Tennessee Education Lottery Reserve Accounts, Unaudited Schedule of Revenues, Expenditures, and Changes in Fund Balance for the Fiscal Year Ended June 30, 2005 (Apr. 30, 2005) (on file with National Women's Law Center) [hereinafter Elliott Fiscal Year 2004–2005 Report].
[122] *See* Elliott Fiscal Year 2004–2005 Report, *supra* note 121.
[123] *Id.*
[124] 2005 Tenn. Pub. Acts 503 (2005) [hereinafter 2005 Tennessee Appropriation], *available at* http://www.legislature.state.tn.us/bills/currentga/chapter/PC0503.pdf (last visited Aug. 10, 2005). Separate from and in addition to the referendum's overall mandate to spend excess lottery funds on ECE/AS programs, one provision in the legislation implementing the lottery requires that half of any funds from unclaimed prizes be allocated to AS programs. Tennessee Lottery Implementation Law, *supra* note 117, § 2 (codified at Tenn. Code Ann. § 4-51-111f(1)). For FY 2005–2006, a maximum of $4 million of these funds was appropriated for after-school programs, *id.*, the first allocation since the lottery was established. *See* Elliott Fiscal Year 2004–2005 Report, *supra* note 121.
[125] Cal., Proposition 49, *in* County of Imperial, Cal., Elections Dep't, Official Ballot, Consolidated General Election, Tuesday, November 5, 2002 (on file with National Women's Law Center) [hereinafter Prop. 49 Ballot Question]. (As previously described, state ballot measures in California appear on local ballots.) The ballot question read as follows:

> Increases state grant funds available for before/after school programs, providing tutoring, homework assistance, and educational enrichment. Requires that, beginning 2004–05, new grants will not be taken from education funds guaranteed by Proposition 98. Fiscal Impact: Additional annual state costs for before and after school programs of up to $455 million, beginning in 2004–05.

Id.

passed with 57% of the vote.[126] The Prop. 49 initiative[127] contained a complicated funding formula that, beginning on July 1, 2004, and annually thereafter, requires the legislature to appropriate for before- and after-school programs an amount "not to exceed" $550 million per year that is equal to the greater of 1) the amount of the general fund appropriations for after-school programs for the immediately preceding fiscal year or 2) the amount of the general fund appropriations for after-school programs for FY 2003–2004 plus the amount by which the non-guaranteed[128] general fund appropriations for the current year exceed the sum of (a) the amount of the state's non-guaranteed general fund appropriations for the base year[129] plus (b) $1.5 billion.[130] The effect of the Prop. 49 initiative is to ensure that, beginning in FY 2004–2005, annual funding for after-school programs does not fall below the amount appropriated for these programs in FY 2003–2004 ($121.6 million[131]) and may be required to go as high as $550 million, for an increase of as much as $428.4 million a year. The funding must be used to supplement rather than supplant "existing levels of service."[132] The initiative expanded a preexisting, mostly state-funded, before- and after-school program and changed its emphasis from one that made larger grants to selected schools to one that makes smaller grants to all elementary and middle schools.[133] Although the initiative's funding floor for after-school programs is in effect, as of mid-2005 the state's non-guaranteed general fund appropriations had not risen to a sufficient level, estimated to be around $54.7 billion,[134] to trigger the initiative's mandated increase in after-school funding.

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[126] Cal. Sec'y of State, Statement of Vote, 2002 General Election, November 5, 2002, State Ballot Measures 75, *available at* http://www.ss.ca.gov/elections/sov/2002_general/measures.pdf (Apr. 28, 2005) [hereinafter Prop. 49 Results].

[127] Cal., Proposition 49, Before and After School Programs, State Grants, Initiative Statute, *in* Cal. Sec'y of State, California General Election, Tuesday, November 5, 2002, Official Voter Information Guide 73 (codified as amended in scattered sections of Cal. Educ. Code §§ 8482, 8483 & 8484 (West, WESTLAW through 2004 Sess.)), *available at* http://vote2002.ss.ca.gov/2002-vig/pdf/bp_pe01.pdf (last visited May 13, 2005) [hereinafter Prop. 49 Full Text].

[128] The non-guaranteed general fund appropriations are the general fund appropriations other than those guaranteed for school districts and community colleges pursuant to an earlier initiative. *Id.* § 10(c) (codified at Cal. Educ. Code § 8483.5(c)).

[129] The base year is the fiscal year during the period July 1, 2000, through June 30, 2004, for which the non-guaranteed general fund appropriations are the highest as compared to any other fiscal year during that period. *Id.*

[130] *Id.* § 10(b) (codified at Cal. Educ. Code § 8483.5(b)). This formula for determining the amount of funding AS programs were to receive was not specified in the ballot question, *see* Prop. 49 Ballot Question, *supra* note 125, but was included in the full text of the initiative that was in the voters' guide sent to all registered voters, *see* Prop. 49 Full Text, *supra* note 127, § 10(b) (codified at Cal. Educ. Code § 8483.5(b)).

[131] Cal. Dep't of Fin., 2003–2004 Final Budget Summary 438 (Sept. 19, 2003), *available at* http://www.documents.dgs.ca.gov/osp/GovernorsBudget/pdf/2003–04fbudsum.pdf (last visited Apr. 28, 2005) [hereinafter California 2003–2004 Budget]. Prop. 49 also provided that prior to July 1, 2004, it was "the intent of the legislature" that a minimum of $85 million annually be appropriated for after-school programs, Prop. 49 Full Text, *supra* note 127, § 10(a) (codified at Cal. Educ. Code § 8483.5(a)), an amount lower than the $117.5 million appropriated in FY 2001–2002, *see* Cal. Dep't of Finance, 2001–02 Final Budget Summary 576 (Sept. 2001), *available at* http://www.documents.dgs.ca.gov/osp/GovernorsBudget/pdf/2001–02budsum.pdf (last visited Apr. 18, 2005). At least $85 million—$121.6 million—was appropriated for FY 2002–2003, *see* Cal. Dep't of Finance, 2002–03 Final Budget Summary 481 (undated), *available at* http://www.documents.dgs.ca.gov/osp/GovernorsBudget/pdf/2002–03budsum.pdf (last visited Apr. 28, 2005) [hereinafter California 2002–2003 Budget], and FY 2003–2004, *see* California 2003–2004 Budget, *supra*.

[132] Prop. 49 Full Text, *supra* note 127, § 10(e) (codified at Cal. Educ. Code § 8483.5(e)).

[133] *See id.* § 8(c) (codified at Cal. Educ. Code § 8482.55(c)).

[134] Cal. Legislative Analyst's Office, Analysis of the 2004–2005 Budget Bill, Education E-144 to E-145 (Feb. 2004) *available at* http://www.lao.ca.gov/analysis_2004/education/ed_14_childcare_anl04.pdf (last visited Apr. 28, 2005).

12. Florida Voluntary Universal Pre-kindergarten Education Initiative: Amendment 8

The Florida Voluntary Universal Pre-kindergarten Initiative (hereinafter Florida UPK initiative) adopted in 2002 was an amendment to the state constitution requiring the state to offer a voluntary, "high quality," free pre-kindergarten program to every four-year-old in Florida by no later than the 2005 school year.[135] It won with 59% of the vote.[136] No funding source was specified in the initiative; instead, the legislature was directed to fund it "through funds generated in addition" to funds already being spent as of January 1, 2002, "for child or adult education, health care, or development" programs.[137] "High quality" was not defined, but the initiative did require the program to be delivered according to "professionally accepted standards."[138] On the last day of its 2004 session, the Florida legislature passed implementing legislation to create a statewide "Voluntary Prekindergarten Education Program,"[139] but after extensive criticism of the legislation by advocates[140] and the media,[141] Governor Jeb Bush vetoed the legislation.[142] At the end of 2004,

footnote cont'd
For example, the state's non-guaranteed appropriations for FY 2004–2005 were about $5.4 billion below the trigger amount. *Id.*

[135] Fla., Amendment 8, Voluntary Universal Pre-kindergarten Education, Official General Election Ballot, *in* Fla. Dep't of Elections, Proposed Constitutional Amendments for 2002 Ballot (Nov. 5, 2002), *available at* http://election.dos.state.fl.us/initiatives/2002ballot.shtml (last visited Apr. 28, 2005) [hereinafter UPK Initiative Ballot Question]. The ballot question read as follows:

> Every four-year-old child in Florida shall be offered a high quality pre-kindergarten learning opportunity by the state no later than the 2005 school year. This voluntary early childhood development and education program shall be established according to high quality standards and shall be free for all Florida four-year-olds without taking away funds used for existing education, health, and development programs.

Id.

[136] Fla. Dep't of State, Div. of Elections, November 5, 2002 General Election, Official Results, *available at* http://election.dos.state.fl.us/initiatives/2002ballot.shtml (last visited Apr. 28, 2005) [hereinafter UPK Results].

[137] Fla., Amendment 8, Voluntary Universal Pre-kindergarten Education, *in* Fla. Dep't of State, Div. of Elections, Proposed Constitutional Amendments for 2002 Ballot (2002) (amending Fla. Const. art. IX, § 1(c)), *available at* http://election.dos.state.fl.us/initiatives/2002ballot.shtml (last visited Apr. 28, 2005) [hereinafter UPK Initiative Full Text]. The ballot question included this funding direction as well, but in slightly different language. *See* UPK Initiative Ballot Question, *supra* note 135.

[138] UPK Initiative Full Text, *supra* note 137, (amending Fla. Const. art. IX, § 1(b)). The ballot question language referred to "high quality" but did not specifically mention "professionally accepted standards." *See* UPK Initiative Ballot Question, *supra* note 135.

[139] Enrolled H.B. 821, Engrossed 2, 2004 Leg., Reg. Sess. (Fla. 2004), *available at* http://www.flsenate.gov/data/session/2004/House/bills/billtext/pdf/h0821er.pdf (last visited Apr. 28, 2005) [hereinafter Vetoed UPK Legislation].

[140] *See, e.g.*, Children's Campaign, Inc., Can Tallahassee Do the One Simple Thing Voters Asked For? *available at* http://www.iamforkids.org/upk/FLCH-11362_preK3.pdf (last visited Apr. 28, 2005) [hereinafter Children's Campaign]; Brent Kallestad, *Penelas Asks Bush for Special Session on Prekindergarten*, The Ledger, May 12, 2004 (Lakeland, Fla.), (on file with the National Women's Law Center) [hereinafter *Penelas Asks Bush for Special Session*]; Mary Ellen Klas, *Bush Urged to Veto Pre-K Legislation*, Miami Herald, May 19, 2004, at B5 [hereinafter *Bush Urged to Veto Pre-K Legislation*].

[141] *See, e.g.*, Editorial, *Try, Try Again*, Tallahassee Democrat, June 29, 2004, at E7 [hereinafter *Try, Try Again*]; Editorial, *Gov. Bush Should Veto Woeful Pre-K Measure*, Palm Beach Post, May 10, 2004, at A14 [hereinafter *Gov. Bush Should Veto*]; Editorial, *Governor Should Veto Inadequate Pre-K Law*, Miami Herald, May 7, 2004, at A24 [hereinafter *Governor Should Veto*].

[142] Letter from Jeb Bush, Governor, to Glenda E. Hood, Sec'y of State (July 9, 2004), *available at* http://www.myflorida.com/myflorida/government/laws/2004legislation/pdfs/HB_821/veto.pdf (last visited Apr. 28, 2005) [hereinafter Veto Message].

the legislature adopted a second bill that differed only slightly from the first one, which the Governor signed.[143] No program funding was included in either the vetoed or enacted legislation because appropriations for the 2005 school year are made in the 2005 legislative session. However, the Governor proposed only $372 million for the new program in his FY 2005–2006 budget,[144] and the legislature approved $387.1 million,[145] in sharp contrast to the estimates at the time of the initiative that a high-quality pre-kindergarten program would cost between $425 and $650 million.[146]

13. Portland Five-Year Levy for Children's Investment Fund Referendum: Measure 26–33

The Portland Children's Investment Fund was created and financed by a 2002 Portland, Oregon local referendum[147] (hereinafter Portland Children's Investment Fund referendum) sponsored by City Commissioner Dan Saltzman, and was approved with 53% of the vote.[148] The ordinance that authorized the referendum imposed a levy to fund "cost effective, proven early childhood programs, child abuse prevention and intervention, and after-school and mentoring programs for children."[149] The levy was an increase in property taxes of $0.4026 per $1,000 of assessed value, which took effect beginning in FY 2003–2004, and will sunset after five years.[150] The ordinance specified that the levy proceeds were to be placed in a "special fund" administered

[143] *Compare* Act of Dec. 16, 2004, 2004 Fla. Laws ch. 2004-484 (to be codified as amended in scattered sections of Fla. Stat.), *available at* http://elections.dos.state.fl.us/laws/04laws/ch_2004-484.pdf (last visited July 20, 2005) [hereinafter Florida UPK Legislation] *with* Vetoed UPK Legislation, *supra* note 139.

[144] Bush/Jennings Policy and Budget Recommendations: Fiscal Year 2005–2006, Governor's Appropriations Bill 15, *available at* http://www.ebudget.state.fl.us/reports/governors_bill_2005.pdf (last visited Apr. 28, 2005) [hereinafter Bush/Jennings Budget Recommendations].

[145] Conf. Rep. on S.B. 2600, 37th Sess. Reg. Sess., § 2, Specific Approp. 72 (Fla. 2005), *available at* http://www.flsenate.gov/data/session/2005/senate/appbills/pdf/confrprt.pdf (last visited June 20, 2005) [hereinafter Florida Pre-K Appropriation].

[146] Council for Educ. Policy Research & Improvement, Proposed Constitutional Amendment: Voluntary Universal Pre-kindergarten 2–3 (undated), *available at* http://www.cepri.state.fl.us/pdf/Pre-K%20Summary%208-9-02.pdf (last visited Apr. 28, 2005) [hereinafter Proposed Constitutional Amendment].

[147] Portland, Or., Measure No. 26–33, Five-year Levy for Children's Investment Fund (Nov. 5, 2002) (authorized by Portland, Or., Ordinance 176251 (Feb. 6, 2002)) [hereinafter Portland Children's Levy Ballot Question]. The ballot question read as follows: "Shall Portland support early childhood, after school, child abuse programs; five-year levy $0.4026 per $1,000 assessed value beginning in 2003? This measure may cause property taxes to increase by more than three percent." *Id.*

[148] *See* Multnomah Co., Or., Elections Division, Nov. 2002 General Election Results, Final Official Election Results – Updated on Nov. 25, 2002, at 2, *available at* http://www.co.multnomah.or.us/dbcs/elections/2002-11/results.shtml (last visited Sept. 28, 2005) [hereinafter Portland Results].

[149] Portland Or., Ordinance 176251, § 1 (Feb. 6, 2002), *available at* http://www.portlandonline.com/auditor/index.cfm?&a=5119&c=27249 (last visited Apr. 28, 2005) [hereinafter Portland Ordinance]. Neither the specific reference to child care nor the sunset provision appeared expressly in the ballot question, *see* Portland Children's Levy Ballot Question, *supra* note 147, but both were in the summary of the referendum in the voters' guide that was sent to every registered voter, *see* Summary of Measure 26–33, *in* Multnomah Co., Or. Elections Div., Online Voters' Pamphlet, Nov. 2002 General Election, City of Portland 1 (Nov. 5, 2002), *available at* http://www.co.multnomah.or.us/dbcs/elections/2002-11/26-33.shtml (last visited Apr. 28, 2005) [hereinafter Portland's Children's Levy Summary].

[150] Portland Children's Levy Ballot Question, *supra* note 147; Portland Children's Levy Summary, *supra* note 149; Portland Ordinance *supra* note 149.

by the City Council and spent only for its specified purposes; it did not contain any provision on supplantation.[151] Of the approximately $8.7 million raised and available in the first year (FY 2003–2004), approximately $1.6 million was allocated for child care programs in September 2003,[152] and $2.2 million was allocated for after-school programs in late June 2004.[153]

14. Seattle Quality Childcare Programs for Seattle's Children Initiative: Initiative 77

The Seattle Quality Childcare Programs ballot measure (hereinafter Seattle Latte Tax initiative), a 2003 statutory initiative, proposed dedicated funding for several child care-related and early learning programs.[154] In particular, the initiative proposed to fund a career and wage ladder program to improve the quality and retention of child care workers, education programs for in-home providers, pre-kindergarten programs for children ages three to five, and assistance to low-income families to help them pay for child care.[155] The initiative would have generated new revenues to fund these programs by imposing a 10¢ tax on every espresso drink;[156] hence, the proposal was dubbed the "latte tax." The initiative required the new revenues raised from the latte tax to be placed in a separate "Early Learning and Care Account" administered by the City and used only for specified purposes.[157] The funds were required to be in addition to other

[151] *See* Portland Ordinance, *supra* note 149.

[152] *See* Portland, Or., Ordinance 177851 (Sept. 3, 2003) (approving recommendations of Allocation Committee, at Portland Children's Investment Fund, Early Childhood Organizations and Programs Funded to Date—Year 1 (Feb. 2004) (on file with National Women's Law Center)) [hereinafter Portland ECE Grants].

[153] Portland, Or., Ordinance 178560 (June 30, 2004) (approving recommendations of Allocation Committee, at Portland Children's Investment Fund, Applicants Recommended for Funding by Allocation Committee; Tentative Awards (undated) (on file with the National Women's Law Center)) [hereinafter Portland AS Grants].

[154] Seattle, Wash., The City of Seattle Initiative No. 77, *in* Seattle Ethics & Elections Comm'n, Primary Election Voters' Guide 25 (Sept. 16, 2003), *available at* http://www.ci.seattle.wa.us/ethics/el03a/report/vpp/03prim.pdf (last visited Apr. 25, 2005) [hereinafter Initiative 77 Ballot Question]. The ballot question read as follows:

> Initiative Measure Number 77 concerns funding childcare and early learning through an espresso beverage tax. The measure would fund qualifying pre-kindergarten programs, grants to qualifying families, and education-based compensation increases for childcare [sic] and early learning providers by imposing on businesses that prepare and sell espresso beverages in Seattle a tax in the amount of 10¢ on each such sale. The measure establishes an oversight committee and requires that tax revenues not replace existing funding for these services and that the City continue to fund these services at 2002 levels, adjusted for inflation. Should this measure be enacted into law?

Id.

[155] These specific programs were described generally in the ballot question, *see id.*, and more specifically in the full text of the initiative that appeared in the voters' guide mailed to every registered voter, *see* The City of Seattle Initiative No. 77, Complete Text of Initiative No. 77, § 4(b), *in* Seattle Ethics & Elections Comm'n, Primary Voters' Guide 27, *available at* http://www.ci.seattle.wa.us/ethics/el03a/report/vpp/03prim.pdf (last visited Apr. 25, 2005) [hereinafter Initiative 77 Full Text].

[156] *Id.* § 7, at 30; Initiative 77 Ballot Question, *supra* note 154.

[157] Initiative 77 Full Text, *supra* note 155, § 3, at 29.

city-provided funds for early care and learning services and not to supplant any ECE funding; the initiative also required the city to continue its ECE spending at 2002 levels, "to the extent possible."[158] The measure lost with 31% of the vote.[159]

C. Research Methodology

This report is based on a combination of legal research and research into public records, a review of a representative sampling of academic and other literature, and interviews with individuals with first-hand knowledge of specific ballot campaigns. Legal research was used to obtain information on ballot access requirements and the text of the ballot measures themselves. A serious but not exhaustive review of the literature was conducted to identify the key justifications for and criticisms of the use of ballot measures. From a review of public records such as election results, news coverage and editorials, campaign materials, and post-election analyses and reports, information was gleaned about election outcomes, ways in which the issues and messages were framed by key players, portrayal of the ballot measures by the media, a flavor of the political environment in which the measures were considered, and assessments of the effectiveness of the ECE/AS measures that have been implemented.

Because much of the story behind these efforts is found off the record, interviews with knowledgeable participants played a central part in the research. The research was conducted during the last half of 2003 and early 2004. Numerous experts and advocates were consulted, including through thirty-two in-depth telephone interviews of individuals who were the main proponents, key players, and influential advocates involved in eight of the ballot campaigns studied.[160] The eight campaigns for which formal interviews were conducted are the California Prop. 10 and Prop. 49 initiatives, both Denver Kids' Tax measures, Colorado Pre-K-12 initiative, Florida UPK initiative, Portland Children's Investment Fund referendum, and Seattle Latte Tax initiative. To increase the chances of obtaining candid assessments, interviewees were assured that the sources of specific observations and insights would remain anonymous. The individuals interviewed and consulted are listed in Appendix A.

[158] Initiative 77 Ballot Question, *supra* note 154. The measure contained an "escape clause" from these requirements as well, stating that if in any year general fund appropriations for the Divisions of Aging and Disability, Community Services, Family and Youth Services, and the Office of Domestic Violence were reduced below that division's general fund appropriations for the previous year, the general fund appropriation for ECE services could also be reduced "by a maximum of the average percent decrease" in the general fund appropriations for each of those four divisions. *See* Initiative 77 Full Text, *supra* note 155, § 4(d), at 29.

[159] King County, Wash., Records, Elections & Licensing Services Div., Primary, Official Final (Sept. 16, 2003), *available at* http://www.metrokc.gov/elections/2003sep/respage9.htm (last visited Apr. 25, 2005) [hereinafter Initiative 77 Results].

[160] Opponents of the measures studied who were not a part of the children's advocacy community, such as tobacco companies, coffee shop owners, or anti-tax activists, were not interviewed. However, when applicable, interviews did include ECE/AS advocates who may have had significant concerns about, or even opposed, a measure.

Together, the research into public records and the intelligence gleaned from interviews provided a rich foundation of information for analyzing ECE/AS ballot measures. However, there are limitations to the research. Uniform and complete information for all of the ballot measures studied was not always obtained or obtainable. In particular, detailed documentary information about the oldest ballot measures was difficult to locate, interviews were not conducted regarding the oldest measures, and accessible interviewees were not always equally knowledgeable on all points of inquiry. For this reason, it is not possible to give an exhaustive accounting of the ballot measures studied on every variable—there are missing data—and there was no attempt to perform a statistical analysis that might have isolated the effects of the different variables. Thus, some conclusions are supported more by examples than by a more complete quantitative analysis.

In addition, the universe of ballot measures on ECE/AS programs is relatively small, and a study of this size is not one that lends itself to hard, quantitative results. For this additional reason, conclusions must be approached with caution. Still, because the study encompasses much of the universe—almost all known ECE/AS initiatives through 2003 were examined—it is possible to detect patterns and trends and to draw some conclusions about whether ballot measures are a worthwhile advocacy strategy and, if so, ways to maximize the chances for using them successfully.

II. THE INITIATIVE AND REFERENDUM LANDSCAPE

A. Prevalence and Types of Ballot Measures[161]

There are two general types of ballot measures that offer citizens the opportunity to take a direct role in lawmaking—initiatives and referendums.[162] Initiatives are measures proposed by members of the general public, whereas referendums are measures passed by a legislative body that are referred to the voters for approval or rejection.

With initiatives, individuals propose a law (statutory initiative) or a constitutional amendment (amendment initiative)[163] and, if they collect enough signatures to qualify the proposal for the ballot, voters get to decide whether to adopt or reject it. The opportunity to launch a ballot initiative is not a strategy that is universally available, however. Only twenty-four states permit their citizens to take a direct and proactive role in lawmaking through statewide ballot initiatives.[164] Eighteen of these twenty-four permit initiatives that amend the state constitution;[165] three of these eighteen permit only such initiatives.[166] Twenty-one of the twenty-four permit statutory initiatives,[167] and fifteen permit both types of initiatives.[168]

[161] The information in this subsection and the next is derived mainly from M. Dane Waters, *Initiative and Referendum Almanac* (2003) [hereinafter *I&R Almanac*].

[162] *Id.* at 11. Ballot measures can also involve resolutions, memorials, advisory questions, and other declarations of voter sentiment that are only advisory in nature and do not have the force of law, *see id.*; they are therefore of limited value to advocates.

[163] *Id.* Each type of initiative can be further divided into *direct* (goes right from citizens to the ballot) and *indirect*. In the case of indirect initiatives, citizens must petition and submit their policy proposal to the legislature before it can be placed on the ballot. *Id.* at 13. If the legislature approves the proposal, it becomes law. *Id.* If the legislature rejects the proposal outright, fails to act within the required time period, or in some cases adopts an unacceptable version, the initiative can be placed on the ballot, usually in the next scheduled election. *Id.*

[164] *Id* at 11. The twenty-four states are Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. *Id.* at 12. Five (Alaska, Maine, Massachusetts, Mississippi, and Wyoming) of these twenty-four states only provide for indirect initiatives. *Id.*

[165] *Id.* at 11–12. The eighteen states are Arizona, Arkansas, California, Colorado, Florida, Illinois, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota. *Id.* at 12.

[166] *Id.* at 12. Florida, Illinois, and Mississippi allow only constitutional amendment initiatives. *Id.*

[167] *Id.* at 11. The twenty-one states that allow statutory initiatives are Alaska, Arizona, Arkansas, California, Colorado, Idaho, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. *Id.* at 12.

[168] *Id.* at 12. The fifteen states that permit both types of initiatives are Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota. *Id.*

Many states that do not allow statewide initiatives do allow them at the local level. For instance, New York City, Houston, and New Orleans permit initiatives, even though New York, Texas, and Louisiana do not.[169] Although cities are about 40% more likely to permit initiatives if they are in an initiative state,[170] almost every major city in the country provides for initiatives.[171] The precise number is difficult to quantify, but experts estimate that thousands of cities and counties across America extend the ballot initiative power to their citizens and that somewhere between 61% and 71% of citizens have access to ballot initiatives. [172]

Use of ballot initiatives has waxed and waned over the course of their roughly 100-year history.[173] They have, however, certainly been a regular feature of the election landscape since 1978, when California's Proposition 13, an initiative to cut property taxes and limit future tax increases,[174] received widespread attention. Ballot initiatives today are used by advocates of all ideological persuasions, often to make policy, tax, or spending decisions that legislators have refused or been unable to make. Yet, more than 60% of all "initiative activity" has been concentrated in just six of the twenty-four states that allow initiatives: Arizona, California, Colorado, North Dakota, Oregon, and Washington.[175]

With all of the initiatives that are proposed and voted on in each election and all of the attention that ballot initiatives receive, especially when "lightening-rod" social issues are involved, it could seem as if mounting an initiative campaign must be a snap. The reality, however, is that very few proposed initiatives ever make it to the ballot, and fewer still are approved by the voters. By the Initiative & Referendum Institute's count, only about one-fourth of the initiatives that are filed with the appropriate state authorities actually make it to the ballot.[176] Furthermore, of all the statewide initiatives that made it to the ballot between 1904 and 2002, only about four in ten (41%) were approved by the voters.[177]

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[169] *See* M. Dane Waters, Initiative and Referendum in the United States, Presentation to the Democracy Symposium 1 (Feb. 16–18, 2002), *available at* http://ni4d.us/library/waterspaper.pdf (last visited Sept. 29, 2005).
[170] John G. Matsusaka, *I&R in American Cities: Basic Patterns, in I&R Almanac, supra* note 154, at 35 [hereinafter *I&R in Cities*].
[171] *Id.* at 36.
[172] *Id.* at 35. *See also* International City/County Management Association, Municipal Form of Government, 2001, at 2 (2001), *available at* http://www2.icma.org/upload/bc/attach/%7B3877813F-7DA9-49C5-9604-077086B74BE6%7Dfog2001web.pdf (last visited Sept. 28, 2004). Of the roughly half (54%) of all municipalities that responded to the ICMA survey, 58% provided for ballot initiatives. *Id. But see I&R in Cities*, *supra* note 170, at 35 (estimating the actual number of municipalities authorizing ballot initiatives to be closer to between one-third to one-half).
[173] Most of the twenty-four states that offer ballot initiatives adopted the process in a twenty-year time span between 1898 and 1918, coinciding with the Populist and Progressive movements. *I&R Almanac*, *supra* note 161, at 3–5.
[174] Cal., Proposition 13, Tax Limitation-Initiative Constitutional Amendment (1978), *in* Cal. Sec'y of State, Resources: California Ballot Propositions Database (amending Cal. Const. art. XIIIA, §§ 1–6), *at* http://www.ss.ca.gov/elections/elections.resources.htm. (last visited Mar. 14, 2005) [hereinafter Prop. 13].
[175] *I&R Almanac*, *supra* note 161, at 7; Initiative & Referendum Institute, Is the Initiative Process Out of Control? (undated), *available at* http://www.iandrinstitute.org/Usage.htm (last visited Sept. 29, 2004).
[176] *I&R Almanac*, *supra* note 161, at 7.
[177] *Id.*

Referendums can be divided into popular referendums, by which citizens dissatisfied with the legislature's adoption of a law can petition to place it on the ballot for an up-or-down vote, and legislative referendums, by which a legislative body can vote to place a proposed law on the ballot for direct approval or disapproval by the voters.[178] As with initiatives, legislative referendums can involve either statutes or constitutional amendments.[179] All states except Delaware not only permit but require constitutional amendments passed by the legislature to be submitted to the voters for approval in a referendum.[180] However, there are only twenty-three states that permit their state legislatures to place proposed statutes on the ballot;[181] these twenty-three states substantially overlap with, but are not the same as, the twenty-four states that permit ballot initiatives.[182] Whether a legislative referendum is placed on the ballot at the legislature's option or is mandated by law,[183] it does not require the time, expense, or risk entailed with an initiative of having to collect signatures in order to qualify for the ballot. Moreover, statewide legislative referendums appear to enjoy a higher success rate than initiatives—about 61% are approved.[184]

B. Typical Requirements and Overview of the Initiative Process

Proponents of ballot initiatives[185] must overcome several procedural hurdles in order to place a measure on the ballot. Procedural requirements are quite intricate and vary from state to state, but there are certain types of rules and procedures that are typical of the process. First, even before circulating an official petition, the proposal must be filed (sometimes along with a nominal number of signatures and a refundable filing fee) with the responsible state official(s) for review

[178] *Id.* at 11.
[179] *Id.*
[180] *Id.* at 5, n.13.
[181] Initiative & Referendum Institute, Table 1.2: States with Legislative Referendum (LR) for Statutes and Constitutional Amendments (undated), *available at* http://iandrinstitute.org/New%20IRI%20Website%20Info/Drop%20Down%20Boxes/Requirements/Legislative%20Referendum%20States.pdf (last visited Sept. 28, 2005). The twenty-three states that allow the legislature to place a proposed statute on the ballot are Arizona, Arkansas, California, Delaware, Idaho, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, and Washington. *Id.*
[182] *Compare id. with I&R Almanac*, *supra* note 161, at 12.
[183] *I&R Almanac*, *supra* note 161, at 11.
[184] David B. Magleby, *Direct Legislation in the American States*, *in Referendums around the World: The Growing Use of Direct Democracy* 218, 251 Table 7–5 (David Butler & Austin Ranney eds., 1994) (calculations based on a study of statewide legislative referendums in twelve states between 1898 and 1992).
[185] This subsection focuses mainly on the ballot initiative process, and not referendums, for two reasons. First, initiatives are of greater significance to advocates because they offer a means by which advocates can propose policy, whereas popular referendums—measures placed on the ballot by citizens dissatisfied with a legislative enactment for an up-or-down vote—would rarely be a useful tool for advocates seeking to expand access to high-quality, affordable ECE/AS services. This is because popular referendums can only be used to reject (or approve) a legislative enactment; they cannot be used to initiate or improve a legislative enactment. Second, although legislative referendums—statutory or constitutional proposals placed on the ballot by the legislature—are a more useful tool for advocates than popular referendums because they offer a means of establishing new policy, the process for convincing a legislature to place a legislative referendum on the ballot resembles the process for convincing a legislature to adopt other types of legislation (except perhaps with requirements for a super-majority in the case of constitutional amendments), and thus is a process that is likely already familiar to advocates.

to assure that it meets all applicable legal requirements as to content and form.[186] That official is typically the state attorney general or secretary of state.[187] In a few states, however, a legislative council,[188] or even the state supreme court, reviews the proposal.[189]

The type of official review and approval process required also varies from one jurisdiction to another. In about one-third of the twenty-four states that permit initiatives, the designated official reviews the measure only to confirm that it is in the proper form.[190] About half of the twenty-four states require some type of review of the language or content of the proposal, for instance to assure that it is constitutional and complies with any content limitations.[191] In only four of these content-review states, however, can the responsible official reject the proposal and keep it off the ballot.[192] In the other eight, the decision of the official is merely advisory—the proponents are free to ignore the decision.[193]

Limitations on content run the gamut.[194] For instance, some states disallow initiatives that require appropriations,[195] or allow them only if the measure also contains a funding source.[196] Some states specify that certain subjects are off-limits, such as measures that address religion[197] or modifications of their public employees' retirement system.[198] Some states also have limits on the frequency with which an initiative that is substantially the same as one that failed can appear on the ballot.[199] All states limit initiatives to measures that could be acted on by the legislature[200] and more than half require that an initiative address only a single subject.[201] Single-subject rules may be liberally or

[186] *I&R Almanac*, *supra* note 161, at 15.
[187] S*ee id.*
[188] *Id.* For example, in Montana and Colorado, "legislative services" or "legislative council" staff perform some ballot-related review functions. *See* Mont. Code Ann. § 13-27-202 (2003), *available at* http://data.opi.state.mt.us/bills/mca/13/27/13-27-202.htm (last visited Aug. 7, 2005) (Montana); Colo. Rev. Stat. § 1-40-105 (2004) *available at* http://198.187.128.12/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0 (last visited Aug. 7, 2005) (Colorado).
[189] *I&R Almanac*, *supra* note 161, at 15.
[190] *See id.* The *I&R Almanac* is unclear on the number of states—the text says that in ten states the official reviews the measure only for form, but the chart accompanying the text lists only seven states in which the official plainly reviews only for form: Arizona, Maine, Missouri, Nevada, North Dakota, Oklahoma, and Wyoming. *Id.*
[191] *See id.* The *I&R Almanac* is unclear on the number of states—the text says that twelve states require some type of review of the content or language, but the chart accompanying the text lists thirteen states in which some review of content or language is required: Alaska, Arkansas, Colorado, Florida, Idaho, Massachusetts, Mississippi, Montana, Nebraska, Oregon, South Dakota, Utah, and Washington. *Id.*
[192] *Id.* The four states are Arkansas, Florida, Oregon, and Utah. *Id.*
[193] *Id.*
[194] *See* National Conference of State Legislatures, Initiative and Referendum in the 21st Century: Final Report and Recommendations of the NCSL I&R Task Force 17–19 (2002), *available at* http://www.ncsl.org/programs/legman/irtaskfc/irreport.htm (last visited Sept. 28, 2005).
[195] *I&R Almanac*, *supra* note 161, at 18. For example, Alaska, Maine, Montana, and Wyoming do not allow initiatives that require appropriations. *Id.*
[196] *Id.* For example, Missouri and Nevada allow initiatives that require appropriations only if a funding source is provided. *Id.*
[197] *Id.* Massachusetts, for example, does not allow initiatives that address religion. *Id.*
[198] *Id.* Mississippi, for example does not allow such initiatives. *Id.*
[199] *Id.* at 20.
[200] *Id.* at 18.
[201] *See id.* The definition of what constitutes a single subject varies from state to state. This was an issue in the Florida UPK initiative. *See infra* notes 301-03, 443 and accompanying text.

narrowly construed,[202] and can supply the grounds for legal challenges to placing an initiative on the ballot.[203]

Once the content is reviewed, an official title and a summary of the initiative must be prepared, first to be used on petitions that will be circulated for signatures, and later on the ballot itself. Because the wording of the title and summary can influence the outcome of the initiative,[204] the power to write that language and gain approval of it is a major issue. In some states, the proponent can write the title and summary for the petition, with or without official approval.[205] In others, the attorney general or a special "drafting" committee writes the circulation title and summary.[206] Because that title and summary may later be used on the ballot itself, the title and summary are often contested in court, either before petitions are circulated or after that but before the election.[207] When it comes to what appears on the election ballot and official voter information materials, however, all states require official approval of the proponent's language at a minimum, and more typically the ballot title and summary are actually drafted by an official such as the attorney general or secretary of state.[208]

Once the content is approved and the title and summary are set, the proponent must circulate petitions within a limited period of time and gather a specified number of signatures in support of placing the proposal on the ballot.[209] Usually, the number of signatures required is set in terms of a percentage of registered voters or a percentage of voters in the previous election for a given office; in most cases, the latter benchmark is the number of votes cast for governor.[210] The signature requirements tend to be more stringent for constitutional amendment initiatives than for statutory initiatives: of the fifteen states that permit both constitutional and statutory initiatives, twelve require a larger number of signatures to qualify a constitutional initiative than a statutory initiative, sometimes twice as many.[211] Thirteen of the twenty-four initiative states also require that the signatures gathered be geographically distributed so that voters from many areas of the state are represented on the petition.[212] Once enough signatures are collected, they are submitted for

[202] *See* Caroline J. Tolbert, Daniel H. Lowenstein, & Todd Donovan, *Election Law and Rules for Using Initiatives*, *in Citizens as Legislators: Direct Democracy in the United States* 27, 41–43 (Shawn Bowler, Todd Donovan, & Caroline J. Tolbert eds. 1998).).
[203] *Id*. at 41–43; Kenneth P. Miller, *The Courts and the Initiative Process*, *in I&R Almanac*, *supra* note 161, at 459.
[204] *I&R Almanac*, *supra* note 161, at 16.
[205] *Id*. at 16–17.
[206] *Id*.
[207] *Id.* at 16. The *I&R Almanac* text says that eleven states provide expedited court review of challenges to the circulation title on the petition, but the chart accompanying the text lists only nine states that do so, Alaska, Arkansas, Colorado, Idaho, Mississippi, Montana, Oregon, Washington, and Wyoming. *Id.* Similarly, the text says that fourteen states provide for expedited court review of the ballot title wording, but the chart accompanying the text lists sixteen states that do so: Alaska, Arkansas, California, Colorado, Idaho, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Oklahoma, Oregon, Utah, Washington, and Wyoming. *Id*. at 17.
[208] *Id*. at 16–17.
[209] *Id.* at 20. The individuals who circulate the petitions and collect the signatures must also sometimes meet certain criteria, such as state residency. *Id*.
[210] *Id*. at 21.
[211] *Id.* The twelve states that permit both statutory and constitutional amendment initiatives and require more signatures for the latter are Arizona, Arkansas, California, Michigan, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota. *Id.*
[212] *Id*. at 28–29. The thirteen states are Alaska, Arkansas, Florida, Idaho, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, Ohio, Utah, and Wyoming. *Id.*

verification. A few states presume the signatures to be valid unless they are challenged, but the rest require either all or a random sample of the signatures to be verified, ordinarily by the secretary of state's office.[213]

If the initiative proponent has collected enough valid signatures by the deadline, the proposal will go on the ballot, and the campaign for the proposal begins in earnest. States typically require only a simple majority for passage. Some, however, require a supermajority or some other, more stringent, approval requirement, such as requiring a certain percentage of the electorate to have voted in order for the majority to count.[214]

Finally, after passage, initiatives may be legally susceptible to modification by lawmakers. In all eighteen states that permit constitutional amendment initiatives, they may only be amended by another initiative or a referendum.[215] However, states are split concerning the legislature's authority to amend or repeal a statutory initiative. In one state, California, a statutory initiative cannot be modified or repealed by the legislature; only another initiative can do that.[216] In nine of the remaining twenty states that authorize statutory initiatives, the legislature is permitted to amend or repeal the initiative after the election, but there are some restrictions on that power, such as waiting periods before the legislature can act or a requirement that any change command a super-majority.[217] However, in the other eleven states, the legislature may repeal or amend the initiative with a simple majority.[218]

C. Democracy Run Amok? General Concerns about Initiatives

The use of ballot initiatives to make law is controversial.[219] On the one hand, ballot initiatives are a tool of direct democracy. Supporters of the ballot power argue that they allow the people to go over the heads of an unresponsive legislative body and effectuate the will of the people.[220] On the other hand, sometimes the legislature has good reason to be unresponsive, especially if a proposal is popular with the public but is ill-considered or even unjust. Thus, some who are

[213] *Id.* at 22–24. The *I&R Almanac* text says that three states presume the signatures valid unless challenged, but the chart accompanying the text lists only two states, Ohio and Oklahoma. *Id.*
[214] *Id.* at 26.
[215] *Id.* at 27.
[216] *Id.* The exception to this rule is that the legislature may amend an initiative if the initiative itself permits it. Cal. Const. art. 2, § 10(c). For example, the California Prop. 10 initiative expressly permits amendment by the legislature, but only if the amendment is consistent with and in furtherance of the initiative's purposes and is approved by a two-thirds vote. Prop. 10 Full Text, *supra* note 73, § 8.
[217] *I & R Almanac*, *supra* note 161, at 27. The nine states that permit either amendment, repeal, or both, but with limitations, are Alaska, Arizona, Arkansas, Michigan, Nevada, North Dakota, Utah, Washington, and Wyoming. *Id.*
[218] *Id.* These eleven states are Colorado, Idaho, Maine, Massachusetts, Missouri, Montana, Nebraska, Ohio, Oklahoma, Oregon, and South Dakota. *Id.*
[219] Referendums, unlike initiatives, do not seem to be the subject of such controversy. The types of concerns voiced about the initiative process and discussed in this section—such as lack of expertise and input, no opportunity for compromise and refinement, and hamstringing government by failing to see the big picture—do not apply because lawmaking by lawmakers is at the center of referendum process. *See, e.g.*, Richard J. Ellis, *Democratic Delusions: The Initiative Process in America* 3–4 (2002).
[220] *See generally Citizen Lawmakers*, *supra* note 8, ch. 2.

active participants in or observers of policy-making and the political process object to initiatives, contending that they produce bad government and bad policies.[221]

Some of the concern relates to perceived deficiencies in the process. Voters may not understand what they are voting on, either because they are ill-informed or because the initiative may be long, complicated, technical, or drafted in legalese. As compared to the policy expertise, hearings, scrutiny, deliberations, and refinements that usually go into legislation, ballot initiatives may not be supported by sufficient study, input, or debate. Moreover, once an initiative is qualified for the ballot, it is a take-it-or-leave-it proposition; the process does not allow for revisions. Even after the election, as described above, the legislature may be restricted in its ability to modify an initiative to reflect changed circumstances.

Another concern is the impact that initiatives have on other spending or policy priorities, and hence state budgets. Initiatives are generally considered on their individual merits; they are not weighed against other priorities, whereas legislators can—at least theoretically—more readily see the big picture. Passage of measures requiring more money for education, health care, roads, or other public priorities can be beneficial, especially when viewed as stand-alone proposals. But, especially to the extent initiatives limit taxes or mandate specific expenditures, they can put government in a budgetary straitjacket, leaving less money to address needs not covered by the initiative. This problem may be compounded by the cumulative effect of multiple initiatives.[222]

Some critics of the initiative process are skeptical that initiatives are genuinely a tool of the people and believe them to be more a tool of moneyed interests.[223] The ballot is accessible to anyone with the money to hire paid signature-gatherers. For instance, California Prop. 10, the early childhood initiative funded by a tobacco tax, was able to be launched because Rob Reiner contributed a great deal of his own money and was able to raise significant sums from others in Hollywood. On the other side, after the passage of Prop. 10, the tobacco industry immediately hired a professional firm to gather the signatures needed to place on the next general ballot a counter-initiative that would have repealed the tobacco tax. But access doesn't guarantee victory. The counter-initiative failed. Still, as will be discussed in the next chapter, huge sums are often spent for and against ballot initiatives.[224] When millions of dollars are involved, the claim that initiatives are "a tool of the people" overlooks the fact that most "people" don't have ready access to such large amounts of money.[225]

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[221] *See, e.g., Democracy Derailed, supra* note 8, at 1 (calling the initiative process "not a government of laws but laws without government").

[222] *See* Jonathan Weisman, *Voter Initiatives Limit Calif. Wiggle Room; Governor Has Little Budget Discretion*, Wash. Post, Aug. 14, 2003, at A1 (citing research by John Ellwood that found that ballot initiatives and federal mandates allocate 60% to 80% of the state budget); David Postman, *Voters Limiting Legislature's Say: Major State Decisions Being Made by Initiatives*, Seattle Times, Nov. 11, 2001, at B1. *But see* John G. Matsusaka, Have Voter Initiatives Paralyzed the California Budget? (Nov. 2003), *available at* http://papers.ssrn.com/sol13/papers.cfm?abstract_id=476443 (last visited Aug. 5, 2005) (concluding that voter initiatives have not imposed significant constraints on California's ability to raise revenues or allocate appropriations).

[223] *See, e.g.*, *Democracy Derailed*, *supra* note 8, ch. 5. *But see* Shaun Bowler & Todd Donovan, *Information and Opinion Change on Ballot Propositions*, 16 Political Behavior 411 (1994) (concluding that media spending on ballot measures does not drive or convert public opinion).

[224] *See Democracy Derailed*, *supra* note 8, at 163–64 (pointing out that in the 1997–1998 election cycle, more than $257 million was spent for and against statewide ballot initiatives). *See also infra* pp. 92–96.

[225] A related concern is that the two major political parties have become major players in the ballot initiative process and regularly attempt to use initiatives to boost voter turnout for their slate of candidates, divide the opposition, and

Even when these criticisms ring true, in evaluating the merits of ballot initiatives as a strategy, the question is not whether there are valid criticisms of ballot initiatives, but rather how initiatives compare to other strategies. For most measures, the best comparison is to the legislative process, because legislation is the primary alternative. And the legislative process can share some of the same or similar pitfalls as the initiative process. For instance, like voters, legislators are not always well-informed on all of their votes. They often defer to knowledgeable colleagues or take cues about how to vote from their party leaders, just as voters rely on opinion leaders, party endorsements, and others for cues on how to vote.[226]

Moreover, the legislative process offers no guarantees that the "right" priorities will be funded. Investments in programs and services that have been the subject of the initiatives described in this report are chronically undervalued and underfunded.[227] Legislatures may be dominated by moneyed interests as much as ballot campaigns are. In the absence of specific mandates from the voters, legislators may respond to more powerful constituencies and use limited revenues for tax cuts or other priorities. Sometimes, therefore, ballot initiatives can have the beneficial effect of forcing choices and requiring lawmakers to make the decisions that should be made and the public wants them to make.

Whether, in the end, ballot initiatives make a positive or detrimental contribution to democracy, there are more strategic and practical considerations to weigh in deciding whether ballot initiatives are a useful strategy for early childhood and school-age program advocates and, if so, how to maximize the chances for success. The balance of this report examines a variety of ECE/AS ballot measures, most of them recent, to assess whether the initiative (and, in some instances, referendum) process is an effective strategy for advancing the ECE/AS agenda. The report then highlights lessons learned in order to help advocates increase the likelihood of victory in any ballot campaign they undertake.

footnote cont'd
promote their own party's agenda. *See* Daniel A. Smith & Caroline J. Tolbert, *The Initiative to Party: Partisanship and Ballot Initiatives in California*, 7 Party Politics 739 (2001) (asserting that there is growing evidence that the parties' involvement in California ballot campaigns increases turnout by the base, splits the opposing party's vote, raises money, and bolsters policy positions). *But cf.* Noah Campbell Trister, The Effects of Ballot Measure Ideology on Partisan Voter Turnout (2001) (unpublished A.B. thesis, Princeton University) (on file with Princeton University Library) (detailing empirical study of ballot measures in twenty-seven states between 1992 and 2000 and generally concluding that ballot measure ideology does not affect partisan voter turnout).

[226] *See* Arthur Lupia, *Shortcuts vs. Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88 Am. Pol. Sci. Rev. 63–76 (1994).

[227] *See generally* National Women's Law Center, Women's Stake in Improving the Availability, Affordability, and Quality of Child Care and Early Education 4–6 (2002), *available at* http://www.nwlc.org/pdf/WomensStakeApril2002.pdf (last visited Sept. 28, 2005); Jennifer Mezey, Rachel Schumacher, Mark H. Greenberg, Joan Lombardi, & John Hutchins, Center for Law & Social Policy, Unfinished Agenda: Child Care for Low-Income Families Since 1996, Implications for Federal and State Policy (2002), *available at* http://www.clasp.org/publications/unfinished_agenda_full_report.pdf1 (last visited Sept. 28, 2005); Suzanne W. Helburn & Barbara R. Bergmann, *America's Child Care Problem: The Way Out* (2002).

III. ARE BALLOT MEASURES A WORTHWHILE STRATEGY FOR ADVANCING THE ECE/AS AGENDA?

This chapter of the report analyzes whether ballot measures are an effective strategy to bring about improved ECE/AS policies. Based on the measures studied, this chapter first examines whether some types of ECE/AS policy proposals do better at the polls than others, and whether some financing approaches do better at the polls than others. For those ballot measures studied that were approved, this chapter then takes stock of what they have accomplished and whether they achieved what they set out to do. Next, the inquiry turns to gauging whether ballot measures are a cost-effective means of achieving those accomplishments. Finally, since it is difficult to weigh the relative merits of a particular strategy in a vacuum, the last part of this chapter reflects on how ECE/AS ballot measures compare to ECE/AS legislative strategies.

A. Which Types of ECE/AS Proposals Are Most Successful at the Polls?

Numerous factors contribute to the outcome of ballot campaigns; rarely is one single factor responsible. This subsection examines which types of ECE/AS policies and which types of financing mechanisms have won at the ballot box, and whether either a measure's policy or its financing seems to have made a difference in the outcome. In this examination, the Florida CSC referendums are treated separately from the other thirteen ballot measures studied. Although the CSC proposals in the Florida counties are very similar, they cannot fairly be counted as a single proposal with one outcome because of the split in results at the polls (they lost in ten elections, won in eight). On the other hand, to count them as eighteen separate ballot measures would assign them too much weight and allow them to skew the findings that emerge from the other measures studied. Therefore, the other thirteen measures (referred to collectively as the "core-analysis" measures) are discussed first and the effect of the CSC measures on that discussion follows.[228]

Ballot measures on ECE/AS issues have enjoyed a fairly high rate of success at the ballot box: nine of the thirteen core-analysis measures—or roughly two-thirds—triumphed on election day, as did eight of the eighteen Florida CSC measures. Based on the election results, the type of ECE/AS

[228] This evaluation of the reasons for a measure's success at the polls does not include an examination of whether the measure was an initiative or a referendum, since the success rate of ECE/AS initiatives and referendums is about the same. Seven of the thirteen core-analysis measures were initiatives and six were referendums; four of these seven initiatives were approved by the voters, as were four of the six referendums. All of the eighteen Florida CSC measures were referendums; eight were approved by the voters.

policy or program proposed does not seem to have driven a measure's success or failure at the polls. In contrast, the type of financing mechanism proposed does seem to have had some effect on a measure's success.

1. Types of ECE/AS Policy Proposals that Have Won Voter Approval

Clearly, one factor to consider in evaluating the reasons for a ballot measure's success at the polls is the content of the policy change being proposed and whether the type of ECE/AS policy proposed affects the outcome. The nine successful core-analysis measures contained a variety of ECE/AS policy proposals, as did the four unsuccessful core-analysis measures. In contrast the eight successful and ten unsuccessful CSC measures were virtually identical. Taken together, the electoral record of both the core-analysis and CSC measures demonstrates that no specific ECE/AS policy is a sure winner or a sure loser.

A starting point in evaluating whether certain types of proposals were better candidates for a ballot campaign than others is to look at those ballot measures that proposed only one type of ECE/AS policy improvement, because they were judged by the voters on their own. Only two of the ballot measures studied were "pure" in that way. The Florida UPK initiative only addressed pre-kindergarten for four-year-olds;[229] that policy proposal prevailed.[230] The California Prop. 49 initiative tackled only the expansion of before- and after-school programs.[231] It also was successful on election day.[232]

Two more ballot measures restricted their policy proposals to improvements in ECE/AS services only, but included more than one type of ECE/AS issue. The Seattle Latte Tax initiative, which focused on ECE, would have allocated the new funds it raised to finance ECE assistance for low-income families, support training and compensation programs for child care workers, and expand pre-kindergarten for three-to-five year-olds.[233] The 2001 Denver Kids' Tax measure was framed as addressing "the needs of unattended children," which were defined as child care and out-of-school care in the underlying ordinance[234] and in the campaign coverage.[235] Both of these failed at the polls,[236] but measures containing similar ECE/AS policies and programs, as described below, were successful elsewhere.[237]

[229] UPK Initiative Full Text, *supra* note 137; *see also* UPK Initiative Ballot Question, *supra* note 135.
[230] UPK Results, *supra* note 136.
[231] Prop. 49 Full Text, *supra* note 127; *see also* Prop. 49 Ballot Question, *supra* note 125.
[232] Prop. 49 Results, *supra* note 126.
[233] Initiative 77 Full Text, *supra* note 155; s*ee also* Initiative 77 Ballot Question, *supra* note 54.
[234] *See* Denver Ordinance II, *supra* note 109, § 2.
[235] *See, e.g.*, Amy Reinink, *Plan for Kids' Tax Fine-tuned*, Denver Post, Sept. 27, 2001, at B-02; Sheba R. Wheeler, *Kid Tax Game Plan Shifts*, Denver Post, Oct. 29, 2001, at B-01.
[236] *See* Initiative 77 Results, *supra* note 159; Denver Measure II Results, *supra* note 112.
[237] Proponents of both these measures also described their losses as attributable to factors other than the policies they proposed. *See* discussion *infra* p. 89.

The remaining nine core-analysis and all of the CSC ballot measures included ECE/AS policies as part of a larger proposal. Five of the core-analysis and all of the CSC measures packaged ECE and/or AS policies with other improvements in social services; the other four core-analysis measures included ECE and/or AS improvements as part of a broader education proposal. Both types of "package deals" had a good rate of success at the polls.

Four of the five core-analysis and eight of the eighteen CSC "social services" packages prevailed on election day. The Aspen Day Care referendum, which provided funds for "day care" as well as affordable housing, won in 1990[238] and was renewed in 1999.[239] The Portland Children's Investment Fund referendum provided support for child care and school readiness, plus child abuse prevention and after-school programs,[240] and it prevailed at the polls.[241] The California Prop. 10 initiative focused on children from birth to age five, and addressed early care and education as part of a larger, integrated approach to early childhood development that also encompassed social services, health care, and public awareness on parenting skills.[242] That initiative also prevailed, although the vote was very close.[243] The San Francisco Children's Fund measure (in both its original[244] and renewed[245] forms) authorized funds for many children's programs including child care, delinquency prevention, recreation, and health and social services, and was approved twice.[246] The only core-analysis measure in this group that lost, the 2000 Kids' Tax referendum in Denver, encompassed health, early education, and before- and after-school programs.[247] The Florida CSC referendums, eight of which were successful[248] and ten of which lost, had a broad charge to fund "preventive, developmental, treatment, and rehabilitative services for children,"[249] which encompassed child care, prenatal care, out-of-school activities, and many other services.

Three of the four "education" packages were approved by the voters. The Seattle F&E Levy referendum (in both its original and renewed versions) supported early childhood development, school-based services, comprehensive student health services, and children's out-of-school activities;[250] it passed three times.[251] Colorado's Pre-K-12 initiative was first and foremost a proposal

[238] Aspen 1990 Results, *supra* note 46.
[239] Aspen 1999 Results, *supra* note 55.
[240] Portland Ordinance, *supra* note 149; Portland Children's Levy Summary, *supra* note 150; *see also* Portland Children's Levy Ballot Question, *supra* note 147.
[241] See Portland Results, *supra* note 148.
[242] Prop. 10 Full Text, *supra* note 73.
[243] Prop. 10 Results, *supra* note 72.
[244] Prop. J Full Text, *supra* note 57.
[245] Prop. D Full Text, *supra* note 67.
[246] Historical Ballot Measures, *supra* note 63.
[247] Denver, Colo., Ordinance 2000-0680 (Aug. 28, 2000) [hereinafter Denver Ordinance I]; Denver Measure I Ballot Question, *supra* note 103.
[248] These eight electoral successes do not include two additional electoral successes: Pinellas and Palm Beach counties returned to the voters to increase the property tax levy financing the measures. *See* Pinellas CSC Increase, *supra* note 15; Palm Beach CSC Increase, *supra* note 15.
[249] CSC Statute, *supra* note 14, § 125.901(2)(a)(1).
[250] Original F&E Ordinance, *supra* note 33. (superseded by 1997 F&E Ordinance, *supra* note 37, & 2004 F&E Ordinance, *supra* note 44); *see also* 2004 F&E Levy Ballot Question, *supra* note 43; *cf.* Original F&E Levy Ballot Question, *supra* note 31; 1997 F&E Levy Ballot Question, *supra* note 35.
[251] Original F&E Levy Results, *supra* note 30; 1997 F&E Levy Results, *supra* note 36; 2004 F&E Levy Results, *supra* note 42.

to increase funding for education, including preschool,[252] and it, too, was successful.[253] Both the Tennessee[254] and Alabama[255] lottery referendums combined support for early learning and/or pre-kindergarten, and in the case of Tennessee support for expanded after-school programs as well, with what were primarily mechanisms for financing college scholarship programs. The Tennessee measure passed,[256] but the Alabama measure failed.[257] Thus, including an ECE/AS proposal in a broader education measure seems to have had about the same success rate as combining it with other non-education children's programs or services.

Looking at the various ECE/AS policies individually, there was no ECE/AS policy that was a sure winner or a sure loser. For example, measures containing proposals to expand pre-kindergarten won in three jurisdictions (Florida (UPK initiative), Colorado, and Tennessee) but lost in two others (Seattle (Latte Tax initiative) and Alabama). Measures containing expansions of after-school programs won in four jurisdictions (California (Prop. 49 initiative) Portland, Seattle (F&E Levy referendum), and Tennessee), lost in one (Denver, twice), and both won and lost in Florida (CSC referendums). Measures containing improved access to, or quality in, child care won in four jurisdictions (California (Prop. 10), Aspen, Portland, and San Francisco), lost in one (Denver, twice), and both won and lost in two jurisdictions (Seattle (F&E Levy referendum, Latte Tax initiative) and Florida CSC referendums). A broad range of policy proposals has succeeded and no single type of policy proposal has consistently failed. In other words, no particular type of ECE/AS policy has worked "best."

Moreover, looking at ways of presenting ECE/AS policies—either by themselves or as part of a package of children's services or education reforms—shows mixed results as well: both ways of presenting ECE/AS measures had some successes and some failures. Measures containing only one or more ECE and/or AS policies won in California (Prop. 49 initiative) and Florida (UPK initiative), but lost in Denver (2001 initiative) and Seattle (Latte Tax initiative). Measures in which ECE and/or AS policies were packaged with other, non-ECE/AS programs won in Seattle (F&E Levy referendum), Aspen, San Francisco, California (Prop. 10 initiative), Colorado, Tennessee, and Portland, but these "package deals" lost in Denver (2000 referendum) and Alabama. In the case of the Florida CSC referendums, the *very same proposal* to improve a range of children's services won about half the time and lost the other half. Thus, the way in which the policy proposals were packaged also does not seem to have been particularly determinative of their success. Although more proposals that combined ECE and/or AS with other proposals won (seven of nine of the core-analysis measures and eight of the eighteen Florida CSC referendums) than proposals that were restricted to ECE and/or AS issues (two of the four core-analysis measures), the much smaller size of the latter group, and the lack of exit poll data to determine whether ECE/AS issues or the other issues in the package drove the vote, make firm conclusions perilous. In sum, a fairly wide range of ECE/AS issues and means of packaging them were represented and most were successful, suggesting that the type of ECE/AS policy put forward and the way it was

[252] Amendment 23 Full Text, *supra* note 91; *see also* Amendment 23 Ballot Question, *supra* note 90.
[253] Amendment 23 Results, *supra* note 89.
[254] Tennessee Lottery Full Text, *supra* note 113.
[255] Alabama Lottery Full Text, *supra* note 85; *see also* Alabama Lottery Ballot Question, *supra* note 83.
[256] Tennessee Results, *supra* note 116.
[257] Alabama Results, *supra* note 88.

presented were not particularly decisive to the outcome on election day.[258] As will be seen in the next section, however, the financing mechanism contained in the ballot proposal appears to have had a stronger impact on the outcome.

2. Types of ECE/AS Financing Mechanisms that Have Won Voter Approval

In assessing the role that content plays in a measure's success at the ballot box, the substantive ECE/AS policies or programs proposed are half of the equation. The other critical component is how the policies or programs are financed. Deciding whether and where to find the money to finance improvements in ECE/AS programs is not much easier with a ballot measure than it is with legislation. All the same quandaries are present: How should the measure be financed? Which type of financing is the most fair and capable of winning support, and which will draw opposition?

This subsection examines whether certain types of financing schemes are better candidates for a winning ballot measure than others, and if so, which ones. Although a range of financing schemes was successful at the ballot box, some had more difficulty than others. In general, proposals that earmarked funds from existing revenues had a higher rate of success than proposals that raised new revenues, although in each instance the earmarking proposals contained protections for existing funding of the same or related programs that may also have contributed to their success.

a. Types of Financing Proposed

The ballot measures encompassed in this study illustrate diverse approaches to funding ECE/AS programs, but those that included financing followed one of two general approaches: they generated additional money for ECE/AS programs by creating a new source of revenues or they generated additional money for ECE/AS programs by earmarking funds from existing sources of revenues. Those that raised new money for ECE/AS programs were further divided among those that raised the funds by instituting or increasing broadly shared property or sales taxes, instituting or increasing a tax on a specific product, or utilizing the non-tax strategy of a lottery. Those that relied on a reallocation of existing revenues protected existing funding of the same or related programs by establishing a "funding floor" or including some other type of "maintenance-of-effort" mechanism,[259] and earmarked additional funds from a particular source of revenue or from general revenues to be set aside and spent on the ECE/AS (and sometimes other children's) programs at issue. One measure did not specify any particular funding source; it simply mandated

[258] What is missing from an analysis that just focuses on election-day outcomes is the dog that didn't bark—the ECE/AS policies that may have been considered by advocates but were *not* included in ballot proposals because advance polling indicated that public support for them was weak, or at least not as strong as for other policies. If only those proposals with the strongest public support were selected, voters would only be presented with the "cream of the crop." Because no in-depth interviews were conducted for several of the older ECE/AS ballot measures analyzed, it is not known whether all ECE/AS proponents conducted advance polling. However, all of the proponents of the eight initiative and referendum proposals who were interviewed for this study indicated that they did initial polls before drafting. Among that group, all used polling to help them refine the ballot language and frame arguments, but none discarded particular policies because of poll results.

[259] Some of the measures that created a new source of revenues also contained maintenance-of-effort provisions. *See* notes 318–319 *infra* and accompanying text.

the provision of a particular program and left it up to the legislature to determine, subject to some broad limitations, how much to spend and where to find the money. The funding approaches used by the different ballot measures studied are summarized below.

Types of Funding Mechanisms Proposed

Ballot Measure	New Funds			Existing Funds	
	Broad Taxes (Source)	Product Taxes (Type)	Non-tax Revenue	Maintenance-of-Effort (Type/Source)	Added Earmark (Source)
1. Florida Children's Services Council referendums (8 passed, 10 defeated)	property taxes				
2. Seattle Families & Education Levy referendum	property taxes				
3. Aspen Day Care referendum	sales taxes				
4. San Francisco Children's Fund initiative				baseline budget/ general funds	property taxes
5. California Proposition 10 initiative		tobacco products tax			
6. Alabama Lottery referendum (defeated)			lottery proceeds		
7. Colorado Pre-K-12 initiative				funding floor/ general funds	general funds
8. 2000 Denver Kids' Tax referendum (defeated)	sales taxes				
9. 2001 Denver Kids' Tax initiative (defeated)	sales taxes				
10. Tennessee Lottery referendum			lottery proceeds		
11. California Proposition 49 initiative				funding floor/ general funds	general funds
12. Florida UPK initiative	none provided; source of financing to be determined by legislature				
13. Portland Children's Investment Fund referendum	property taxes				
14. Seattle Latte Tax initiative (defeated)		espresso drinks tax			

Ballot measures that raised new funds to pay for ECE/AS programs had a more mixed record than measures that earmarked funds from existing revenues. Five of the thirteen core-analysis measures proposed to raise broadly shared property or sales taxes to pay for ECE/AS services: the Seattle F&E Levy, Aspen Day Care, Portland Children's Investment Fund, and the 2000 and 2001 Denver Kids' Tax measures. The first three were approved by the voters (two of them more than once). The eighteen Florida CSC ballot measures proposed a broadly shared increase in the property tax; eight of these were approved (two of them more than once, by securing increases in the amount of the levies), ten were rejected. Two ballot measures—the California Prop. 10 and Seattle Latte Tax initiatives—proposed taxes on specific products: the first succeeded, the second failed. And two measures proposed creating state lotteries: the Tennessee Lottery referendum was approved by the voters, the Alabama Lottery referendum was rejected. In contrast, the three ballot measures that proposed an earmark of existing funds for ECE/AS programs, though a much smaller group, were uniformly successful at the polls: the San Francisco Children's Fund (twice), Colorado Pre-K-12 and California Prop. 49 initiatives. Only one measure had no funding mechanism—the Florida UPK initiative; it, too, won voter approval.

i. Broadly Shared Taxes

The most prevalent way of raising new revenues in the ballot measures studied was to propose an increase in a broadly shared sales or property tax. The five core-analysis measures and eighteen Florida CSC referendums with this financing mechanism were successful about half the time, making it difficult to evaluate this type of financing mechanism.

The tax increases in all of these measures—the Florida CSC, Seattle F&E Levy, Aspen Day Care, Portland Children's Investment Fund, and two Denver Kids' Tax measures—were fairly small, suggesting that, at least when the increase was small, its size was not a significant factor in its success. The Aspen Day Care referendum raised the sales tax by .45%, from 1.25% to 1.7%.[260] Both the 2000[261] and 2001[262] losing Kids' Tax measures in Denver proposed only a .2% sales tax increase, minuscule and less than half the size of Aspen's sales tax increase for child care. The Portland Children's Investment Fund referendum levied a property tax increase of $.4026/$1,000 property value ($50.33 on a $125,000 house).[263] The original Seattle F&E Levy referendum imposed a property tax increase of $.23438/$1,000 property value (about $29.30 on a $125,000 house).[264] The eighteen Florida CSC ballot referendums generally imposed a half-mill increase

[260] Financing Child Care, *supra* note 10, at 22; *see* Aspen Ordinance 81, *supra* note 49, § 3.1 (codified at Aspen, Colo., Muni. Code § 23.32.060 (c)(5)); *see also* Aspen Ballot Question, *supra* note 48.
[261] Denver Ordinance I, *supra* note 247, § 1; *see also* Denver Measure I Ballot Question, *supra* note 103.
[262] Denver Ordinance II, *supra* note 109, § 3; *see also* Denver Measure II Ballot Question, *supra* note 104.
[263] Portland Ordinance, *supra* note 149; *see also* Portland Children's Levy Ballot Question, *supra* note 147. (Calculations of the rate on a $125,000 house in this paragraph are illustrative, and do not take into account any exemptions that may apply.)
[264] Original F&E Ordinance, *supra* note 33, § 3; *see also* Original F&E Levy Ballot Question, *supra* note 31. When the levy was renewed in 1997, 1997 F&E Levy Results, *supra* note 36, and again in 2004, 2004 F&E Levy Results, *supra* note 42, no millage rate was specified but the maximum amount was about the same (1997) or increased (2004). *See* 1997 F&E Ordinance, *supra* note 37; 2004 F&E Ordinance, *supra* note 44, § 3; *see also* 1997 F&E Levy Ballot Question, *supra* note 35; 2004 F&E Levy Ballot Question, *supra* note 43.

in the property tax rate ($62.50 on a $125,000 house).[265] The Aspen,[266] Portland,[267] Seattle[268] and eight of the Florida measures[269] were successful, but the Denver measures[270] and ten of the Florida measures[271] were not.

ii. Taxes on Specific Products

The two ballot measures that created a new stream of funds by taxing a specific product faced particular challenges. The Seattle Latte Tax initiative, which imposed a 10¢-per-espresso-drink tax to fund early care and education,[272] lost.[273] The California Prop. 10 initiative, which imposed a 50¢-per-pack tax on tobacco to fund early care and education, among other programs,[274] was successful, but the vote was very close: it eked out a 50.5%–49.5% margin of victory.[275] In both cases, advocates attributed the loss and near-loss primarily to their choice of financing mechanisms.

Product-specific taxes can lead to problems because they are more likely than property taxes or sales taxes to target an identifiable business interest, and businesses have the motivation and the resources to mount well-funded, organized, sophisticated campaigns in opposition to such measures. The Latte Tax initiative in Seattle certainly galvanized opposition from the numerous small espresso shops there, as well as from coffee giants such as Starbucks and Seattle's Best.[276] Business interests also have the resources to mount lawsuits before the initiative qualifies for the

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[265] *See* CSC Statute, *supra* note 14, § 125.901(3)(b). As previously described, two of the CSCs, Pinellas and Palm Beach County, sponsored and won second referendums raising their CSC levy to one mill. *See* Pinellas CSC Increase, *supra* note 15; Palm Beach CSC Increase, *supra* note 15.

[266] Aspen 1990 Results, *supra* note 46. The referendum was renewed in 1999. Aspen 1999 Results, *supra* note 55.

[267] Portland Results, *supra* note 148.

[268] Original F&E Results, *supra* note 30. The F&E Levy was renewed in 1997, 1997 Levy Results, *supra* note 36, and in 2004, 2004 F&E Levy Results, *supra* note 42.

[269] Pinellas Results, *supra* note 19; Palm Beach Results, *supra* note 19; Hillsborough Results, *supra* note 19; Martin Results, *supra* note 19; St. Lucie Results, *supra* note 19; Okeechobee Results, *supra* note 19; Broward Results, *supra* note 19; Miami-Dade Results, *supra* note 19. As previously described, the successful Pinellas and Palm Beach referendums were also submitted to the voters a second time to increase their property tax levies and were again successful. Pinellas 1990 Results, *supra* note 19; Palm Beach 2000 Results, *supra* note 19.

[270] Denver Measure I Results, *supra* note 107 (2000 referendum); Denver Measure II Results, *supra* note 112 (2001 initiative).

[271] Polk Results, *supra* note 18; Sarasota Results, *supra* note 18; Pasco 1990 Results, *supra* note 18; Pasco 1992 Results, *supra* note 18; Duval Results, *supra* note 18, Leon Results, *supra* note 18; Lee Results, *supra* note 18; Collier Results, *supra* note 18; Miami-Dade 1988 Results, *supra* note 18; Alachua Results, *supra* note 18.

[272] Initiative 77 Full Text, *supra* note 155, § 7; *see also* Initiative 77 Ballot Question, *supra* note 154.

[273] Initiative 77 Results, *supra* note 159.

[274] Prop. 10 Full Text, *supra* note 73; *see also* Prop. 10 Ballot Question, *supra* note 71.

[275] Prop. 10 Results, *supra* note 72.

[276] *See, e.g.*, Noespressotax.org, Endorsements (on file with National Women's Law Center); Kathy Mulady, *Latte Tax Debate Whips Up Strong Feelings*, Seattle Post-Intelligencer, Aug. 19, 2003, *available at* http://seattlepi.nwsource.com/local/135603_latte19.html (last visited June 8, 2005); Alan J. Liddle, *Luxury-Levy Worries Brew over Espresso-Tax Plan*, Nation's Restaurant News, Aug. 12, 2002, *available at* http://www.findarticles.com/p/articles/mi_m3190/is_32_36/ai_90570793 (last visited June 8, 2005).

ballot or after it passes, as the tobacco companies did with the California Prop. 10 initiative.[277] In the case of Prop. 10, the tobacco companies even went so far as to place their own initiative to repeal Prop. 10 on the ballot in the very next general election.[278] All of these attacks by the tobacco industry failed, but they required Prop. 10's proponents to fight every step of the way.

Moreover, when a tax is levied on a very specific product, it can give rise to debate about whether there is an appropriate "nexus" between the funding source and the program funded. This may be because the tax is in effect a "user fee;" "nexus" appears to be a non-issue when the tax being imposed is a more general one that is broadly shared. Although the discernible nexus between cigarette taxes and ECE may not be obvious, the California Prop. 10 initiative made it clear. Its stated objectives included discouraging smoking, because the adverse health effects from pre-natal and second-hand exposure to smoke work against enabling children to enter school in good health and "ready and able to learn."[279] The text of the initiative made the reverse connection as well, i.e., that children who succeed in school are more likely to avoid smoking.[280] Consequently, proponents were able to make the case for a nexus between the Prop. 10 initiative's proposed increase in tobacco taxes and the services it would fund. But with the Seattle Latte Tax initiative, proponents reported there was much criticism by opinion leaders and by espresso drinkers of the absence of a nexus between espresso and child care; some attributed the initiative's loss to the appearance that the funding mechanism was irrational and random, and concerns about "what product would be next."[281]

In addition to the nexus issue, the type of product taxed may contribute to a ballot measure's success or failure. Taxes on tobacco are "sin taxes" and according to anti-tobacco advocates they remain popular with the public as a means of discouraging smoking, especially among children.[282] The California Prop. 10 initiative capitalized on this public support and the tobacco industry was not able to overcome it in efforts to repeal Prop. 10 two years after passage.[283] Seattle's proposed espresso tax, on the other hand, was a luxury tax in legal status, in how it was conceptualized by the proponents, and in how they pitched it in the campaign. Interviewees reported that advocates had been debating the idea of such a tax for years, on the rationale that espresso is big business in Seattle so it would raise substantial and stable amounts of money, and those willing to pay $3

[277] *See Cal. Ass'n of Retail Tobacconists v. State*, 135 Cal. Rptr. 2d 224 (Cal. Ct. App. 2003).
[278] Cal., Proposition 28, Repeal of Proposition 10 Tobacco Surtax, *in* Cal. Sec'y of State, 2000 California Primary Election Voter Information Guide/Ballot Pamphlet, March 7, 2000, *available at* http://primary2000.ss.ca.gov/VoterGuide/Propositions/28text.htm (last visited June 8, 2005) [hereinafter Prop. 28].
[279] Prop. 10 Full Text, *supra* note 73, § 2(i)-(m).
[280] *Id*. § 2(g).
[281] Norman B. Rice, Editorial, *Ill-Conceived Espresso Tax Would Not Deliver on Promises*, Seattle Post-Intelligencer, Sept. 7, 2003, *available at* http://seattlepi.nwsource.com/opinion/137688_taxno07.html (last visited June 8, 2005); *Espresso Tax Worth a Shot?*, CNN, Aug. 25, 2003, *available at* http://www.cnn.com/2003/US/West/08/25/offbeat.espresso.ap (last visited June 8, 2005) ("'What's next? Is there going to be a salmon tax to pay for literacy programs?' said Robert Nelson, president and chief executive officer of the National Coffee Association.").
[282] According to Matthew Myers, President of the Campaign for Tobacco-Free Kids, polls indicate that raising tobacco taxes to discourage smoking remains very popular, and using the taxes raised to help kids is even more popular. Telephone Interview with Matthew Myers, Nov. 4, 2003.
[283] Cal. Sec'y of State, State Ballot Measures, Statewide Returns, 2000 Primary Election (June 2, 2000), *available at* http://primary2000.ss.ca.gov/returns/prop/00.htm (last visited Aug. 10, 2005).

for a latte wouldn't mind paying 10¢ more to "help kids." Yet, because taxes on specific products are often justified on the basis of discouraging consumption of "bad" products or behaviors, any tax on a specific product or behavior risks being interpreted as a sin tax. Some of the Latte Tax initiative campaign participants who were interviewed reported that espresso drinkers seemed to have taken personal offense at the tax, in that they considered their lattes neither a sin nor a luxury, and did not consider themselves rich. In any case, there was a consensus among the advocates interviewed that the initiative's financing mechanism, not its child care policies, was what defeated that ballot measure.

iii. Non-tax Revenues

Two of the ballot measures proposed raising new revenues by creating state lotteries; the Tennessee Lottery referendum was successful, the Alabama Lottery referendum was not.

In Alabama, then-Governor Don Seligman was voted into office, in large part, on his campaign pledge to create a lottery and use the proceeds to boost financing mostly for college aid, but also for voluntary pre-kindergarten.[284] Polls showed high levels of support for the proposal—over 60% just two months before the election.[285] Yet, on election day the referendum was defeated by a 54–46% margin.[286] The religious community's organized opposition to state-sponsored gambling was widely credited for the defeat.[287] Thus, the Alabama proposal appears to have failed because of opposition to its financing mechanism, not its substantive policy proposals.

A similar referendum to create a state lottery in Tennessee, in contrast, prevailed comfortably, with 57% of the vote.[288] It, too, stipulated that lottery proceeds should be used first to fund aid for postsecondary education, and any excess was to be spent on early learning and after-school programs. Religious organizations, as in Alabama, led the opposition.[289] Thus, the reasons for the difference in election results were not obvious. However, to the extent that the lottery financing mechanism was a factor, the greater influence of religious organizations in Alabama or Tennessee's lack of a state income tax, and hence perhaps greater acceptance of other means of raising revenue, could explain the difference in results. In any case, the Alabama and Tennessee experiences suggest that use of a lottery as the financing mechanism can be controversial and therefore risky, but not necessarily fatal.

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[284] Leah Marie Rawls Atkins, *Alabama (state), in* Microsoft® Encarta® Online Encyclopedia 7 (2004) *at* http://encarta.msn.com/encyclopedia_761576470_13/Alabama_(state).html#p195 (last visited June 8, 2005) (Siegelman was "elected governor on the single-issue platform of a state lottery to fund educational reforms"); *Siegelman Reveals His 'Open' Lottery Proposal*, Decatur Daily, Aug. 29, 2002, at B3.

[285] Associated Press, *Voters in Alabama Soundly Defeat State Lottery*, N.Y. Times, Oct. 13, 1999, at A18.

[286] Alabama Results, *supra* note 88.

[287] *See, e.g.*, Karin Miller, *Bet On It: A Long, Loud Lottery Debate Awaits*, Oak Ridger, Feb. 19, 200, *at* http://www.oakridger.com/stories/021901/new_0219010007.html (last visited June 8, 2005).

[288] Tennessee Results, *supra* note 116.

[289] *Sen. Cohen Ready to Get Games Going*, The Oak Ridger, Nov. 6, 2002, *at* http://www.oakridger.com/stories/110602/stt_1106020022.html (last visited June 8, 2005).

iv. Earmarks of Existing Revenues

Another method used in ballot measures to increase funding for ECE/AS programs has been to set aside or "earmark" a certain portion of existing revenues for those programs. Three of the ballot measures studied took this approach to financing, coupling it with a funding floor or other protection against reductions in funding of the same or related programs: the San Francisco Children's Fund, Colorado Pre-K-12 and Prop. 49 initiatives. All three of these measures were approved by the voters.

The San Francisco Children's Fund initiative required that 2.5¢ of every $100 in property taxes collected by the city be deposited into a separate fund for children's services, including child care.[290] To ensure that these newly allocated funds augmented rather than replaced existing investments in children's programs and that existing services continued, the initiative also required the city to reserve a certain percentage of its budget (general revenues) for a Baseline Children's Budget (the funding floor).[291] This approach was reaffirmed and strengthened when the San Francisco measure was renewed by the voters in 2000: the allocations from existing general revenues for the Baseline Budget and from property tax revenues for the Children's Fund were both increased.[292]

The Colorado Pre-K-12 initiative required the legislature to increase base, per-pupil spending for preschool through grade twelve and total funding for specifically defined categorical education programs by at least the rate of inflation plus 1% for ten years (and by at least the rate of inflation thereafter).[293] To help pay for this increase, the initiative created a set-aside of existing income tax revenues, which were to be deposited in a State Education Fund.[294] The initiative not only prohibited the legislature from using these funds to supplant the level of specified general fund appropriations for education in FY 2000–2001 (the funding floor), but also required the legislature to increase these appropriations by at least 5% annually for ten years, except when growth in personal income was less than 4.5%.[295]

Prop. 49, the after-school initiative in California, mandated that at least the amount of the general fund appropriations for after-school programs in FY 2003–2004 (the funding floor), up to $550 million (the funding increase), be appropriated for after-school programs in subsequent years

[290] Prop. J Full Text, *supra* note 57 (amending San Francisco Charter § 6.415(b), (d)) (superseded by Prop. D Full Text, *supra* note 67 (amending San Francisco Charter art. XVI, § 16.108(c), (e))); *cf.* Prop. J Ballot Question, *supra* note 56.
[291] Prop. J Full Text, *supra* note 57 (amending San Francisco Charter § 6.415(g)) (superseded by Prop D. Full Text, *supra* note 67) (amending San Francisco Charter art. XVI, § 16.108(g))); *cf.* Prop. J Ballot Question, *supra* note 56.
[292] Prop. D Full Text, *supra* note 67 (amending San Francisco Charter art. XVI, § 16.108 (c)); *see also* Prop. D Ballot Question, *supra* note 66.
[293] Amendment 23 Full Text, *supra* note 91, at 47 (amending Colo. Const. art. IX, § 17(1)); *see also* Amendment 23 Ballot Question, *supra* note 90.
[294] Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, §§ 17(4)(a), 17(5)); *see also* Amendment 23 Ballot Question, *supra* note 90.
[295] Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, § 17(5); *see also* Amendment 23 Ballot Question, *supra* note 90.

and that the funding come from existing general revenues (but not from general revenues already earmarked for education).[296] The funding increase, however, is contingent on growth in overall state budget appropriations to a specified threshold.[297]

Based on news accounts and campaign materials, the proponents of all three of these ballot measures campaigned for them, in part, by arguing they could help children *without raising taxes*,[298] a pitch that may have appealed to voters. The fact that all three of these measures also contained provisions designed to ensure a certain baseline level of investments in the same or similar children's programs may have been a factor in their success at the polls as well.

v. Financing Not Specified

Florida's successful UPK initiative did not identify a particular financing mechanism, expressly leaving it to the legislature to devise one.[299] The initiative required the state to fund UPK, but it neither created nor identified any particular source of funding for that mandate beyond the caveat that UPK must be financed with "funds generated in addition to those used" for existing "child or adult education, health care, or development" programs.[300] Proponents of the Florida measure explained both that its policy content was stated quite generally and that its financing mechanism was largely unspecified because of the state's stringent single-subject requirement for ballot initiatives, which requires that constitutional amendment initiatives "embrace but one subject and matter directly connected therewith."[301] At times, the Florida Supreme Court has barred measures that both create a program and create a financing mechanism from the ballot, since voters could agree with one subject, the proposed program, but not the second subject, the funding source.[302] Even measures that are limited to a single issue have had problems winning the Florida Supreme Court's approval if they are so detailed as to "substantially alter" or usurp the functions

[296] Prop. 49 Full Text, *supra* note 127, § 10 (codified at Cal. Educ. Code § 8483.5); *cf.* Prop. 49 Ballot Question, *supra* note 125.
[297] Prop. 49 Full Text, *supra* note 127, § 10(b) (codified at Cal. Educ. Code § 8483.5(b)).
[298] *See* San Francisco, Cal., Office of the Registrar of Voters, Proponent's Argument in Favor of Proposition J, San Francisco Voter Information Pamphlet & Sample Ballot 80 (Nov. 5, 1991), *at* http://sfpl4.sfpl.org/pdffiles/November5_1991.pdf (last visited June 13, 2005); The Bell Policy Center, Proponents' Arguments, Amendment 23 Funding for Public Schools 5 (on file with National Women's Law Center); Cal. Sec'y of State, Argument in Favor of Proposition 49, California General Election, Tuesday, November 5, 2002, Official Voter Information Guide 22, *available at* http://vote2002.ss.ca.gov/2002-vig/pdf/bp_pe01.pdf (last visited June 13, 2005).
[299] UPK Initiative Full Text, *supra* note 137; *see also* UPK Initiative Ballot Question, *supra* note 135.
[300] UPK Initiative Full Text, *supra* note 137 (amending Fla. Const. art. IX, § 1(c)); *see also* UPK Initiative Ballot Question, *supra* note 135.
[301] Fla. Const. art. XI, § 3 [hereinafter Florida Single Subject Rule].
[302] *Compare, e.g., In Re Advisory Opinion to the Attorney General re Save Our Everglades,* 636 So.2d 1336, 1340 (Fla. 1994) (proposal to create Everglades trust fund financed by tax on sugar industry violates single-subject rule) *with In Re Advisory Opinion to the Attorney General re Florida's Amendment to Reduce Class Size,* 816 So.2d 580, 584 (Fla. 2002) (proposal to set limits on class size that neither specifies funding source nor specific amount does not violate single-subject rule). *But see In Re Advisory Opinion to the Attorney General re Funding for Criminal Justice,* 639 So.2d 972, 973 (Fla. 1994) (proposal to create criminal justice trust fund financed with sales tax and appropriations by legislature does not violate single-subject rule).

of another branch of government.[303] Given the lack of clarity in the court cases, proponents of the UPK initiative decided the safest course was to provide only a general description of the program content and no funding mechanism. The initiative proponents may have omitted the funding source for legal reasons, but some supporters of the measure interviewed thought that the omission of a funding source was also smart politics—they had purposely steered clear of funding in order to make their proposal more palatable and to avoiding generating potential opposition that might not otherwise exist.[304]

b. Other Financing-Related Provisions

All of the ballot measures studied contained one or more other financing-related provisions that may have contributed to the success of the winning measures, but were no guarantee of success.

Six of the thirteen core-analysis ballot measures[305] and one of the Florida CSC referendums[306] contained sunset provisions, which assure voters that the measure is not permanent, and that they will have a chance to evaluate the results before "re-upping." Five of these seven measures were successful,[307] and three of them have reached their sunset dates (one more than once) and been

[303] *Compare In Re Advisory Opinion to the Attorney General re Requirement for Adequate Public Education Funding*, 703 So.2d 446, 449 (Fla. 1997) (proposal to require at least 40% of appropriations be allocated to education usurps legislative functions) *with In Re Advisory Opinion to the Attorney General re Limited Casinos*, 644 So.2d 71, 73–4 (Fla. 1994) (proposal to allow limited casino gambling containing detailed regulatory requirements affected but did not usurp government functions; details just fleshed out scope).

[304] The lack of a funding mechanism may have helped the measure to pass on election day, but both it and the measure's lack of program details led to problems in implementing the measure. *See infra* notes 441–462 and accompanying text.

[305] The six measures that contained sunset provisions were the Seattle F&E Levy referendum, Original F&E Levy Ordinance, *supra* note 33, § 3 (superseded by 1997 F&E Ordinance, *supra* note 37, § 3, & 2004 F&E Ordinance, *supra* note 44, § 3); *see also* Original F&E Levy Ballot Question, *supra* note 31; 1997 F&E Levy Ballot Question, *supra* note 35; 2004 F&E Levy Ballot Question, *supra* note 43; Aspen Day Care referendum, Aspen Ordinance 81, *supra* note 49, § 7 (superseded by Aspen, Colo., Res. 99–13 § 7 (Mar. 8, 1999)); *see also* Aspen Ballot Question, *supra* note 48; Aspen 1999 Ballot Question, *supra* note 54; San Francisco Children's Fund initiative, Prop. J Full Text, *supra* note 57 (amending San Francisco Charter § 6.415 (b)) (superseded by Prop. D Full Text, *supra* note 67 (amending San Francisco Charter art. XVI, § 16.108 (c))); *see also* Prop. J Ballot Question, *supra* note 56; Prop. D Ballot Question, *supra* note 66; Portland Children's Investment Fund referendum, Portland Ordinance, *supra* note 149; *see also* Portland Children's Levy Summary, *supra* note 150; and two Denver Kids' Tax measures, Denver Ordinance I, *supra* note 247, § 1 (2000 Measure); Denver Ordinance II, *supra* note 106, § 2 (2001 measure); *see also* Denver Measure I Ballot Question, *supra* note 109 (2000 measure); Denver Measure II Ballot Question, *supra* note 104 (2001 measure).

[306] The Miami-Dade CSC referendum that was approved in 2002 contained a sunset provision, *see* Miami-Dade CSC Ballot Question, *supra* note 22, but the losing 1988 version did not, *see* Miami-Dade County, Fla., County Question, Independent Juvenile Welfare Special Dist., General Election Official Ballot, 11/8/88 [hereinafter Miami-Dade 1988 CSC Ballot Question].

[307] The Seattle F&E Levy referendum, Original F&E Results, *supra* note 30; Aspen Day Care referendum, Aspen 1990 Results, *supra* note 46; San Francisco Children's Fund initiative, Historical Ballot Measures, *supra* note 63; Portland Children's Investment Fund referendum, Portland Results, *supra* note 148; and the 2002 Miami-Dade CSC referendum, Miami-Dade Results, *supra* note 19, were approved by the voters.

approved for another "term" by the voters: the Seattle F&E Levy,[308] Aspen Day Care,[309] and San Francisco Children's Fund measures.[310]

Another financing-related feature that may have helped garner support for some measures was the requirement to place any revenues raised in a fund that is segregated from the rest of the treasury. Requiring funds to be deposited and held in a separate "trust fund" is designed to prevent the legislature from raiding those funds for other purposes, thereby reassuring voters that the funding will be spent as intended and as promised. Six of the thirteen core-analysis ballot measures proposed a separate fund or account,[311] and four of these six prevailed at the polls,[312] one more than once.[313] The funds raised by all of the Florida CSC referendums are required to be deposited into a separate fund or account;[314] eight of these won[315] and ten lost.[316]

Finally, many of the ballot measures studied contained provisions that prohibited supplantation and specified that the funds raised or devoted for ECE/AS programs should be in addition to, not in place of, existing expenditures for ECE/AS or other programs. Supplantation occurs when, for example, new revenues generated by the ballot measure prompt lawmakers to reduce their previous spending for the same or similar programs, thereby canceling out the effect of the new funding.[317] Nine of the thirteen core-analysis measures[318] and the 2002 Miami-Dade

[308] 1997 F&E Levy Results, *supra* note 36 (1997 renewal); 2004 F&E Levy Results, *supra* note 42 (2004 renewal).
[309] Aspen 1999 Results, *supra* note 55.
[310] Historical Ballot Measures, *supra* note 63.
[311] The six measures that contained such segregated-fund arrangements were the San Francisco Children's Fund initiative, Prop. J Full Text, *supra* note 57 (amending San Francisco Charter § 6.415(a)) (superseded by Prop. D Full Text, *supra* note 67 (amending San Francisco Charter art. XVI, § 16.108(a))); *see also* Prop. J Ballot Question, *supra* note 56; Prop. D Ballot Question, *supra* note 67; California Prop. 10 initiative, Prop. 10 Full Text, *supra* note 73, § 5 (codified at Cal. Health & Safety Code § 130105(d)); Alabama Lottery referendum, Alabama Lottery Full Text, *supra* note 85; *see also* Alabama Lottery Ballot Question, *supra* note 83; Colorado Pre-K-12 initiative, Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, § 17(4)(a)); *see also* Amendment 23 Ballot Question, *supra* note 90; Portland Children's Investment Fund referendum, Portland Ordinance, *supra* note 149, § 1(12); and Seattle Latte Tax initiative, Initiative 77 Full Text, *supra* note 155, § 3, at 29.
[312] The four prevailing measures with a separate fund or account were the San Francisco Children's Fund initiative, Historical Ballot Measures, *supra* note 63; California Prop. 10 initiative, Prop. 10 Results, *supra* note 72; Colorado Pre-K-12 initiative, Amendment 23 Results, *supra* note 89; and Portland Children's Investment Fund referendum, Portland Results, *supra* note 148.
[313] The San Francisco Children's Fund initiative was renewed in 2000. Historical Ballot Measures, *supra* note 63.
[314] *See* CSC Statute, *supra* note 14, § 125.901(3)(e)(1).
[315] Pinellas Results, *supra* note 19; Palm Beach Results, *supra* note 19; Hillsborough Results, *supra* note 19; Martin Results, *supra* note 19; St. Lucie Results, *supra* note 19; Okeechobee Results, *supra* note 19; Broward Results, *supra* note 19; Miami-Dade Results, *supra* note 19.
[316] Polk Results, *supra* note 18; Sarasota Results, *supra* note 18; Pasco 1990 Results, *supra* note 18; Pasco 1992 Results, *supra* note 18; Duval Results, *supra* note 18; Leon Results, *supra* note 18; Lee Results, *supra* note 18; Collier Results, *supra* note 18; Miami-Dade 1988 Results, *supra* note 18; Alachua Results, *supra* note 18.
[317] *See* California Attorney General Opinion on Supplementation vs. Supplantation, Advisory Opinion 01–01 (2001), *available at* http://ccfc.ca.gov/PDF/advisoryopinion123.pdf (last visited Sept. 28, 2005).
[318] The nine measures with anti-supplantation provisions were the Seattle F&E Levy referendum, Original F&E Levy Ordinance, *supra* note 33, § 1(b) (superseded by 1997 F&E Ordinance, *supra* note 37, § 1(b), & 2004 F&E Ordinance, *supra* note 44, § 1(b)); San Francisco Children's Fund initiative, Prop. J Full Text, *supra* note 57 (amending San Francisco Charter § 6.415(c)) (superseded by Prop. D Full Text, *supra* note 67 (amending San

CSC referendum[319] contained such provisions in some form or another, and eight of these won on election day.[320] Advocates who are drafting ballot measures may include such provisions to ensure that new funds do not displace old funds,[321] but it is also possible that anti-supplantation provisions increase the appeal of ECE/AS ballot measures to voters.

* * *

Many different types of ECE/AS policies and financing proposals have prevailed on the ballot. Ultimately, without issue-specific exit polls, it is impossible to draw definitive conclusions about whether and precisely how the content of a ballot measure and/or its financing affected the outcome. However, this analysis shows that a wide variety of ECE/AS policies can succeed at the polls, and that no particular type of ECE/AS policy proposal is clearly more successful than any other. Proposals to increase affordable access to and the quality of child care, expand access to pre-kindergarten, and boost after-school programs all drew public support and were able to win on the ballot. Moreover, whether ECE/AS programs were proposed alone or as part of a larger package aimed at supporting children's well-being or education, for the most part they were successful. In the end, all types of ECE/AS proposals appear to be good candidates for the ballot.

On the other hand, it does seem that the way in which ballot measures propose to fund ECE/AS services can make a difference in the outcome. A small but uniformly successful group of measures set aside funds from existing revenues, with protections for existing funding of the same or related programs, suggesting there is probably some advantage in being able to tell the public that ECE/AS goals can be accomplished with no new taxes and no diminution in support for other similar programs. There may or may not be an advantage to including no funding mechanism—

footnote cont'd

Francisco Charter art. XVI, § 16.108(d))); *cf.* Prop. J Ballot Question, *supra* note 56; Prop. D Ballot Question, *supra* note 66; California Prop. 10 initiative, Prop. 10 Full Text, *supra* note 73, § 6 (codified at Cal. Health & Safety Code § 30131.4); Alabama Lottery referendum, Alabama Lottery Full Text, *supra* note 85; *see also* Alabama Lottery Ballot Question, *supra* note 83; Colorado Pre-K-12 initiative, Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, §§ 17(4), 17(5)); Amendment 23 Ballot Question, *supra* note 90; Tennessee Lottery referendum, Tennessee Lottery Full Text, *supra* note 113 (amending Tenn. Const. art. XI, § 5); California Prop. 49 initiative, Prop. 49 Full Text, *supra* note 127, § 10(e) (codified at Cal. Educ. Code § 8483.5(e)); *cf.* Prop. 49 Ballot Question, *supra* note 125; Florida UPK initiative, UPK Initiative Full Text, *supra* note 135, § 1(c) (amending Fla. Const. art. IV, § 1); *see also* UPK Ballot Question, *supra* note 135; and Seattle Latte Tax initiative, Initiative 77 Full Text, *supra* note 155, § 4(d), at 29; *see also* Initiative 77 Ballot Question, *supra* note 154.

[319] Miami-Dade County, Fla., Res. R-522-02 (2002) [hereinafter Miami-Dade Ordinance]; Miami-Dade CSC Ballot Question, *supra* note 22. The original statute authorizing the CSCs also stated that it was "the intent of the legislature" not to supplant local funding. CSC Statute, *supra* note 154.

[320] The eight measures containing anti-supplantation provisions that prevailed were the Seattle F&E Levy referendum, Original F&E Levy Results, *supra* note 30; 1997 F&E Levy Results, *supra* note 36; 2004 F&E Levy Results, *supra* note 42; San Francisco Children's Fund initiative, Historical Ballot Measures, *supra* note 63; California Prop. 10 initiative, Prop. 10 Results, *supra* note 72; Colorado Pre-K-12 initiative, Amendment 23 Results, *supra* note 89; Tennessee Lottery referendum, Tennessee Results, *supra* note 116; California Prop. 49 initiative, Prop. 49 Results, *supra* note 126; Florida UPK initiative, UPK Results, *supra* note 136; and 2002 Miami-Dade CSC referendum, Miami-Dade Results, *supra* note 19. The 1988 version of the Miami-Dade proposal, which lost at the polls, Miami-Dade 1988 Results, *supra* note 18, did not contain such a provision.

[321] *See infra* notes 463–497 and accompanying text for a discussion of how well these mechanisms have protected funding.

the one measure that left the funding to the legislature was also successful at the polls. However, winning voter support for expressly raising new revenues is possible; ballot measures that increased broadly shared sales or property taxes, taxed specific products, and established lotteries were successful about half the time. Yet, measures that raised revenue by taxing a specific product or from a lottery also generated focused opposition. Indeed, with both the Seattle Latte Tax initiative and the Alabama Lottery referendum, there was practically no visible opposition to the ECE/AS-related goals of these ballot measures, only to the means of funding them. Finally, the inclusion of additional financing-related provisions such as sunset provisions, segregated trust funds, and baseline budgets and/or other anti-supplantation prohibitions may have increased the odds of winning for several measures, but were no guarantee of success.

B. Have ECE/AS Ballot Measures Accomplished Their Goals?

Passing a law is one thing; implementing it is another. It is not sufficient just to win on election day. To assess whether ballot measures constitute an effective strategy for winning ECE/AS improvements, it is important to determine what they have accomplished and whether they are achieving their goals.

All of the ECE/AS ballot measures studied sought to increase the total amount of public funds invested in ECE/AS programs and services in order to increase the quantity and/or improve the quality of ECE/AS programs. There is no uniformity in the scope of the ballot measures studied or in the way in which accomplishments are reported; therefore, although the effectiveness of each measure can be assessed, it is difficult if not impossible to compare the accomplishments of one measure to another. To evaluate the accomplishments of ECE/AS ballot measures, then, this section focuses on whether the ballot measures approved by the voters accomplished what they set out to do. It examines whether they succeeded in increasing public investment in ECE/AS programs (as well as met other major goals), whether there were any material differences in what the ballot measures mandated and the ways in which they are being implemented, whether the increased investment has been sustained over time, and whether the measures produced any other significant outcomes or effects—either positive or negative.

The record is fairly impressive. All of the ballot measures that both won at the polls and have been fully implemented—the Seattle F&E Levy referendum, Aspen Day Care referendum, San Francisco Children's Fund initiative, California Prop. 10 initiative, Colorado Pre-K-12 initiative, Portland Children's Investment Fund referendum, and eight Florida CSC referendums—have delivered increased funding for ECE/AS. Moreover, despite some threats, they have each been successful at protecting and holding on to that funding stream over time. In addition to increased funding for ECE/AS programs, proponents reported other positive outcomes as well, such as increasing public awareness of the importance of ECE/AS and strengthening partnerships, leading to additional political gains. The two measures that won at the polls but, at this writing are just beginning to take effect—the California Prop. 49 initiative and the Tennessee Lottery referendum—not surprisingly, have had limited impact. These measures show promise for greater impact, but contain design contingencies and/or ambiguities that have hindered—and may

continue to hinder—their capacity to fully achieve their goals. Finally, the impact of the Florida UPK initiative, which won at the polls but does not take effect until the 2005–2006 school year, is unclear at this writing, but it does not seem likely that its implementation will fully meet its objectives. Of course, the ballot measures that were rejected by the voters did not accomplish their goals and, although a few of the proponents of these measures reported that the effort to enact them did not set back the ECE/AS agenda, in at least some instances the evidence suggests otherwise.

1. Increased Investment in ECE/AS Programs

The opportunity to enlarge significantly the public investment in ECE/AS is at the heart of why advocates have considered and used ballot measures. For this reason, an assessment of the various measures' accomplishments in increasing the funding for ECE/AS programs must be a central element of the analysis. Both dedicated tax increases and earmarks from existing funds have been effective in producing increased investments for ECE/AS programs; however, as discussed below, in at least one instance the earmark has put pressure on a state budget in combination with other state ballot measures, which has in turn threatened the earmark's continued ability to provide that increased investment. In addition, in some instances other aspects of the design of a measure raise questions about the measure's ability to deliver increased investments for ECE/AS programs or to meet other goals.

a. Measures that Have Been Fully Implemented

Twelve of the fourteen ECE/AS ballot measures studied that have been fully implemented raised new revenues by increasing taxes: the Seattle F&E Levy referendum, Aspen Day Care referendum, California Prop. 10 initiative, Portland Children's Investment Fund referendum, and eight Florida CSC referendums. The remaining two measures that have been fully implemented generated revenues for ECE/AS programs by creating earmarks out of existing funds: the San Francisco Children's Fund and Colorado Pre-K-12 initiatives. All of these measures successfully raised new funding that otherwise had not been available and allocated for ECE/AS programs.

i. New Revenues

All of the eight winning Florida CSC referendums relied on property tax revenues, though the amounts raised vary by county. For example, in Broward County, the CSC referendum raised $28.8 million from its property tax levy in 2003. Of the roughly $25.2 million that was spent on programs in 2003, about 37% was devoted to "out-of-school" programs (including after-school) and 15% was spent on child care and school readiness.[322] "This is money that wasn't there before," said one advocate. In nearby Martin County in FY 2001–2002, the CSC raised a little

[322] Broward CSC 2003 Annual Report, *supra* note 25, at 7.

over $3 million[323] from its property tax levy; of that amount, it allocated $456,942 for after-school programs and $597,553 for ECE programs.[324] In Palm Beach County, the CSC referendum raised more than $54 million for children's programs in FY 2000–2001;[325] of that amount, 50% was spent on early childhood programs, and 25% was spent on "After School/Holiday & Summer Care for Elementary Children."[326]

The referendums that created the CSCs are very general and do not spell out how the funds raised will be allocated. The goals of the Miami-Dade Children's Trust referendum were typical: to "fund improvements to children's health, development, and safety [and] promote parental and community responsibility for children…to supplement current County expenditures for children [sic] services."[327] To the extent that ECE/AS is a part of these goals—every county has some ECE/AS programming—and the CSCs are raising new funds that previously did not exist or were not devoted to ECE/AS programs, the CSCs seem to be accomplishing what they set out to do by raising and distributing the funds. In fact, as previously described, two of the CSC referendums—in Pinellas[328] and Palm Beach[329] counties—went back to the voters for approval to increase the amount of their CSC property tax levies from half a mill to one mill, and both prevailed, thereby doubling their revenues.

The Seattle F&E Levy referendum also based its financing on raising property taxes. By its terms (in both the original 1990 version and the 1997 renewed version), the F&E referendum authorized raising a maximum of about $69 million over its seven-year term.[330] These funds were required to be used for certain service areas, including "early childhood development" and "out-of-school activities."[331] There is an oversight committee, but the referendum does not apportion the funds; rather, the funds are allocated as part of the city budget.[332] In recent years, the referendum has generated more than $10 million annually.[333] Of the $2.8 million spent on ECE/AS programs

[323] Children Servs. Council of Martin County, Tending the Future, Caring for Our Children Today, 2003, *available at* http://csmc.org/Documents/15-Annual _reports.html (last visited July 6, 2005).
[324] National Women's Law Center calculations based on Children's Services Council of Martin County, CSC Funded Programs for FY 01/02, at 1–10 (Oct. 4, 2001) (on file with National Women's Law Center).
[325] *See* Lawton Chiles Found., Whole Child Project, How to Create a Children's Services Council in Your County: A Case Study from Palm Beach County 1 (undated), *available at* http://www.wholechildproject.org/csccasestudy.html (last visited June 12, 2005).
[326] *Id.* at 5–6.
[327] Miami-Dade CSC Ballot Question, *supra* note 22. *See also* Miami-Dade Ordinance, *supra* note 319.
[328] *See* Pinellas CSC Increase, *supra* note 15.
[329] *See* Palm Beach CSC Increase, *supra* note 15.
[330] Original F&E Levy Ordinance, *supra* note 33, § 3 (1990 version); 1997 F&E Levy Ordinance, *supra* note 37 (1997 version); *see also* Original F&E Levy Ballot Question, *supra* note 31 (1990 version); 1997 F&E Levy Ballot Question, *supra* note 35 (1997 version).
[331] Original F&E Ordinance, *supra* note 33; *see also* 1997 F&E Ordinance, *supra* note 37, § 5(1); *cf.* Original F&E Levy Ballot Question, *supra* note 31; 1997 F&E Levy Ballot Question, *supra* note 35.
[332] Original F&E Ordinance, *supra* note 33, §§ 4, 6; *see also* 1997 F&E Levy Ordinance, *supra* note 37, §§4, 5; *cf.* Original F&E Levy Ballot Question, *supra* note 31; 1997 F&E Levy Ballot Question, *supra* note 35.
[333] *See* F&E Budget, *supra* note 41, at 128.

in 2003, nearly $1.5 million was allocated to the Comprehensive Child Care Project, which funds programs such as child care subsidies for low-income families and child care teacher training ($878,000), and the School-Age Care Project ($596,000);[334] another roughly $1.3 million of the levy proceeds was spent on other out-of-school care programs.[335] In the 2004 renewal of the F&E Levy referendum, the maximum amount authorized was substantially increased to $117 million over the following seven-year period, with increased emphasis on ECE/AS programs.[336] Accordingly, the amount devoted to these programs should increase in the next few years.

Because the Portland Children's Investment Fund referendum, another measure that increased property taxes, was just adopted in 2002 and implemented beginning in 2003, its accomplishments have just begun to materialize. The proponents anticipated the measure would raise and spend about $50 million over its five-year life, or about $10 million per year.[337] In its first full year of operation (FY 2003–2004), a total of $8.7 million was available for program grants and administrative costs.[338] A five-member allocation committee was formed to evaluate and make decisions on grant proposals[339] in three rounds, which correspond to the three program areas outlined in the referendum (early childhood, child abuse, and after-school programs).[340] In October 2003, the first round of grants totaling about $3.2 million/year was made for "proven" early childhood programs, of which $1.6 million was allocated for early care and education.[341] A proponent of the referendum reported that creating more spaces to help meet the demand for child care and programs like Head Start was the primary goal of the ECE portion of the measure. Although interviewees reported no major glitches in implementation of this first round, some advocates and providers were disappointed that a disproportionate amount of the ECE money was allocated to Early Head Start rather than to child care programs because of the referendum's "proven program" requirement—many child care programs have not been evaluated. In June 2004, $2.2 million was allocated for after-school programs.[342] Debate over what constitutes a "proven" program is expected to continue, and will likely continue to affect allocation of the funds.

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[334] *See id*.
[335] *See id*. For a discussion of other programs, *see* F&E Progress Report, *supra* note 40.
[336] 2004 F&E Ordinance, *supra* note 44, § 3; 2004 F&E Levy Ballot Question, *supra* note 43.
[337] Portland Children's Levy Summary, *supra* note 150.
[338] The $14 million authorized to be raised by the levy for FY 2003–2004 was reduced to $9.3 million due to "tax compression," a limit on the amount of total property tax increases. Drew S. Barden, Property Tax Primer 5–6 (2003) (on file with National Women's Law Center). That figure was further reduced down to about $8.7 million to account for delinquent tax payments and other losses. *Id.* at 6.
[339] Portland Children's Investment Fund, Overview of the Children's Investment Process, *available at* http://www.childrensinvestmentfund.org/index.php (last visited July 20, 2005).
[340] Portland Ordinance, *supra* note 149; *see also* Portland Children's Levy Ballot Question, *supra* note 147.
[341] Portland ECE Grants, *supra* note 152.
[342] Portland AS Grants, *supra* note 153. The remaining $4.9 million of the $8.7 million for FY 2003–2004 was allocated for other children's programs and administrative costs. National Women's Law Center calculations based on Portland ECE Grants, *supra* note 152, Portland AS Grants, *supra* note 153, and Portland, Or., Ordinance 178187 (Feb. 11, 2004) (approving recommendation of Allocation Committee for child abuse and neglect programs) (on file with National Women's Law Center).

The Aspen Day Care referendum increased sales taxes expressly to generate revenues for housing and child care. Reportedly, the referendum originally would have addressed only the problem of the lack of affordable housing in a town heavily reliant on tourism. Child care was added later in recognition of its place as the other large budget item for working families.[343] Thus, the referendum was intended to help working families more easily afford child care as well.

Neither the original nor the renewed versions of the Aspen Day Care referendum specified what portion of the total revenues should be allocated to the "day care" component (versus the affordable housing component) or for what specific programs those funds should be allocated.[344] The City Council was charged with making these decisions,[345] and has devoted more than half of the revenues generated to child care. For example, in 2002, the sales tax imposed by the referendum generated about $1.7 million.[346] Of this amount, $990,271 was appropriated for child care. Over the last 11 years, more than $10 million has been appropriated for child care.[347] The funds have been used for child care resource and referral services, financial aid to help parents pay for child care, and grants to support infant and toddler subsidies, child care worker training and wage supplements, capital improvement grants, assistance in obtaining accreditation, and start-up help for in-home child care providers.[348]

The final ballot measure that increased taxes, the California Prop. 10 initiative, has been highly successful in generating new, dedicated revenues for early childhood programs. Inspired by research demonstrating how vital early childhood development is to children's later success and well-being, the Prop. 10 initiative mandated a 50¢-per-pack cigarette tax, which generated over $3 billion for early childhood programs over its first five years.[349] The initiative's revenues are divided, with 20% of the funds allocated to the state commission and 80% allocated to independent county commissions. Thus, in FY 2002–2003, of the approximately $600 million in revenues generated by the tobacco tax,[350] the 58 county commissions received about $476 million,[351] and the state commission received approximately $124 million.[352]

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[343] Financing Child Care, *supra* note 10, at 22.
[344] *See generally* Aspen Ordinance 81, *supra* note 49 (original version); Aspen, Colo., Res. 99–13 (March 8, 1999) [hereinafter Aspen 1999 Resolution] (1999 renewal).
[345] Aspen Ordinance 81, *supra* note 49 (original version); *cf.* Aspen 1999 Resolution, *supra* note 344 (1999 renewal).
[346] City of Aspen Fin. Dep't, City of Aspen, Colorado Financial Statements, December 31, 2002, at 43, *available at* http://www.aspenpitkin.com/pdfs/depts/45/2002financials.pdf (last visited June 12, 2005).
[347] Aspen Chart, *supra* note 51.
[348] Kids First Board, Child Care Grant Application 2003, at 3, *available at* http://www.aspenpitkin.com/pdfs/depts/50/grant-application.pdf (last visited June 12, 2005).
[349] *See* California Audit FY 2003–2004, *supra* note 80 ($596 million in FY 2003–2004); California Audit FY 2002–2003 *supra* note 80 ($597 million in FY 2002–2003); California Audit FY 2001–2002, *supra* note 80 ($627 million in FY 2001–2002); California Audit FY 2000–2001, *supra* note 80 ($652 million in FY 2000–2001); California CCFC Annual Report FY 1999–2000, *supra* note 80 ($672 million in FY 1999–2000).
[350] First 5 2002–2003 Report, *supra* note 82, at 1–2.
[351] *Id.* at 7–1.
[352] National Women's Law Center estimate based on total taxes collected ($600 million) and county allocation ($476 million). *See id.*

It is difficult to determine precisely how much of these total revenues has been spent on ECE. The state commission has reported its expenditures on individual ECE-related programs, but reports each of them for different time periods, with no aggregate amount computed for ECE programs as a whole.[353] The county commission's expenditures are reported by type of organization funded[354] (regardless of the type(s) of program being provided) rather than by the type of program. Thus, the data on the initiative's accomplishments are incomplete, disaggregated, and noncomparable.

Still, it is possible to get a snapshot sense of these accomplishments. For example, in FY 2001–2002, the state commission spent more than $19 million (15% of its 20% share) from the Child Care Account.[355] The types of ECE programs funded by the state commission included training and retention programs for child care workers, child care center and family child care home accreditation initiatives, and "school readiness," which is broadly defined as including early education as well as parenting and family support services and health and social services.[356] Moreover, over the seven years between FY 2003–2004 and FY 2009–2010, the state commission plans to spend over 50% of its program budget—more than $520 million—on programs it categorizes as "early childhood learning and education" programs.[357]

Furthermore, the bulk of the Prop. 10 initiative's revenues and the heart of its implementation, and therefore its achievements, occur at the local level. The initiative contained no specific directive to the county commissions on how to spend their 80% share of the revenues but there is evidence that the commissions have been active in promoting ECE. Increased access to high-quality ECE was the outcome most often cited by county commissions as a high priority.[358] In FY 2002–2003, about $11.2 million (approximately 2% of the county commissions' allocation of $476 million) of county Prop. 10 funds went to child care and preschool organizations,[359] but that is just a small part of the picture. Many other types of organizations, such as community groups and education organizations, also received an unknown amount of funds to provide ECE programs.[360] According to some interviewees, many of the county commissions have created innovative programs and "are doing magical things." For instance, the Alameda County Commission's Child Development Corps program not only provides stipends to encourage child care workers to seek professional education, but also spearheads efforts to ensure that the local colleges offer childhood development courses in languages other than English. One of the most ambitious local efforts under way is in Los Angeles County. The commission there has launched a major project to provide universal access to preschool and will invest $500 million over five years

[353] *See, e.g.*, First 5 2002–2003 Report, *supra* note 82, at 1-4 to 1-10.
[354] *Id.* at 7-6, 7-7.
[355] First 5 2001–2002 Report, *supra* note 81, at 2-2. Only 3% of the state commission's share was required to be spent on child care-related programs. *See* Prop. 10 Full Text, *supra* note 73, § 5 (codified at Cal. Health & Safety Code § 130105(d)(1)).
[356] First 5 2002–2003 Report, *supra* note 82.
[357] *Id.* at 2-3.
[358] *Id.* at 3-11.
[359] *Id.* at 7-6.
[360] *Id.* at 7-7.

on top of the $100 million that it had already committed towards that goal.[361] In all, more than $1 billion in state and county Prop. 10 initiative funds, over five to seven years, will be devoted to "Preschool for All."[362]

The downside of sin taxes, of course, is that if they work to discourage the sin, they also produce a declining revenue stream. Because one of the non-ECE/AS goals of Prop. 10 was to discourage smoking, the proponents anticipated a declining revenue base from the beginning, a phenomenon that is already happening.[363] Moreover, between FY 2003–2004 and FY 2009–2010, the state commission projects that its 20% share of the revenues will also decline every year, from $111.1 million in FY 2003–2004 to $87.6 million in FY 2009–2010.[364] Consequently, according to interviewees, some of the local commissions have been trying to save some of their funds in anticipation of future declines, and others have taken a "pilot program" approach of funding new programs to get them launched but without an expectation of continuing support.

Amid enthusiasm for the Prop. 10 initiative's achievements, there are a few areas in which advocates think the initiative is falling short. For instance, because most of the focus of the ECE portion of the initiative, consistent with its directives, has been on improving the quality of ECE programs rather than expanding availability or affordability, some interviewees expressed disappointment that the initiative has not made a dent in the waiting list for child care subsidies, as they had hoped. The state commission's most recent annual report also reveals that the number of licensed center slots has not increased and family child care slots have increased only slightly, at least in the early years of the initiative's operation (1998–2000).[365] Moreover, one interviewee expressed a view that, although programs like pre-kindergarten that provide high-quality early learning experiences should be supported, care for infants and toddlers is not being sufficiently addressed and creating more half-day programs does not help the parents who need full-day care.

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[361] Carla Rivera, *$500 Million Is Committed to Preschools*, Los Angeles Times, Oct. 10, 2003, at B3; First 5 LA, Universal Access to Preschool, *available at* http://www.first5.org/ourprojects/universalaccess.php4 (last visited June 24, 2005). In 2003, Rob Reiner, the originator of Prop. 10, and the California Teachers Association began work on another statewide ballot initiative, this time to establish universal preschool statewide and increase funding for education, Ed Fletcher, *Initiative Would Tax Businesses to Pay for Preschool*, Sacramento Bee, Oct. 30, 2003, at A3, but the organizers later withdrew the proposal. *See* Press Release, Cal. Teachers Ass'n Joint Statement of Barbara E. Kerr, President of California Teachers Association, and Rob Reiner on Discontinuing the Improving Classroom Education Act Ballot Initiative (April 8, 2004), *available at* http://www.cta.org/Press/PressReleases/2004/20040408_1.htm (last visited June 12, 2005) [hereinafter CTA Release]; *CTA Board Halts Effort To Qualify Improving Classroom Education Act*, California Educator (California Teachers Association, Burlingame, CA), May 2004, *available at* http://www.cta.org/CaliforniaEducator/v8i8/Action_1.htm (last visited June 12, 2005).

[362] Cal. Children & Families Comm'n, First 5 California, 2002–03 Annual Report Executive Summary 3 (2004).

[363] In 1999, the Prop. 10 initiative's first year of operation, youth smoking rates dropped 35%, whereas smoking by adults went down only a very slight .4%. Cal. Children & Families Comm'n, First 5 California, Prop 10 Facts (undated), at http://ccfc.ca.gov/prop10facts.htm (last visited June 24, 2005). The funds raised from the initiative have declined slightly each year since FY 1999–2000, the first year of tax collections. *Compare* California CCFC Annual Report FY 1999–2000, *supra* note 80 ($672 million for FY 1999–2000) *with* California Audit FY 2000–2001, *supra* note 80 ($652 million for FY 2000–2001); California Audit FY 2001–2002, *supra* note 80 ($627 million for FY 2001–2002); California Audit FY 2002–2003, *supra* note 80 ($597 million for FY 2002–2003); California Audit FY 2003–2004, *supra* note 80 ($596 million for FY 2003–2004).

[364] First 5 2002–2003 Report, *supra* note 82, at 2-4.

[365] *Id.* at 3-11, 3-12.

Despite some concerns, however, all of the California interviewees agreed that the new funds raised and the concerted programmatic attention wrought by the Prop. 10 initiative have made a tangible contribution to increasing and improving child care and early education.

In summary, the creation of new sources of revenues dedicated to ECE/AS in ballot measures that have been fully implemented has in fact successfully increased public investment in ECE/AS programs. These measures demonstrate that small increases in property taxes or sales taxes, or a sizable sin tax increase, can generate millions in new ECE/AS funds that did not previously exist.

ii. Earmarks of Existing Revenues

Creating ECE/AS earmarks out of existing sources of revenues, at least when the measures include some means of protecting existing funding of the same or related programs, has also been an effective way to increase the funds invested in ECE/AS programs. Two of the ballot measures that expanded the funds allocated to ECE/AS by earmarking a portion of existing revenues have been fully implemented: the San Francisco Children's Fund and the Colorado Pre-K-12 initiatives. Both succeeded in allocating significant new funding to ECE/AS programs, although the success of the Colorado initiative, in combination with other, earlier state ballot measures, has posed a threat to its continued ability to provide that funding.

The San Francisco Children's Fund initiative created two set-asides to increase investment in ECE/AS services. As previously described, first, it mandated that the city continue to spend what it had been spending on children's programs out of general funds as a Baseline Children's Budget, and second, it established a new Children's Fund, financed by setting aside a portion of property tax revenues that could only be spent to increase the total amount of money spent on children's services.[366] Over its first nine years, the Children's Fund increased funding for children's programs, which included ECE/AS programs, by over $122 million.[367] The Baseline Budget contributed another roughly $465 million over that period.[368] Documentation of how much of the funding generated by the original initiative was spent on ECE/AS programs was not available. However, during the first four years, the initiative required that at least 25% of the Children's Fund proceeds be spent on child care.[369]

By the time the sunsetting Children's Fund initiative was placed on the ballot for renewal (Proposition D) in 2000, supporters boasted that they had provided child care, delinquency prevention, recreation, and health and social services to about 80,000 more children each year than before the initiative, all without raising taxes.[370] The Prop. D initiative increased the size

[366] Prop. J Full Text, *supra* note 57 (amending San Francisco Charter § 6.415 (a)) (superseded by Prop. D Full Text, *supra* note 67 (amending San Francisco Charter art. XVI § 16.108(a), (d))); *cf.* Prop. J Ballot Question, *supra* note 56; Prop. D Ballot Question, *supra* note 66.
[367] First Nine Years, *supra* note 9, at iii.
[368] National Women's Law Center estimate based on First Nine Years, *supra* note 9, at 4 (chart indicating that the Baseline Budget provided $45–60 million per year in children's services funding appropriations).
[369] Prop. J Full Text, *supra* note 57 (amending San Francisco Charter § 6.415(e)).
[370] Comm. to Renew the Children's Amendment, It's Time to Renew San Francisco's Landmark Children's Fund. Vote Yes on D! 2 (2000) (campaign literature) (on file with the National Women's Law Center).

of the set-asides for both the Baseline Budget and the Children's Fund.[371] It did not specify any particular amounts be spent on specific ECE/AS services, but it did provide that "affordable child care and early education" and "recreational, cultural and after-school programs" were eligible for assistance from the Children's Fund.[372] According to a Children's Services Allocation Plan developed as a result of the initiative, the combined revenues for the Children's Fund and Baseline Budget in FY 2002–2003 were about $85.5 million;[373] of that amount, nearly $16 million was budgeted from those sources for early care and education programs.[374]

The other ballot measure that has been fully implemented and funded from earmarked funds is the Colorado Pre-K-12 initiative. Its goal was to make up for lost ground in funding for education by mandating specified education funding increases.[375] As described earlier, the initiative required the legislature to increase base per-pupil education funding for grades pre-K-12 and total funding for specifically defined categorical education programs by at least the rate of inflation plus 1% each year for ten years (and by at least the rate of inflation thereafter).[376] It also required the legislature, at a minimum, to maintain its total general fund appropriations for education at the FY 2000–2001 level and to increase these appropriations by at least 5% annually for ten years, except in years in which growth in personal income in the state in the previous year was less than 4.5%.[377]

To finance the inflation-plus-1% mandate, the initiative specified that an amount equal to .33% of federal taxable income earned in the state be set aside from state income tax revenues and placed in a new State Education Fund.[378] State Education Funds could be used to help the legislature pay for the inflation-plus-1% increase; the legislature was also authorized to appropriate amounts from the SEF for certain specified purposes, including expanding the availability of preschool.[379]

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[371] Prop. D Full Text, *supra* note 67 (amending San Francisco Charter art. XVI, § 16.108(c), (g)); *cf.* Prop. D Ballot Question, *supra* note 66.
[372] Prop. D Full Text, *supra* note 67 (amending San Francisco Charter art. XVI, § 16.108(e)(1), (2)).
[373] *See* San Francisco Allocation Plan, *supra* note 69, at 17.
[374] NWLC SFCF Calculations, *supra* note 70. The Allocation Plan indicates that millions more were budgeted for AS programs, but under the rubric of "academic support," "enrichment and youth development," and "job training"—the actual amount spent for after-school programs is not available, let alone a breakout of how much of that total came from the Children's Fund and the Baseline Budget. *See* San Francisco Allocation Plan, *supra* note 69, at 54–55, 58–61.
[375] *See* Donnell-Kay Found., Amendment 23 and Public School Financing in Colorado 5, 14 (2003), *available at* http://www.headfirstcolorado.org/A23FINAL.pdf (last visited June 12, 2005) [hereinafter Amendment 23 Report]; Colo. Educ. Network, Frequently Asked Questions about The CEN School Funding Initiative 1 (July 17, 2000), *available at* http://www.coaauw.org/coloednet/cen3.html (last visited June 12, 2005) [hereinafter Colorado FAQ].
[376] Amendment 23 Full Text, *supra* note 91, at 47 (amending Colo. Const. art. IX, § 17(1)); *see also* Amendment 23 Ballot Question, *supra* note 90. The legislature was also prohibited from using these funds to supplant the level of specified general fund appropriations for education in FY 2000–2001. Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, § 17(5)); *see also* Amendment 23 Ballot Question, *supra* note 90.
[377] Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, § 17(5)); *see also* Amendment 23 Ballot Question, *supra* note 90.
[378] Amendment 23 Full Text, *supra* note 91, at 47–48 (amending Colo. Const. art. IX, § 17(4)(a)); *see also* Amendment 23 Ballot Question, *supra* note 90.
[379] Amendment 23 Full Text, *supra* note 91, at 48 (amending Colo. Const. art. IX, § 17(4)(b)).

On the face of it, a diversion of income tax revenues away from the general fund and into an earmarked fund might be expected to eat into the general funds available to the legislature to meet its 5%-increase obligation or other spending needs. However, because the initiative was passed when the economy was doing well and because of Colorado's constitutional limits on state spending that require surpluses to be refunded to the taxpayers,[380] the funds diverted to the SEF initially represented budget surpluses that were otherwise unavailable to the legislature.[381] Thus, the diverted surpluses did not detract from the legislature's resources, they simply reduced the refunds taxpayers would have otherwise received.[382]

In the first full year of implementation (FY 2001–2002), because the state treasury was flush, the state had no difficulty following the initiative's mandates. The legislature not only used the SEF to help meet the inflation-plus-1% mandate, thus increasing base per-pupil spending on then-existing preschool slots, it also used a combination of SEF funds and general funds to expand the number of slots. The legislature increased preschool slots for at-risk three- and four-year-olds by 1,000 (500 each year for FY 2001–2002 and FY 2002–2003), bringing the total from the previous level of 8,550 to 9,550.[383] The legislature also increased its total general fund appropriations for education by at least 5% in FY 2001–2002,[384] in accordance with the initiative's mandate.

However, because of the subsequent recession beginning in 2001, the state's revenues decreased, and it had more difficulty meeting the Pre-K-12 initiative's mandates. Federal taxable income earned in the state declined, in part because of federal tax cuts in 2001 and 2002, resulting in fewer earmarked revenues going into the SEF in FY 2002–2003, FY 2003–2004, and FY 2004–2005, and requiring the legislature to fund more of the inflation-plus-1% mandate from the general fund.[385] Beginning in FY 2002–2003[386] and continuing through FY 2004–2005, the

[380] Taxpayer's Bill of Rights, Colo. Const. art. IX, § 20(7)(d), *available at* http://www.sos.state.co.us/pubs/elections/2001_const.pdf (last visited June 12, 2005) [hereinafter TABOR Amendment].

[381] Interviews with the Pre-K-12 initiative's proponents and several other sources indicate that, at the time of the initiative's passage, it was intended and widely expected that budget surpluses would more than cover the cost of meeting the inflation-plus-1% requirement. *See, e.g.,* Colo. Governor's Office of State Planning & Budgeting, The TABOR Surplus 2 (July 2002) (on file with the National Women' [hereinafter TABOR Surplus]; Amendment 23 Report, *supra* note 375, at 15.

[382] Amendment 23 Report, *supra* note 375, at 9; Colorado FAQ, *supra* note 375, at 2.

[383] *See* Colo. Rev. Stat. §§ 22-28-104(2)(d)(I)(A) (2004). (Total slots increased from 9,050 to 11,050, because slots for the state's full-day kindergarten program, which is considered a component of the preschool program, increased by 1,000 slots as well. *Id.*)

[384] Colo. Gen. Assemb., Legislative Council Staff, Summary of 2001 Major Legislative Issues: Education 2 (May 2001), *available at* http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2001/research/01Education.htm (last visited June 12, 2005); Colorado FY 2004–2005 Appropriations Report, *supra* note 97, at 64.

[385] In its first full year of implementation (FY 2001–2002), the earmark diverted about $273 million to the SEF to fund the inflation-plus-1% spending increases called for in the initiative. Colo. Legislative Council Staff, House Joint Resolution 03-1033 Study: TABOR, Amendment 23, the Gallagher Amendment, and Other Fiscal Issues 98 (Sept. 2003), *available at* http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2003/research/FinalReport.pdf (last visited June 12, 2005). That amount decreased to about $188 million in FY 2002–2003. *Id.* It increased the following two years (FY 2003–2004 and FY 2004–2005), *id.*, but because the accumulation of earmarked funds was not sufficient to fund the inflation-plus-1% mandate, the general fund still had to make up a greater-than-projected amount of the difference. *Id.* at 99. *See also* TABOR Surplus, *supra* note 381, at 2.

[386] Memorandum from the Colo. Legislative Council Staff, to the Joint Budget Comm., Senate & House Educ. Comms., & Office of State Planning & Budgeting, Report on the State Education Fund 10 (Feb. 3, 2004), *available*

state was also legally excused from its obligation to increase its total general fund appropriation for education by 5%, because of a decline in personal income growth after 2001.[387] In FY 2002–2003, the legislature increased its general fund appropriation, but by less than 5%.[388] In FY 2003–2004 and FY 2004–2005, however, although personal income did not grow at sufficient levels to trigger the required 5% increase in the general fund appropriation,[389] the legislature increased that total appropriation each year by more than 5%.[390] Finally, the legislature temporarily eliminated for FY 2003–2004 and FY 2004–2005[391] the 1,000 extra preschool slots it had created over the course of FY 2001–2002 and FY 2002–2003 using funds from both the SEF and the general fund.[392]

In FY 2005–2006, because the state's finances improved somewhat, the legislature was able to meet the initiative's mandates handily. It not only increased the statewide base per pupil amount by inflation plus 1%, but also increased its general fund appropriations for total education program by 7.6%,[393] much more than the 5% maintenance-of-effort increase required by the initiative. The legislature not only restored as scheduled the 1,000 preschool slots that had been temporarily suspended,[394] it also added 1,310 new preschool slots for FY 2005–2006 and years thereafter, bringing the total number of preschool slots up to 10,860.[395] The restored slots were funded as part of the 7.6% increase in general fund appropriations,[396] and the new slots were funded out of the SEF.[397]

Thus, despite some curtailments of the initial expansion that followed the initiative's passage, its overall impact has been as intended: to increase funding for pre-K-12 education. The legislature has fulfilled its obligation to increase base per-pupil spending by inflation plus 1% every year since passage, and preschool has shared in this increase. When the initiative passed in 2000, the FY 2000–2001 statewide base per-pupil funding, including for preschool, was $4,002;[398] in FY 2005–

footnote cont'd

at http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2004/Final Reports/04SEFFinalReport.pdf (last visited June 21, 2005).

[387] In calendar year 2001, personal income growth over the previous year fell to 4.3%; income growth was less than 4.5% as well in calendar years 2002 (.8%) and 2003 (2.5%). Memorandum from the Colo. Legislative Council Economics Staff, to Members of the Gen. Assemb., Focus Colorado: Economic and Revenue Forecast, 2004–2010, at 19 (Sept. 20, 2004), (on file with the National Women's Law Center) [hereinafter Income Growth Forecast].

[388] *See* Colorado FY 2004–2005 Appropriations Report, *supra* note 97, at 83–84.

[389] Income Growth Forecast, *supra* note 387, at 19.

[390] *See* Colorado FY 2004–2005 Appropriations Report, *supra* note 97, at 83–84.

[391] Colo. Rev. Stat. § 22-28-104(2)(d)(I)(A)(2004).

[392] Colorado FY 2004–2005 Appropriations Report, *supra* note 97, at 488.

[393] Memorandum from Deb Godshall, Asst. Director, Colorado Legislative Council, to Members of General Assembly 1 (May 13, 2005), *available at* http://www.state.co.us/gov_dir/leg_dir/lcsstaff/schfin/2005/05SummaryMemo.PDF (last visited June 9, 2005).

[394] *See* 2005 Colorado School Financing Act, *supra* note 97, at § 15 (to be codified as amended at Colo. Rev. Stat. § 22-28-104(2)(d)(I)(A)).

[395] *See id.* (Total slots increased to 12,360, *id.*, of which 1,500 were authorized to be used for the full day kindergarten component of the preschool program, *id.*(to be codified at §§ 22-28-104 (2)(d)(I)(E)(F)).

[396] Godshall Interview, *supra* note 102.

[397] *See* 2005 Colorado School Financing Act, *supra* note 97, § 20(1)(a).

[398] Colorado FY 2004–2005 Appropriations Report, *supra* note 97, at 64.

2006, it was $4,718.[399] Although not legally obligated to do so, in every year since passage except FY 2002–2003, the legislature has continued to increase its total general fund appropriation for education, often by more than the 5% minimum increase, which, with the SEF, has provided the funding for the increase in preschool slots. Moreover, Colorado advocates believe that, in addition to increasing funding (and, for some years, the number of slots) for preschool, the initiative more firmly anchored preschool as an appropriate part of public education, giving it a more solid foundation than before the initiative.

At the same time, and despite the Pre-K-12 initiative's provision to tie its increases, in part, to growth in state personal income, its success has put pressure on the state's budget, which is already constrained by two previous ballot measure amendments to the state constitution. The first of these two measures, the Gallagher Amendment, was approved in 1982, and imposes a limit on local property taxes.[400] The second, the Taxpayer's Bill of Rights (TABOR) Amendment, was approved in 1992, and both limits spending and revenue growth by all levels of government and requires that any revenues collected over the spending limit be refunded to taxpayers.[401] It also requires voter approval to exceed the spending and revenue limits.[402] The combined pressure that these limitations and the more recent Pre-K-12 initiative have put on the state budget as state revenues have declined has led to efforts by both advocates and lawmakers to amend the constitution to change the limits of the Gallagher and TABOR amendments or the mandates of the Pre-K-12 initiative, or both, although the most recent efforts have focused on limiting the TABOR amendment, not the Pre-K-12 initiative.[403]

In short, the two ballot measures that were financed by earmarks and whose spending mandates have taken full effect demonstrate that these kinds of set-asides can work—both succeeded in setting a floor below which funding could not be cut, and both succeeded in adding to that funding. However, the experience thus far under the Colorado Pre-K-12 initiative points up a risk of earmarks: the earmarked funds must come from somewhere. This may not be a problem during times of economic growth, but in times of declining revenues, earmarks, even those that contain provisions designed to protect existing funding, can place increased pressure on already-squeezed budgets, which may in turn threaten the continued ability of the earmark to provide increased ECE/AS funding.[404]

[399] 2005 Colorado School Financing Act, *supra* note 97, § 1 (to be codified at Colo. Rev. Stat. § 22-54-104(5)(a)(XII)).
[400] Colo., Amendment 1, Property Tax Assessment (amending Colo. Const. art. X, § 3), *in* Colo. Legislative Council, History of Statewide Ballot Issues Since 1964, *available at* http://www.state.co.us/gov_dir/leg_dir/lccsstaff/research/CONSTbl.htm (last visited June 12, 2005).
[401] TABOR Amendment, *supra* note 380.
[402] *Id.*
[403] *See infra* notes 486–487 and accompanying text.
[404] Of course, in difficult economic times, a property or sales tax dedicated to ECE/AS programs may be no more immune, since policy makers may see such a tax as a potential source of revenues for other programs and seek to modify it as well.

b. Measures that Have Been Partially Implemented

There are two ECE/AS ballot measures that, while victorious at the polls, have thus far had limited impact because, for varying reasons, their main provisions have just begun to be implemented: the California Prop. 49 initiative and the Tennessee Lottery referendum. In the case of Prop. 49, the initiative contained a delayed effective date; the Tennessee referendum took effect immediately, but it took about a year for the legislature to adopt implementing legislation and for the state to get the lottery up and running. The Prop. 49 initiative is funded by an earmark, the Tennessee referendum by new revenues. In the cases of both the Prop. 49 initiative and the Tennessee Lottery referendum, however, the increased funding for ECE/AS programs was made contingent on the existence of "excess" funds, and the "trigger" has not yet been pulled in California and has been only partially pulled in Tennessee. Although these measures show promise for greater impact, these contingencies or other ambiguities in their design raise some concerns about the timing of, and their future ability to, deliver substantial increased ECE/AS funding.

The chief goal of the California Prop. 49 initiative was to enable AS programs to serve more youth by greatly increasing public funding for these programs.[405] As previously described, beginning on July 1, 2004, the initiative provides for a continuous annual appropriation[406]—an automatic appropriation over which the legislature has no discretion or control—of no less than the previous fiscal year's funding (the funding floor) and no more than $550 million.[407] Appropriations above the funding floor (i.e., any funding increases) are contingent on a budget "trigger," which is "pulled" only if and when total general fund appropriations (not counting funds already earmarked for public education under a previous initiative) reach a level that is at least $1.5 billion higher than it was in the fiscal year between 2000 and 2004 with the highest appropriations level.[408]

The Prop. 49 initiative also provides that before July 1, 2004, it is the "intent of the legislature" that funding for AS programs not go below $85,000,[409] and the legislature did, for the most part, hold funding steady between 2002 and 2004. It appropriated $121.6 million for after-school programs in both FY 2002–2003[410] and FY 2003–2004.[411] In late 2002, just one month after the passage of the Prop. 49 initiative but before its funding floor was in effect, then-Gov. Davis proposed mid-year, across-the-board budget cuts to education programs, including AS programs, for both the remainder of FY 2002–2003 and for FY 2003–2004.[412] Although a cut

[405] The Prop. 49 initiative sought to expand the number of youth served by using increased funding to make smaller grants to all programs rather than larger grants to only some programs. *See* Prop. 49 Full Text, *supra* note 127, § 8 (codified at Cal. Educ. Code § 8482.55(c)).
[406] *Id.* § 10 (codified at Cal. Educ. Code § 8483.5(b)).
[407] *Id.* The initiative sets $550 million as the ceiling for its mandated increases, but expressly does not prohibit the legislature from increasing AS funding above that amount. *Id.*
[408] *Id.*
[409] *Id.* (codified at Cal. Educ. Code § 8483.5(a)).
[410] California 2002–2003 Budget, *supra* note 131, at 379.
[411] California 2003–2004 Budget, *supra* note 131, at 438.
[412] Cal. Dep't of Fin., Mid-Year Spending Reduction Proposals 19 (Dec. 2002), *available at* http://www.dof.ca.gov/HTML/BUD_DOCS/midyr02.pdf (last visited June 12, 2005).

of $8.3 million in AS programs was made for the remainder of FY 2002–2003,[413] AS funding for FY 2003–2004 was restored to $121.6 million.[414] After-school program advocates who were interviewed about the Prop. 49 initiative credited its passage with giving them the political leverage to deflect deeper cuts and get AS funding restored. Now that the floor is established as the amount of the FY 2003–2004 appropriations for AS, it is set at $121.6 million.[415] In keeping with the initiative's requirement that funding not fall below the previous year's level, but that funding not increase until the trigger is pulled, the state budget allotted $121.6 million in AS funding each year for FY 2004–2005 and FY 2005–2006,[416] and these amounts were automatically appropriated by the Prop. 49 initiative itself.[417]

It is unclear, however, when the Prop. 49 initiative's mandated increases in funding will begin. The rationale for the $1.5 billion trigger is that if total general fund appropriations have increased by $1.5 billion over recent levels—excess funds of a sort—this is a sign that the state budget is in good enough shape to afford the increased funding earmarked for AS programs. To the extent implementation of the increase and the envisioned expansion of AS programs depends on the state's fiscal situation, it may be long-awaited. Due to California's continuing budget woes, the projected effective date for the increased funding in the initiative has been delayed from FY 2004–2005[418] until FY 2007–2008.[419] On the other hand, like the Colorado Pre-K-12 initiative in part, the Prop. 49 initiative recognizes that when the economy turns sour, mandatory earmarks can exacerbate budget problems, and tries to prevent these problems from occurring.[420] Accordingly, once the initiative's conditions are met, AS programs should automatically receive an increase.[421]

[413] SBX1 18, Sec. 49, 2003 Cal. Stat. 4 (amending Budget Act of 2002, 2002 Cal. Stat. 379), *available at* http://info.sen.ca.gov/pub/03–04/bill/sen/sb_0001-0050/sbx1_18_bill_20030318_chaptered.html (last visited June 12, 2005).
[414] Cal. Dep't of Fin., Governor's Budget, May Revision 2003–04, at 32 (May 14, 2003), *available at* http://www.dof.ca.gov/HTML/BUD_DOCS/May_Revision_2003_www.pdf (last visited June 12, 2005); California 2003–2004 Budget, *supra* note 131, at 438.
[415] Because the floor is set at $121.6 million, the maximum mandated increase is now set at $428.4 million ($550 million – $121.6 million = $428.4 million).
[416] Cal. Dep't of Fin., Governor's Budget 2004–05 (Education Section) E6 (Jan. 1, 2004), *available at* http://www.osp.dgs.ca.gov/On-Line+Publications/Governors+Budget+2004–2005.htm (last visited June 12, 2005) (FY 2004–2005); Cal. Dep't of Fin., Governor's Budget 2005–06, at edu-7 (2005), *available at* ftp://ftpgov.dof/ca.gov/pub/GovernorsBudget/6000/pdf (last visited Aug. 10, 2005) (FY 2005–2006).
[417] *See* Cal. Dep't of Fin., State of California Budget for the Fiscal Year 2004–05, Final Change Book: List of Changes to the Governor's Budget 515 (Sept. 16, 2004), *available at* http://www.osp.dgs.ca.gov/On-Line+Publications/finalchangebook0405.htm (last visited Sept. 29, 2005) (providing that because "Proposition 49 continuously appropriates the After School Education and Safety Program…funds should no longer be appropriated in the annual budget bill").
[418] *See* Cal. Sec'y of State, California General Election, Tuesday, November 5, 2002, Official Voter Information Guide 20.
[419] Cal. Legislative Analyst's Office, Analysis of the 2004–2005 Budget Bill, Education 12 (Feb. 2004) *available at* http://www.lao.ca.gov/analysis_2004/education/ed_14_childcare_anl04.htm#_Toc64255556 (last visited June 24, 2005).
[420] Despite the Prop. 49 initiative's attempt to guard against the adverse effect that an earmark can have on funding for existing programs when budgets are tight, some critics of its budget trigger have pointed out that it is possible for the initiative's increased funding to take effect even if the state budget is still ailing. This is because its trigger is based on the size of the general fund appropriations, not on the fiscal health of the state. If routine growth in the budget (due to inflation and population changes) exceeds the $1.5 billion cushion provided by the Prop. 49 initiative, its trigger could be pulled, even though the state is still running deficits. Delaine McCullough, Cal. Budget Project, What Would Proposition 49, The After School Education and Safety Program Act, Mean for California? (July 2002) *available at* http://cbp.org/2002/bb020701.pdf (last visited June 12, 2005); League of Women Voters of Cal., Why We Oppose Prop. 49, *available at* http://no49.ca.lwvnet.org/about.html (last visited Aug. 2, 2005).
[421] The increase could be quite modest in the beginning, since $550 million is the ceiling, not the floor.

The other measure just beginning to be implemented is the Tennessee Lottery referendum, which, unlike the Prop. 49 initiative, funds ECE/AS programs from a new source of revenues: a state lottery. Like the Prop. 49 initiative, however, the increased investments in ECE/AS programs are contingent upon the existence of excess funds, and the legislature has been slow to allocate these excess funds for ECE/AS programs. As previously described, the Tennessee referendum, passed in 2002, amended the state constitution to authorize the creation of a lottery whose net proceeds are to be used to fund college scholarships; any excess net proceeds are to be spent on capital outlays for education facilities and early learning and after-school programs.[422]

Following passage of the referendum, the state legislature quickly passed two bills in 2003 creating a lottery and a college scholarship program. In the legislation creating the lottery, the legislature established a "lottery for education account" into which the net proceeds of the lottery were to be deposited and an "after school programs special account" into which half of any unclaimed prize money was to be deposited.[423] (The latter allocation is in addition to the excess net proceeds that may be spent on AS programs pursuant to the terms of the lottery referendum itself.) In the scholarship program legislation, the legislature expressed a preference that early learning be the first of the lottery's three secondary priorities to be funded with any excess net proceeds.[424] Moreover, it made amendments to a pre-existing preschool program, establishing that any excess net proceeds from the lottery allocated for early learning be distributed through a system of competitive grants for preschool programs administered by the Department of Education;[425] in 2004, the legislature created a similar allocation system for after-school programs funded.[426]

The lottery was launched in January 2004. In its first six months of operation, it had sales revenues of $422 million[427] and in mid-July 2004, lottery officials announced plans to transfer $123 million in net proceeds to the lottery for education account, and $2 million in unclaimed prize money to the after-school account.[428] Scholarships for the first semester (fall, 2004) were then projected to be about $88 million,[429] leaving more than $30 million in net proceeds that could be spent for other purposes.

However, none of these excess funds were allocated to any of the lottery's secondary ECE/AS purposes. To the contrary, Governor Phil Bredesen took the position that the state should see how the lottery goes for awhile before substantially expanding or starting a new pre-kindergarten

[422] Tennessee Lottery Full Text, *supra* note 113.
[423] Tennessee Lottery Implementation Law, *supra* note 117, § 2 (codified at Tenn. Code Ann. § 4-51-111f(1)).
[424] Tennessee Scholarship Implementation Law, *supra* note 120, § 1(codified at Tenn. Code Ann. § 49-4-901).
[425] *Id.* § 4 (codified at Tenn. Code Ann. § 49-6-101(f)(1)).
[426] Act of May 20, 2004, Tenn. Pub. Acts ch. 953 (codified at Tenn. Code Ann. 349-6-701), *available at* http://www.state.tn.us/sos/acts/103/pub/pc0953.pdf (last visited June 12, 2005).
[427] Associated Press, *Lottery to Easily Exceed Funding for HOPE Scholarships*, Williamson County Review Appeal, June 29, 2004).
[428] Press Release, Tenn. Educ. Lottery Corp., Lottery Generates More Than $123 Million for Education in Less Than 6 Months; All Eligible Students Will Receive Scholarships This Fall (July 15, 2004), *available at* http://www.tnlottery.com/newsroom/newsitem.aspx?nid=98= (last visited June 24, 2005).
[429] Amber McDowell, *Bredesen Wants to Hold Off on Spending Lottery Money on Pre-K*, Williamson County Review Appeal, July 1, 2004.

program.[430] His FY 2004–2005 budget requested authorization to spend only $8 million of any excess net proceeds from the lottery on pre-kindergarten and only the $2 million from the unclaimed prize money from the lottery on after-school programs.[431] The state legislature followed the governor's lead, appropriating $8 million for "prekindergarten and early childhood education programs," and $2 million for after-school programs, but both appropriations (even the after-school funds drawn from unclaimed prize funds) were expressly made contingent upon a determination by the Commissioner of Finance and Administration that excess net proceeds from the lottery are available.[432] According to one budget official, it was generally expected that excess net proceeds would be declared and that both the $8 million for ECE programs and $2 million for AS programs would be appropriated in early 2005, after the second semester scholarships were funded.[433]

The caution on allocating funds to ECE/AS, however, continued after the second six months, too. After the lottery's first full year of operation, in January 2005, it had generated $863 million in sales revenues, and about $218 million in net proceeds.[434] Of the latter amount, approximately $49 million was paid out for college scholarships (including administrative costs) for the fall 2004 semester, and the lottery for education account contained approximately in $170 million in excess net proceeds.[435] By spring 2005, the lottery had accumulated $56 million more in net proceeds and spent $45 million more on scholarships, leaving the lottery for education account with $182 million in excess net proceeds for FY 2004–2005.[436] Yet, the official determination of "excess net proceeds" was not made, and thus neither the $8 million for ECE nor the $2 million for AS conditionally appropriated for FY 2004–2005 were released.[437]

In the Tennessee lottery's second year of operation, the prospects that the referendum could deliver increased ECE/AS investment financed by lottery revenues brightened. Governor Bredesen included a much larger pre-kindergarten component in his FY 2005–2006 budget, although he again held back on requesting allocation of a substantial part of the excess net proceeds. His FY 2005–2006 budget proposed,[438] and the legislature approved,[439] a maximum of $25 million to expand the state's pre-kindergarten program, and $4 million in anticipated unclaimed prize money for after-school programs, leaving tens of millions to accumulate in the lottery for education account.

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[430] *Id. See also* Duren Cheek, *Lottery Funds Might Not Go To Pre-K*, The Tennessean, July 27, 2004, at B1.
[431] State of Tenn., The Budget: Fiscal Year 2004–2005, at A-12 (2004); Tom Humphrey, *State Budget Gets a Boost*, Knoxville-News Sentinel, Feb. 3, 2004, at A1.
[432] Act of June 15, 2004, 2004 Tenn. Pub. Acts ch. 961, § 55, *available at* http://www.state.tn.us/sos/acts/103/pub/pc0961.pdf (last visited June 12, 2005).
[433] Telephone Interview with William Bradley, Dir., Budget Div., Tenn. Dep't of Fin. & Admin. (July 21, 2004).
[434] Chris Jones, *Tennessee Lottery Makes $863 Million,* The Decatur Daily, Jan. 21, 2005, *available at* http://www.decaturdaily.com/decaturdailynews/050121/lottery.shtml (last visited April 28, 2005).
[435] Elliott Calendar Year 2004 Report, *supra* note 121.
[436] *See* Elliott Fiscal Year 2004–2005 Report, *supra* note 121.
[437] *See id.*
[438] State of Tenn., The Budget: Fiscal Year 2005–2006, Volume 1, A-7 (2005), *available at* http://www.state.tn.us/finance/bud/bud0506/0506Document.pdf (last visited June 12, 2005).
[439] 2005 Tennessee Appropriation, *supra* note 124.

Although the Tennessee Lottery referendum is a promising source of new revenues to support ECE/AS programs, it is unclear at this writing the extent to which it will deliver on that promise. To the extent that its very design leaves core decisions (including whether, when and how much to appropriate in ECE funds) up to the governor and the state legislature in the regular course of the budget process, it may impede the measure's ability to deliver fully on its promise. On the other hand, the FY 2005–2006 decision to allocate $25 million to pre-kindergarten and $4 million to after-school programs constitutes a significant ECE/AS accomplishment for the referendum and a substantial down payment toward realizing Governor Bredesen's stated desire to expand access to pre-kindergarten to all of the state's four-year-olds.[440] But with both the Governor and legislature proceeding slowly, and the inherent difficulty in determining the point at which the referendum's first-tier priority of funding college scholarships has been met, the prospects for those allocations beyond FY 2005–2006 are unclear.

c. Measures Not Yet in Effect

The impact of the Florida UPK initiative, the only ECE/AS measure studied that passed and is not yet in effect, cannot adequately be assessed at this writing. However, deficiencies in both the design of the initiative and its implementing legislation suggest that though it may increase investment in pre-kindergarten programs, it may not fully meet its other goals.

The UPK initiative grew out of the frustration of Florida advocates who had tried unsuccessfully to get the legislature to expand the state's pre-kindergarten program.[441] In response, they crafted a measure that calls for a "voluntary, high quality, free"[442] pre-kindergarten program for every four-year-old in the state to be in place by the 2005 school year. As previously described, because of Florida's single-subject rule,[443] the initiative contained few substantive requirements, and no details, for the design of the UPK program, only that it be "organized," designed to enable children to make "age appropriate progress…in the development of language and cognitive capabilities and emotional, social, regulatory and moral capacities through education in basic skills," and "delivered according to professionally accepted standards."[444] For the same reason, the initiative did not contain a funding mechanism or specify what level of funding would be considered adequate, only a mandate to the legislature to implement the program and pay for it with funds other than those being spent as of January 1, 2002, for "child or adult education, health care, or development" programs.[445]

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[440] *See* Tenn. Gov. Phil Bredesen Remarks: Northfield Elementary Sch. (2005 Priorities) (Dec. 8, 2004), *available at* http://www.tennessee.gov/governor/newsroom.do?id=3 (last visited June 29, 2005).
[441] *See* discussion *infra* pp. 100–101.
[442] UPK Initiative Full Text, *supra* note 137 (amending Fla. Const. art. IX, § 1(b)); *see also* UPK Initiative Ballot Question, *supra* note 135.
[443] Florida Single Subject Rule, *supra* note 301.
[444] UPK Initiative Full Text, *supra* note 137 (amending Fla. Const. art. IX, § 1(b)).
[445] *Id.* (amending Fla. Const. art. IX, § 1(c)). Aside from skirting the potential legal problems, some supporters of the initiative interviewed took the position that they saw no problem with a lack of specificity on the amount or source of funding, a stance no different than lawmaking by legislation in that advocates win a mandate and the legislature must come up with the funds to implement it.

The lack of program standards in the initiative gave the legislature wide latitude to determine the meaning of "high quality," and the lack of a financing mechanism gave it wide latitude to determine how much it was willing to pay to achieve a universal pre-kindergarten program, whatever its quality. In late 2003, when Florida advocates were interviewed for this study, all were optimistic that a high-quality UPK program would be created and adequately funded. But, by the spring of 2004, advocates were becoming concerned: the majority party in the legislature was opposed to raising taxes to pay for the program, and was showing an inclination to create the program "on the cheap."[446]

On the last day of the session, the Florida legislature reached agreement on a plan[447] that many advocates said fell short of the intent and expectations of ECE/AS advocates who supported the initiative[448] and short of the standards recommended by an Advisory Council chaired by the Lt. Governor.[449] For example, that Advisory Council had recommended that children be provided with a six-hour program day (with four hours of instruction) during the school year,[450] taught by pre-kindergarten teachers with a minimum of a child development associate (CDA) credential but for whom there would be phased-in requirements for an associate's degree and eventually a bachelor's degree in early childhood education,[451] in a classroom that did not exceed a 1:10 teacher-student ratio.[452] By contrast, the plan enacted by the legislature provided for the equivalent of only a three-hour program day during the school year or a full-day pre-kindergarten program over the summer,[453] taught by staff who need hold only a child development associate degree or the equivalent.[454] Moreover, the legislation required classroom student-teacher ratios no larger than 10:1 for the summer,[455] but failed to specify any student-teacher ratios for classes during the school year. In the face of substantial criticism of the legislation from ECE advocates and newspapers across the state,[456] Governor Jeb Bush vetoed it.[457]

After the 2004 election, Governor Bush called the legislature into a special session to try again. The legislature adopted another bill, but it differed only slightly from the first one.[458] Whereas the

[446] *See, e.g.*, Leslie Postal, *Some Fear State Will 'Cheap Out' On Pre-K*, Orlando Sentinel, Mar. 19, 2004, at B1. (A "cheap" program was described as one that would "do little to prepare children for kindergarten" because it does not "require accreditation of schools, low teacher-student ratios or teachers with credentials." *Id.*)
[447] Vetoed UPK Legislation, *supra* note 139.
[448] *See, e.g.,* Children's Campaign, *supra* note 140; *Pinellas Asks Bush for Special Session*, *supra* note 140; *Bush Urged to Veto Pre-K Legislation*, *supra* note 140.
[449] *See* Fla. State Bd. of Educ. Universal Prekindergarten Educ. Advisory Council, Report and Recommendations to the Florida State Board of Education 8-1 (2003), *available at* http://www.upkcouncil.org/docs/UPK_REPORT.pdf (last visited June 12, 2005).
[450] *Id.* at 8-5.
[451] *Id.*
[452] *Id.* at 8-4.
[453] *See* Vetoed UPK Legislation, *supra* note 139, Sec. 1, §§ 1002.55(2), 1002.61(b)(2)(a).
[454] *Id.* § 1002.55(3)(c).
[455] *Id.* § 1002.61(3).
[456] *See* Children's Campaign, *supra* note 140; *Pinellas Asks Bush for Special Session*, *supra* note 140; *Bush Urged to Veto Pre-K Legislation*, *supra* note 140; *Try, Try Again*, *supra* note 141; *Gov. Bush Should Veto*, *supra* note 141; *Governor Should Veto*, *supra* note 140.
[457] Veto Message, *supra* note 142.
[458] *Compare* Vetoed UPK Legislation, *supra* note 139, *with* Florida UPK Legislation, *supra* note 143.

first bill specified no student-teacher ratios for the school-year classes, the second bill specified that there be at least one CDA-credentialed adult per ten students, plus at least one additional adult—who need not have any educational credentials—for classes of eleven to eighteen students.[459] There were no improvements to teacher credentials, extensions of program hours, or other changes advocates had sought. Governor Bush signed this version.

No program funding was included in either the vetoed or enacted legislation because appropriations for the 2005 school year are made in the 2005 legislative session. However, Governor Bush proposed $372 million for the new program in his FY 2005–2006 budget,[460] and the legislature approved $387.1 million,[461] amounts in sharp contrast to the estimates at the time of the initiative campaign that a high-quality program would cost between $425 and $650 million annually.[462]

Even if considerably lower than originally estimated, it appears that the UPK initiative will produce hundreds of millions of dollars in new investment for pre-kindergarten in Florida. However, increased investment is not a severable objective of the Florida UPK initiative; its primary objective was to make a *high-quality* pre-kindergarten program universally available to four-year-olds, and whether the initiative will ultimately achieve that objective, and thus fulfill its mandate, remains in doubt.

* * *

The fourteen ECE/AS ballot measures that have been approved by the voters and fully implemented deployed varied approaches to increasing public investment in ECE/AS programs. In general, both approaches that raised revenues and those that earmarked existing funds increased investment, often substantially. But, as the experience of the Colorado Pre-K-12 initiative shows, earmarks, even when paired with protections for existing funding, may place pressure on finite state budgets that in times of declining revenues can threaten the ability of the earmark to deliver that increased investment.

The two ballot measures that, for various reasons, have only begun to be implemented hold promise for increasing funding for ECE/AS as well. However, the uncertainties that were built into their design raise questions about the extent to which and when they will be able to accomplish what they set out to do. The contingent nature of the funding mechanisms in both the Prop. 49 initiative and the Tennessee Lottery referendum may have accurately reflected their proponents' priorities and helped the measures pass, but that very contingency also means that, at a minimum, ECE/AS programs may have to wait some time for substantial increased support.

More troubling is the Florida experience in implementing its UPK initiative. That initiative's lack of direction to the legislature on both policy and financing questions led to legislation that is likely to increase Florida's investment in pre-kindergarten, but unlikely to produce a high-quality,

[459] UPK Legislation, *supra* note 143, §1 (to be codified at Fla. Stat. § 1002.55(3)(e)).
[460] Bush/Jennings Budget Recommendations, *supra* note 144.
[461] Florida Pre-K Appropriation, *supra* note 145.
[462] Proposed Constitutional Amendment, *supra* note 146.

universal pre-kindergarten program for all four-year-olds in the state. Properly designed, however, ballot measures have shown themselves to be a fruitful strategy for increasing investment in ECE/AS programs.

2. Stabilized and Safeguarded Funding Streams

As previously described, all of the ECE/AS ballot measures sought, to one degree or another, to preserve and perpetuate the revenue streams they created by incorporating various types of structural safeguards. And, by and large, the measures that have been fully or partially implemented appear to have been successful in preventing newly allocated funds from being cut or raided and in assuring that new funds are not used simply to supplant previous spending, although the extent to which these structural safeguards have contributed to that success is unclear.

As previously described, to protect new funding from direct assault and misappropriation for non-ECE/AS purposes, several ballot measures required that any funds raised by the measure be set aside in a fund that is segregated from the rest of the jurisdiction's treasury and whose revenues are dedicated, at least in part, to the measure's purposes; to prevent new funding from indirect assault, several measures prohibited any new revenues raised by the measure from being used to displace previous ECE/AS funding commitments or otherwise required that previous commitments be maintained. All but one of the sixteen ballot measures that passed and whose ECE/AS funding provisions have been partially or fully implemented[463] took steps to protect their funding in one or more of these ways. Twelve of these measures created separate "trust" funds or accounts that were segregated from the rest of the treasury, though they varied in their levels of independence from legislative control.[464] Seven of the sixteen measures contained express prohibitions on

[463] It is not possible to evaluate the stability of ECE/AS funding provided by the Florida UPK initiative because it has at this writing just occurred. However, because both the California Prop. 49 initiative and the Tennessee Lottery referendum have been partially implemented, they are included for evaluation here with the fourteen measures that have been fully implemented—the eight Florida CSC referendums, Seattle F&E Levy referendum, Aspen Day Care referendum, San Francisco Children's Fund initiative, California Prop. 10 initiative, Colorado Pre-K-12 initiative, and Portland Children's Investment Fund referendum.

[464] The twelve measures that created such funds were the eight Florida CSC referendums, CSC Statute, *supra* note 14, § 125.901(3)(e); San Francisco Children's Fund initiative, Prop. J Full Text, *supra* note 57 (amending San Francisco Charter § 6.415(a), (g)) (superseded by Prop. D Full Text, *supra* note 67 (amending San Francisco Charter art. XVI, § 16.108(a), (g))); California Prop. 10 initiative, Prop. 10 Full Text, *supra* note 73, § 5 (codified at Cal. Health & Safety Code § 130105(d)); Colorado Pre-K-12 initiative, Amendment 23 Full Text, *supra* note 91, at 47–48 (amending Colo. Const. art. IX, § 17(4)(a)); and Portland Children's Investment Fund referendum, Portland Ordinance, *supra* note 149. The legislation implementing the Tennessee Lottery also created such a fund. Tennessee Lottery Implementation Law, *supra* note 117, § 2, (codified at Tenn. Code Ann. § 4-51-111(b)(i)).

supplantation.[465] Three of these six went even further by incorporating additional maintenance-of-effort-type requirements on spending.[466]

The California Prop. 10 initiative went the furthest in placing its funding and operations beyond the reach of the legislature. It created a "California Children and Families First Trust Fund" and required that all tobacco tax revenues be deposited into it.[467] The state legislature has no authority to touch these funds; they are administered by the state and county commissions created by the initiative.[468] Moreover, although the Prop. 10 initiative specified that the legislature and the governor appoint the members of the state commission[469] and the county boards of supervisors appoint the members of the county commissions,[470] no government body has supervisory powers over the state or county commissions: the state commission is structurally independent of both the legislature and the governor, and the county commissions are not subject to control by the state commission.[471] The Prop. 10 initiative also required that its funds be used to supplement then-existing "levels of service" and not supplant state or local funds "for any purpose."[472] Despite the large budget deficits California has recently faced,[473] as previously described, the Prop. 10 initiative funds have remained secure for its first five years and, according to the advocates interviewed, have not displaced other similar funding.

[465] The seven measures with anti-supplantation provisions were the Miami-Dade CSC referendum, Miami-Dade Ordinance, *supra* note 319; Seattle F&E Levy referendum, Original F&E Levy Ordinance, *supra* note 33, § 1(b) (superseded by 1997 F&E Ordinance, *supra* note 37, § 1(b), & 2004 F&E Ordinance, *supra* note 44, § 1(b)); San Francisco Children's Fund initiative, Prop. J Full Text, *supra* note 57 (amending San Francisco Charter § 6.415(g)) (superseded by Prop. D Full Text, *supra* note 67 (amending San Francisco Charter art. XVI, § 16.108(g))); California Prop. 10 initiative, Prop. 10 Full Text, *supra* note 73, § 6 (codified at Cal. Rev. & Tax Code § 130131.4); Colorado Pre-K-12 initiative, Amendment 23 Full Text, *supra* note 91, at 47–48 (amending Colo. Const. art. IX, §§ 17(4)(a), 17(5)); California Prop. 49 initiative, Prop. 49 Full Text, *supra* note 127, § 10 (codified at Cal. Educ. Code § 8483.5(e)); and Tennessee Lottery referendum, Tennessee Lottery Full Text, *supra* note 113 (amending Tenn. Const. art. XI, § 5). The Florida UPK initiative, scheduled to take effect in the fall of 2005, also contained such a provision. UPK Initiative Full Text, *supra* note 137, § 1(c) (amending Fla. Const. art. IV, § 1).

[466] The three measures with these requirements were the San Francisco Children's Fund measure, Prop. J Full Text, *supra* note 57 (amending San Francisco Charter §6.415(g)) (superseded by Prop. D Full Text, *supra* note 67 (amending San Francisco Charter art. XVI, § 16.108(d), (g))); Colorado Pre-K-12 initiative, Amendment 23 Full Text, *supra* note 91, at 47–48 (amending Colo. Const. art. IX, §§ 17(4)(a), 17(5)); and California Prop. 49 initiative, Prop. 49 Full Text, *supra* note 127, § 10 (codified at Cal. Educ. Code § 8483.5(b)).

[467] Prop. 10 Full Text, *supra* note 73, § 5 (codified at Cal. Health & Safety Code § 130105(a), (b)).

[468] *Id.* (codified at Cal. Health & Safety Code § 130100(b)).

[469] *Id.* (codified at Cal. Health & Safety Code § 130115).

[470] *Id.* (codified at Cal. Health & Safety Code § 130140(a)(1)(A)).

[471] *See id.* Funds are allocated to the state and county commissions directly from the Trust Fund. *Id.*

[472] *Id.* § 6 (codified at Cal. Health & Safety Code § 30131.4).

[473] For the four fiscal years beginning with 2000–2001, the State of California's expenditures exceeded its revenues, Cal. Dep't of Fin., Chart J, Historical Data, Growth In Revenues, Transfers And Expenditures, General Fund (Jan. 2004), *available at* http://www.dof.ca.gov/HTML/BUD_DOCS/charts/chart-j.pdf (last visited June 24, 2005), creating annual operating deficits of approximately $15 billion. *See Governor Proposes Deep Cuts, Borrowing in 2004–05 Budget*, Budget Watch (Cal. Budget Project, Sacramento, Cal.), March 2004, at 1, *available at* http://www.cbp.org/2004/0403budgetwatch.pdf (last visited June 24, 2005).

Similarly, property tax revenues for the Florida Children's Services Councils are required to be deposited into a separate county fund.[474] The "governing body of the county" has no authority to change a CSC's budget, and only the CSCs have the authority to disburse the funds.[475] The authorizing statute also declares the "intent of the legislature" not to supplant local spending with CSC funds.[476] As previously described, the funding for the Florida CSCs has been steady for several years under this combination of a separate fund, self-controlled decision-making and anti-supplantation language.

The San Francisco Children's Fund initiative, the Colorado Pre-K-12 initiative, and the Portland Children's Investment Fund referendum kept their funds separate from other public funds but retained a comparatively larger role for their legislative bodies to make spending decisions than the Prop. 10 initiative or the Florida CSC referendums.[477] Advocates who were interviewed reported that the funding for these measures has endured since their passage—though it should be noted that all but the San Francisco measure are relatively recent.

The Portland Children's Investment Fund referendum did not specify how funding decisions are to be made—in reality, the city council makes the actual appropriations decisions based on the recommendations of an outside Allocation Committee; however, the levy proceeds are placed in a special fund and the council must spend them only for the purposes enumerated in the referendum.[478] Thus far in its early history, advocates say there is no sign these funds have been absorbed for general use or diverted to other priorities. However, a city cannot control what a county or state does, and after the Portland (city) referendum passed, the county reportedly reduced its funding of ECE/AS programs, according to an advocate there.

The San Francisco Board of Supervisors makes the appropriations decisions for the Children's Fund initiative based on plans proposed by the mayor ("the City" in the renewed version of the measure) with public involvement, but the Children's Fund set-aside is segregated from other city funds and can only be used for enumerated, eligible services.[479] Also, the Children's Fund initiative not only expressly prohibited use of the fund to supplant general spending on children's services, it went further and required the city to maintain a certain baseline level of spending for these services: lawmakers retain decision-making control over the Baseline Budget portion, although the amount of spending on children's services is dictated by the ballot measure.[480] As previously

[474] CSC Statute, *supra* note 14, § 125.901(3)(e).
[475] *Id.* § 125.901(3)(c)-(e).
[476] *Id.* § 125.901(8). The Miami-Dade measure went further, expressly stating that its funds were to be used "to supplement current county expenditures for children's services." Miami-Dade Ordinance, *supra* note 319.
[477] *Compare* San Francisco Children's Fund Initiative, Prop. J Full Text, *supra* note 57 (amending San Francisco Charter § 6.415) (superseded by Prop. D Full Text, *supra* note 67 (amending San Francisco Charter art. XVI, § 16.108))), Colorado Pre-K-12 initiative, Amendment 23 Full Text, *supra* note 91, at 47 (amending Colo. Const. art. IX, § 17(4)(a)); Portland Children's Investment Fund referendum, Portland Ordinance, *supra* note 149, *with* Prop. 10 initiative, Prop. 10 Full Text, *supra* note 73, § 5 (codified at Cal. Health & Safety Code § 130105(d)); Florida CSC referendums, CSC Statute, *supra* note 14, § 125.901(3)(c)-(e).
[478] Portland Ordinance, *supra* note 149.
[479] Prop. J Full Text, *supra* note 57, (amending San Francisco Charter § 6.415(f), (g)) (superseded by Prop. D Full Text, *supra* note 67 (amending San Francisco Charter art. XVI, § 16.108(a), (h))).
[480] *Id.* Under both Prop. J, Prop. J Full Text, *supra* note 57 (amending San Francisco Charter § 6.415(f)), and the renewed version, Prop. D, Prop. D Full Text, *supra* note 67, at P-55 (amending San Francisco Charter § 16.108(i)), a Children's Services Plan is supposed to guide the Board of Supervisors in making funding decisions.

described, the funding appears to have held up relatively well in the nearly fifteen years of its existence. But there have been supplantation attempts. For example, in 2002, advocates protested when the mayor endeavored to use $4 million left unspent from Children's Fund to pay for $4 million in expenses that were supposed to be paid for out of the Baseline Budget.[481] In the end, according to a proponent of the initiative, advocates went along because some of the money was used to help create a universal health care plan for the city's children and it was agreed this would be a one-time occurrence.

Still, advocates reported that this combination of a Baseline Budget supplemented by the Children's Fund stabilized funding and generally insulated children's services from annual appropriations battles and budget cuts. Writing about the first years of implementation, the chief proponent commented, "There were so few budget battles to fight. We were like the Maytag repairman. Here we were in the 'worst budget crisis ever' and children's services were protected."[482]

Under the Colorado initiative, the state legislature is charged with appropriating the additional funds for grades pre-K-12 from both the State Education Fund and from the general fund;[483] however, its maneuvering room is limited. The initiative was very clear on how the SEF funds could be allocated, both for the mandatory increases in base per-pupil funding and specified categorical programs as well as for discretionary programs such as expanding preschool slots.[484] It was also clear that SEF funds were not permitted to be used to supplant the amount the state had been spending on education from the general fund at the time the initiative was adopted.[485] As previously described, despite shortfalls in Colorado's budget in some years since its passage and the substantial authority retained by the legislature over general fund appropriations, this arrangement has worked fairly well to safeguard funding increases and preclude the use of SEF funds to supplant general revenue spending in the four-plus years of the initiative's history. Nevertheless, the Pre-K-12 initiative may be the least secure of this group of ballot measures. Because the revenue-restricting effects of two of Colorado's previous initiative-created constitutional amendments are at odds with the Pre-K-12 initiative's increased spending mandate, elected officials there have advocated modifications to all three amendments that would weaken the Pre-K-12 mandates.[486] As of mid-2005, however, the effort seems focused on limiting the TABOR amendment to permit more revenues collected to be spent rather than refunded to the taxpayers, rendering the Pre-K-12 initiative's mandates safe for the moment.[487]

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[481] Coleman Advocates for Children and Youth, Give Kids Their Money Back! (on file with National Women's Law Center).

[482] Sand Boxes, *supra* note 9, at 65.

[483] Amendment 23 Full Text, *supra* note 91, at 47–48 (amending Colo. Const. art. IX, §§ 17(4)(a), 17(5)).

[484] *Id.* (amending Colo. Const. art. IX, §§ 17(4)(a), 17(4)(b), 17(5)).

[485] *Id.* at 48 (amending Colo. Const. art. IX, § 17(5)).

[486] *See* Mike McPhee, *Coalition Defends Amendment 23: Hearing to Focus on Education Law Amid Fiscal Woes*, Denver Post, Oct. 22, 2003, at B-04.

[487] The Colorado legislature has proposed a statutory referendum for the November, 2005, ballot to permit the state to retain and spend all revenues collected rather than refund them. *See* Act of Apr. 27, 2005, H.B. 05-1194, 65th Gen. Assemb., 1st Reg. Sess. (Colo. 2005), *available at* http://www.leg.state.co.us/clics2005a/csl.nsf (last visited June 15, 2005) [hereinafter 2005 TABOR Limitation]. The revenues may be spent only on specifically enumerated budget items, including public education. *Id.*

The California Prop. 49 initiative utilized a unique strategy for insulating its AS funding from legislative action—it simply made AS appropriations (both the funding floor and funding increases) continuous and automatic, leaving the legislature no discretion to lower the amount or allocation.[488] Although the Prop. 49 initiative's increased funding for AS programs has not yet been triggered, its funding floor provision took effect on July 1, 2004.[489] That provision requires that funding for AS programs not fall below the previous year's funding level.[490] The initiative also provides that its funding must be used to supplement, not supplant, "existing levels of service."[491] The maintenance of AS appropriations for FY 2004–2005 and FY 2005–2006 at the FY 2003–2004 level of $121.6 million, despite California's continuing budget deficits, is preliminary evidence that this funding floor appears to be effective in protecting AS funding in the few years since its passage.[492]

Since at this writing the Tennessee Lottery referendum is just beginning to generate funding for ECE/AS programs, it is premature to judge its effectiveness in stabilizing and safeguarding that funding.[493] As previously discussed, however, the degree of discretion that the referendum gives to the legislature has already affected, and may continue to affect, the stability of its funding.

Based on the experience under these ballot measures, it is tempting to conclude that, for the most part, structural features such as segregated accounts, anti-supplantation provisions, and/or other maintenance-of-effort requirements are effective in protecting new funding from misappropriation and supplantation. Yet there were two ballot measures that managed to hold on to their money with few real structural protections. In particular, the Aspen Day Care referendum raised sales taxes for the undefined purposes of promoting day care and affordable housing, and placed the decision of how to allocate the proceeds between those two objectives in the sole discretion of the city council.[494] As previously described, ECE funding has nonetheless remained relatively stable over the nearly fifteen-year course of the measure's original term and since its 1999 renewal. Similarly, the Seattle F&E Levy referendum vested the power to make funding decisions in the city council.[495] Compared to the other anti-supplantation measures, the F&E Levy referendum's anti-supplantation prohibition is very loosely framed: because the referendum funded some programs previously financed by the school district, it required schools to redirect any funds thus freed up by the levy to other specific educational priorities so that the new funds added to but

[488] *See* Prop. 49 Full Text, *supra* note 127, § 10(b) (codified at Cal. Educ. Code § 8483.5(b)).
[489] *Id.*
[490] *Id.*
[491] *Id.* § 10(e) (codified at Cal. Educ. Code § 8483.5(e)).
[492] As previously described, funding for AS programs did temporarily dip by about $8 million in FY 2002–2003 as the result of across-the-board budget cuts in education, but that was before the Prop. 49 initiative's baseline funding requirement took effect, and the funding reverted to $121.6 million for FY 2003–2004, where it has remained for the two subsequent years. *See supra* notes 409–417 and accompanying text.
[493] For similar reasons, the effectiveness of the Florida UPK initiative in providing stable funding that does not supplant other ECE/AS funds cannot be evaluated until after the funding of the initiative is established and the new pre-kindergarten program begins in the fall of 2005.
[494] Aspen Ordinance 81, *supra* note 49.
[495] Original F&E Ordinance, *supra* note 33 (superseded by 1997 F&E Ordinance, *supra* note 37, § 4, & 2004 F&E Ordinance, *supra* note 44, § 4).

did not supplant the total previously spent on levy-related programs.[496] Nevertheless, as previously described, it appears that the funding for child care and after-school programs has been stable over the nearly fifteen-year duration of that referendum's existence.

Even those ballot measures that provided for their own demise by including sunset clauses have survived. All three measures that contained sunsets and have been submitted to the voters for renewal were approved for an additional term or terms.[497] If funding stability and security are desired, it may be counterintuitive to include a provision that would seem to invite the opposite; in reality, however, sunset provisions have not proven to be a barrier to a measure's long-term survival.

* * *

In most cases, the fourteen ECE/AS ballot measures that have been fully implemented have succeeded in creating stable funding for ECE/AS programs that is protected from raids by cash-strapped legislatures. Of the two measures that have been partially implemented, one measure has helped to stabilize funding and the other is just beginning to allocate funding to ECE/AS programs and, although it does not have a sufficient track record to evaluate its stability, its design and its history so far raise questions about its ability to protect that funding. Although the inclusion of particular features such as segregated funds, anti-supplantation clauses, and funding floors or other maintenance-of-effort requirements may have played a role in stabilizing and protecting funding for ECE/AS programs, the stability and staying power shown by measures without these features suggests that other factors—for example, the commitment of lawmakers or the directly expressed political will of the voters—may have played a role as well. In any event, several ECE/AS ballot measures have established that not only can they raise money, they can hold on to the money. And those measures that have been in operation for a decade or more have effectively institutionalized increased funding for ECE/AS programs and seem to have become an established, enduring part of the ECE/AS fabric in their respective jurisdictions.

3. Other Outcomes and Effects

Besides generating (or, by losing, failing to generate) new funding for ECE/AS programs or bringing about specific policy changes, ballot campaigns have had other effects, both positive and negative. Based on the interviews, advocates reported that the ballot measures that passed had some positive impact beyond the accomplishment of the measure's stated objectives. These additional outcomes included generating additional funding and policy gains, as well

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[496] Original F&E Ordinance, *supra* note 33. *See also* 1997 F&E Ordinance, *supra* note 37, § 1(b); 2004 F&E Ordinance, *supra* note 44, § 1(b).

[497] The three measures with sunsets that have been renewed are the Seattle F&E Levy referendum (twice), 1997 F&E Levy Results, *supra* note 36 (1997 renewal); 2004 F&E Levy Results, *supra* note 42 (2004 renewal); Aspen Day Care referendum, Aspen 1999 Results, *supra* note 55; and the San Francisco Children's Fund initiative (renewed by referendum), Historical Ballot Measures, *supra* note 63. The other two measures with sunsets—the Portland Children's Investment Fund referendum, Portland Ordinance, *supra* note 149, and the Miami-Dade CSC referendum, Miami-Dade Ordinance, *supra* note 319—have not yet reached their expiration dates.

as strengthening partnerships and coalitions. Advocates reported that even some of the ballot measures that lost produced some of these positive side effects. However, some of the defeated ballot campaigns not only failed to accomplish their objectives, but also may have set back the ECE/AS cause in their jurisdiction.

a. Additional Funding and Policy Outcomes

One of the clearest bonuses from successful ballot campaigns is that money can attract more money. For example, proponents of the San Francisco Children's Fund initiative reported that the initiative's serious commitment of dollars to improving children's services made both San Francisco and the organizations in which it invested stronger, more attractive, and more credible grantees of new dollars from both public and private sources. One community center, for example, used $70,000 in "core funding" from the Children's Fund to attract additional funds for an after-school program, eventually building it into a $400,000 program.[498] In the case of the Prop. 10 initiative, one interviewee reported that some counties have used the initiative's funds for services to children ages birth to five to convince private funders to supply additional funds to serve children ages six and older. A perusal of the individual reports submitted by county commissions for the FY 2002–2003 First 5 California Annual Report reveals that some of them have attracted hundreds of thousands, and even millions, of dollars in non-initiative funds.[499]

Besides attracting additional outside funds, advocates reported that winning at the ballot box—having the voters on record in support of a particular goal or program—gave them the added political leverage with lawmakers to avert setbacks and win further policy gains. For example, as previously described, several supporters of the California Prop. 49 initiative credited that win with helping them restore AS funds that had been cut under then-Governor Davis, even though Prop. 49's spending baseline was not yet in effect. And, some individuals involved with implementing the California Prop. 10 initiative noted that the state legislature issued a new master plan for education that includes early education and school-readiness components and that the Prop. 10 initiative's recently focused attention and resources on preschool deserve some of the credit for its inclusion in that plan.

Many supporters noted that successful ballot campaigns spawned other successful ECE/AS ballot measures. According to several Portland interviewees, for instance, the successful Portland referendum was the result of the proponent's desire "to bring to Portland what he had seen work in Seattle [Families & Education Levy referendum] and San Francisco [San Francisco Children's Fund initiative]." After the success of the Prop. 10 initiative in 1998, there was a spate of ECE/AS ballot measures in the next five years; most were successful, though some of them lost.[500] In

[498] First Nine Years, *supra* note 9, at 35.
[499] *See* First 5 2002–03 Report, *supra* note 82, at 8-1 to 8-123.
[500] ECE/AS ballot measures that were victorious in those years were the Colorado Pre-K-12 initiative, Amendment 23 Results, *supra* note 89 (2000); Tennessee Lottery referendum, Tennessee Results, *supra* note 116 (2002); California Prop. 49 initiative, Prop. 49 Results, *supra* note 126 (2002); Florida UPK initiative, UPK Results, *supra* note 136 (2002); Portland Children's Investment Fund referendum, Portland Results, *supra* note 148 (2002); Broward CSC referendum, Broward Results, *supra* note 19 (2000); and Miami-Dade CSC referendum, Miami-Dade Results,

turn, some of the California interviewees stated that Florida's success in passing a universal pre-kindergarten initiative in 2002 generated growing interest in using the ballot to start a statewide UPK program in California.[501]

Just as winning a ballot campaign and having the voters' imprimatur can strengthen advocates' ability to achieve policy gains in later battles or create momentum for wins in other states, for the same reason losing a ballot measure, especially by a large margin, can weaken this ability, stop momentum for action elsewhere, and inflict a longer-term setback.[502] A loss puts the public on record as opposing the proposal, making it potentially more difficult to sway legislators, the media, or public opinion afterward. Advocates behind both of the California initiatives cited this risk, stating that one of their concerns in launching a ballot campaign was that California is such a high-profile state that a loss there could become a national setback.[503] For this reason, most of the advocates interviewed whose measures passed stated they thought it was imperative to win, and the strong likelihood of winning was a factor in deciding whether to go forward.

Interestingly, though, in the jurisdictions in which ballot measures lost, hardly any of the advocates interviewed reported being set back from a policy advocacy perspective by their loss; none thought their efforts had been counterproductive. Disappointing and discouraging? Yes. But damaging to the cause? No.

Nevertheless, there is evidence that a loss at the polls can deal a political setback to advocates and their agenda, at least when they try to return to the ballot to advance that agenda. When the same or a similar ballot proposal was put before the same electorate within a relatively short timeframe (thereby minimizing the chance that significant changes in circumstances or climate had occurred), the proposal lost again, and by much larger margins than the first defeat. For instance, in Pasco County, Florida in November 1990, the referendum vote on whether to raise

footnote cont'd
supra note 19 (2002). In addition, three earlier measures were renewed: the Aspen Day Care referendum, Aspen 1999 Results, *supra* note 55 (1999); San Francisco Children's initiative (renewed by referendum), Historical Ballot Measures, *supra* note 63 (2000); and Seattle F&E Levy referendum, 2004 F&E Levy Results, *supra* note 42 (2004). The Palm Beach CSC referendum was also successfully submitted to the voters to increase its levy, Palm Beach 2000 Results, *supra* note 19 (2000). The measures that lost during those years were the two Denver Kids' Tax measures, Denver Measure I Results, *supra* note 107 (2000); Denver Measure II Results, *supra* note 112 (2001); Alabama Lottery referendum, Alabama Results, *supra* note 88 (1999); Alachua County CSC referendum, Alachua Results, *supra* note 18 (1999); and Seattle Latte Tax referendum, Initiative 77 Results, *supra* note 159 (2003).

[501] As previously described, that interest culminated in a ballot proposal sponsored by Rob Reiner and the California Teachers Association to create a statewide UPK program as part of a larger education funding initiative. But after collecting the needed signatures, the sponsors decided to discontinue that campaign, citing a crowded November ballot. CTA Release, *supra* note 361.

[502] "Ballot initiative campaigns can codify existing sentiments and beliefs that can either propel a movement or set-it [*sic*] back." Ballot Initiative Strategy Center, 10 Things You Should Think Through Before Sponsoring a Ballot Initiative 7 (Jan. 2003), *available at* http://www.measureablerights.com/action.html (last visited July 6, 2005) [hereinafter 10 Things].

[503] Yet, what happens in one state is not always determinative of what happens in another. As previously described, the loss of an education lottery initiative in Alabama in 1999 was not fatal to the prospects of the Tennessee Lottery in 2002, perhaps because the two states have different tax bases, political climates, or other differences that influenced the outcome, or perhaps circumstances materially changed in the three years between the two elections.

property taxes to fund a CSC lost by 52–48%.[504] Perhaps because the vote was so close, supporters tried again in March 1992, but that time the referendum lost 70–30%.[505] Many factors could explain why the second CSC referendum was defeated—for instance the nation was in recession at that time and voters may have been particularly averse to tax increases—but it is unclear why there would be such a substantial drop in support for the second CSC referendum in less than a year and a half, unless the first loss set back the cause.

Advocates involved in the two Denver ballot measures said they were discouraged by their losses in 2000 and 2001, but did not think their causes had been set back. They attributed their 2001 defeat to factors other than the policy proposals themselves, such as vagueness in the wording of the Kids' Tax measure and inadequate grass roots organizing. Yet, none of the Denver interviewees was able to explain why the 2001 initiative was defeated by a larger margin than the 2000 referendum, even though advocates had taken great pains to address the problems thought to have sunk the first one (e.g., vague goals, tied too closely to mayor), had much more time to campaign, and ran "good" television ads. The 2001 campaign may have addressed some of the earlier problems, but it did not address all of the vagueness problems in the wording of the ballot language: "unattended children" is not a commonplace term, so it could be that new problems were responsible for the second defeat. However, another possible explanation for the even bigger loss in 2001 is the preceding loss in 2000, suggesting that it was, in fact, detrimental.

In contrast, the supporters of the Seattle Latte Tax initiative were successful in passing part of their defeated proposal as part of a referendum put before the voters the very next year. Convinced that the loss of the Latte Tax initiative represented a rejection of the financing mechanism rather than a rejection of support for early care and education, advocates used the first half of their opposition's main argument—that child care is important and must be funded, but an espresso tax is the wrong way to do it—to press their case to officials to find another funding source. The F&E Levy was already scheduled to be placed on the ballot for renewal in 2004 and already provided increased emphasis on early education. Latte Tax initiative advocates persuaded the Seattle City Council to include their career and wage ladder program in the referendum for a renewed F&E Levy,[506] and that renewal of the F&E Levy was approved by the voters in September 2004,[507] just one year after the Latte Tax referendum failed. The fact that Latte Tax advocates succeeded in convincing the City Council to import some of their defeated proposal into the F&E Levy referendum indicates that the advocates had not lost political leverage with local lawmakers, and the F&E Levy's renewal at the polls confirms that the cause of ECE generally was not set back by the Latte Tax loss.[508]

[504] Pasco 1990 Results, *supra* note 18.
[505] Pasco 1992 Results, *supra* note 18.
[506] 2004 F&E Levy Ordinance, *supra* note 44.
[507] 2004 F&E Levy Results, *supra* note 42.
[508] It should be noted, however, that the F&E Levy referendum was a well-established, popular proposal financed by a broad-based tax, and that it encompassed much more than the career and wage ladder program, or even ECE generally by its inclusion of student health and other education services. The F&E Levy ballot question also did not expressly mention the career and wage ladder or compensation increases. *See* 2004 F&E Levy Ballot Question, *supra* note 43.

There is also evidence that when there was a substantial gap in time between electoral consideration of two similar measures, the voters' rejection of the first measure did not adversely influence their view of the second. For instance, in the case of the two Miami-Dade CSC referendums, there was a fourteen-year gap between the two elections (the first unsuccessful, the second successful),[509] making it likely that few people even remembered the first vote in deciding how to vote on the second. The second measure may also have been somewhat more appealing to the voters: unlike the 1988 version, it contained a sunset clause and an antisupplantation provision.[510]

Finally, even victorious ballot measures can have negative side effects on ECE/AS funding or policy. In the case of California, those effects have been cumulative. Much of California's revenue base has been limited by initiatives such as Prop. 13 in 1978, which limited property taxes and the ability of the government to raise taxes,[511] and many of its budget expenditures have been directed by initiatives, for instance earmarks for education[512] and drug treatment.[513] The Prop. 49 initiative's AS funding increases have not yet taken effect, but when they do, say some critics, this could further erode the resources available for other needs, including other ECE and children's programs, and exacerbate the state's budget problems.[514] Though the Prop. 49 initiative contains a funding floor and anti-supplantation provision to protect against overall decreases in AS funding, any cuts in other children's programs won't be attributed to the Prop. 49 initiative, said one children's advocate—"its role will be invisible."[515] In Florida, consternation was reported by some interviewees initially concerned about whether the pre-kindergarten program would be funded at the expense of Head Start, child care for children ages birth to three, and school-age programs. Since lawmakers produced legislation that many advocates believe does not meet the initiative's mandate for a high-quality program, some advocates have voiced concern that not only Florida's pre-kindergarten program but also the national movement for UPK itself could be set back.

b. Formation of New Partnerships

Finally, ballot campaigns and the new ECE/AS programs they created have reportedly sparked the formation of new partnerships and coalitions, as well as facilitated relationships and increased

[509] *Compare* Miami-Dade 1988 Results, *supra* note 18, *with* Miami-Dade Results, *supra* note 19.
[510] *Compare* Miami-Dade 1988 CSC Ballot Question, *supra* note 306, *with* Miami-Dade CSC Ballot Question, *supra* note 22.
[511] Prop. 13, *supra* note 174.
[512] Cal., Proposition 98, School Funding, Constitutional and Statutory Initiative (Nov. 1, 1988), *in* University of California, Hastings College of Law, California Ballot Propositions Database, (amending Cal. Const. art. XVI, § 8), *available at* http://www.ss.ca.gov/elections/elections_bp.htm#bp (last visited June 24, 2005).
[513] Cal., Proposition 36, §10.8, Drugs, Probation and Treatment Program, Initiative Statute, *in* Cal. Sec'y of State, California Official Voter Information Guide, General Election, Tuesday, November 7, 2000, at 66 (amending Cal. Health & Safety Code §§11999.4–11999.5), *available at* http://vote2000.ss.ca.gov/VoterGuide/pdf/ballotpamphlet.pdf (last visited Sept. 28, 2005).
[514] League of Women Voters of Cal., About Prop 49: What Does Prop 49 Really Do? (undated) *at* http://no49.ca.lwvnet.org/elections.html (last visited June 13, 2005).
[515] Of course the Prop. 10 initiative, with its separate dedicated funding source, should protect the programs it funds from any cuts Prop. 49 might induce.

coordination among old ones. For example, several supporters of the Florida UPK initiative reported that the initiative campaign itself—and the process of shaping recommendations for its implementation—reduced turf battles, sparked excitement, and increased coordination among early care and education groups within the state. At a minimum, some say, it brought all types of providers and others to the table in a continuing dialogue. (With the legislative battles over the content of the UPK program, however, some advocates reported that the earlier consensus that enabled initiative supporters to present a united front came under strain.) And in California, according to some interviewees familiar with local efforts, the implementation of the Prop. 10 initiative by county commissions spawned new public-private partnerships and more communication and coordination at the local level. Even those who were on the losing side on election day reported some positive effects of their campaigns on coalition-building. For example, in Seattle, several supporters of the Latte Tax initiative reported that the campaign forged stronger bonds among the stakeholder groups.

Conversely, a controversial initiative can create or exacerbate divisions in the ECE/AS community. For example, the Prop. 49 initiative's goal of expanding after-school programs was widely supported by children's advocates, but its failure to raise new revenues to support the expansion caused sufficient concern that some advocates took no position on it and a few even opposed the initiative. However, none of the interviewees reported any lasting divisions.

* * *

In summary, based on the ballot campaigns studied, there is strong evidence that the ECE/AS ballot measures that won at the polls and have been fully implemented have accomplished what they set out to do: they have succeeded in increasing public investment in ECE/AS programs and in protecting and maintaining that investment over time. These ballot measures have often had other positive side effects as well, serving as a catalyst for additional policy or funding gains, including other successful ballot measures, and strengthening coalitions and partnerships. Understandably, the two measures that won at the polls but have only partially been implemented have had limited ECE/AS accomplishments. Moreover, their contingent and/or ambiguous design has postponed and may continue to hinder their ability to deliver on their promises of ECE/AS funding increases in the future. The Florida UPK initiative's lack of direction to the legislature has already had unsatisfactory results and raises concerns about whether Florida will fulfill its mandate to not only increase investment but also create a high-quality UPK program. The ballot proposals that lost at the polls not only did not achieve their stated goals, but in some instances may have set back their causes.

C. Are the Accomplishments of ECE/AS Ballot Measures Worth the Cost?

The advances that ECE/AS ballot measures have produced have not come without substantial investments of both money and time. With few exceptions, both large infusions of cash and significant investments of time (and other in-kind support) were central to the success of the nine ECE/AS ballot campaigns for which monetary cost and time estimates were obtained.[516] This subsection describes the scope and types of costs entailed, in both money and time, and evaluates whether, in light of the significant resources necessary to qualify, win, and implement the ballot measure, the benefits were worth the cost.

As will be seen, although the costs in both time and money were sizeable, the four ECE/AS ballot measures that won at the polls, have been fully implemented, and for which monetary and time estimates were obtained,[517] have more than paid off in producing very high returns. As previously described, they have generated substantial funding increases that have endured, in several cases over long periods of time. Even the two ballot measures that have been only partially implemented have been cost-effective.[518] One of these measures has just begun to increase ECE/AS investment and the other, although it has not yet generated any increased investment, has helped restore a cut and prevented any further decrease in investment. A seventh measure[519] has yet to be implemented, and though it will generate new investment, it may not fully live up to its promise, decreasing its cost-effectiveness. The two remaining measures[520] illustrate, as might be expected, that losing a ballot campaign is certainly not a cost-effective endeavor.

1. The Costs of ECE/AS Ballot Campaigns

Not surprisingly, the amount of money needed for a ballot campaign has varied based on whether the ballot measure was local or statewide, whether it was a referendum or an initiative and how demanding the legal requirements were to qualify the latter for the ballot, the presence and power of opposition, the cost of paid ads in the relevant media market, and a multitude of other factors. But successful local ballot campaigns raised and spent hundreds of thousands of dollars, and for statewide campaigns it was more often in the millions.

Much of the monetary expense for ECE/AS ballot campaigns was incurred right out of the starting gate—for pre-qualification polling, hiring campaign staff and consultants, meeting initial

[516] Monetary cost and time estimates were obtained for the California Prop. 10 initiative, Colorado Pre-K-12 initiative, 2001 Denver Kids' Tax initiative, California Prop. 49 initiative, Florida UPK initiative, Portland Children's Investment Fund referendum, and Seattle Latte Tax initiative, based on interviews, and for the San Francisco Children's Fund initiative and the Tennessee Lottery referendum based on secondary sources.
[517] The four measures that have been fully implemented are the San Francisco Children's Fund initiative, California Prop. 10 initiative, Colorado Pre-K-12 initiative, and Portland Children's Investment Fund referendum.
[518] The two measures that have been partially implemented are the California Prop. 49 initiative and Tennessee Lottery referendum.
[519] The measure that has not yet been implemented is the Florida UPK initiative.
[520] The two remaining measures are the 2001 Denver Kids' Tax initiative and the Seattle Latte Tax initiative.

legal requirements, and especially for gathering the signatures needed to qualify an initiative for the ballot. For example, the proponents of the Florida UPK initiative raised and spent a total of $1.8 million (in 2002 dollars), and $1.4 million of that was spent on collecting the requisite number of signatures to qualify for the ballot.[521] The proponents of the California Prop. 10 and Prop. 49 initiatives reported that they each spent approximately $2 million (in 1998 and 2002 dollars, respectively) of each of their $10 million campaign treasuries on signature collection. The proponents of both the Colorado Pre-K-12 initiative and the Seattle Latte Tax initiative at first tried to collect the needed signatures using volunteers, relying on child care providers, parents, and advocates to do the work. Both campaigns ended up hiring paid signature-gatherers to put them over the top. In the case of Colorado, after it was clear that volunteers wouldn't be able to complete the job alone, one generous contributor donated $350,000 (to a campaign with total expenditures of $630,000[522]), which proponents used to hire a firm to collect the rest of the needed signatures. The proponents of the Seattle Latte Tax initiative said they spent approximately $50,000 of their $80,000 in cash contributions to gather signatures.

Additionally, the post-qualification campaigns themselves were often very expensive. For example, supporters of the Portland Children's Investment Fund referendum relied heavily on a nonprofit advocacy organization and volunteers to conduct outreach, staff phone banks, and do literature drops. They also received in-kind donations of billboard space and radio time. However, even with so many valuable resources being donated, what was anticipated to be a $200,000–250,000 campaign turned out to spend almost double that amount, according to interviewees. The money raised was used mostly to pay for a campaign staff of two, direct mail, and television ads. And that was without having to qualify for the ballot because the proposal was a referendum, and without any organized opposition! The proponents of the Florida UPK initiative, which also had no organized opposition, spent about $400,000 on media advertising.[523] Proponents of the Colorado Pre-K-12 initiative reported that they received some in-kind advice from political consultants, and spent about $250,000 on television ads and campaign communications in support of the initiative right before the election;[524] that ballot proposal, too, had little organized opposition. The campaign for the Tennessee Lottery referendum, which had organized opposition, reportedly spent approximately $250,000 to support the ballot campaign after the legislature placed the referendum on the ballot.[525]

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[521] Florida's Voters, *supra* note 9, at 8.

[522] National Women's Law Center calculations based on E-mail from Ellen Marshall, Campaign Manager, Yes on 23, to Deborah Chalfie, Senior Counsel, National Women's Law Center (Aug. 9, 2004) (on file with the National Women's Law Center). The $630,000 total does not include an additional $400,000 in funds spent by a charitable organization on educational ads in the media in support of early education generally, since the ads were not official campaign expenses and did not urge voter support for the ballot measure, though they may have influenced the result. *Id*.

[523] Florida's Voters, *supra* note 9, at 8.

[524] As previously described, a charitable organization spent an additional $400,000 on ads in support of early education generally during the campaign.

[525] *See* Fred Brown, *No Sure Bets on Lottery Outcome, Constitutional Amendment at Stake*, Knoxville News-Sentinel, Nov. 3, 2002, at B1; Michael Cass, *Several Factors Propelled Lottery Proposal at Polls*, The Tennessean, Nov. 7, 2002, at 1A [hereinafter *Several Factors Propelled Lottery Proposal at Polls*].

California ballot campaigns are in a class by themselves, in scale and expense. The size of the state, the number of signatures that must be collected, and the high cost of paid advertising there make state ballot campaigns especially expensive, and ECE/AS initiatives have been no exception. As noted above, the proponents of the two statewide ECE/AS initiatives, Prop. 10 and Prop. 49, reported that each campaign raised and spent about $10 million (in 1998 and 2002 dollars, respectively), sums made possible largely because Hollywood celebrities were spearheading the campaigns. Both Rob Reiner in the case of the Prop. 10 initiative and Arnold Schwarzenegger in the case of the Prop. 49 initiative garnered large amounts of free media coverage, yet both campaigns spent large amounts on paid media as well: $5 million for the Prop. 10 initiative, according to its chief proponent, and more than $3.5 million for the Prop. 49 initiative.[526]

Although the campaigns for the Props. 10 and 49 initiatives reported that they spent about the same total amount of money, after adjusting for inflation the Prop. 49 initiative spent less, perhaps because it faced minimal, unfunded opposition,[527] whereas the Prop. 10 initiative faced stiff opposition in the form of $50 million in expenditures from the tobacco industry.

It is also true, however, that ECE/AS ballot measures have won with a small investment of money, and lost with a big one. The San Francisco Children's Fund initiative won in 1991 with significant grass roots support at a cost of about $110,000 (in 1991 dollars), nearly half of which was spent on signature collection.[528] In 2000 when the program was up for renewal, it was placed on the ballot as a referendum and thus there was no need to collect signatures. The monetary cost of this campaign was only about $120,000 which, adjusted for inflation, is less than what was spent on the original initiative.[529] The bulk of the funds was spent on doorhangers, signs, mailings, and some campaign staff.[530] Conversely, the 2001 Denver initiative lost despite an expenditure of more than $250,000, according to proponents.[531] Less surprisingly, ballot measures have also lost while spending a small amount of money. The campaign for the Seattle Latte Tax initiative had a budget of only about $140,000,[532] of which only about $80,000 was in cash and the rest was in-kind contributions, according to supporters. "The lack of money and the campaign's failure were connected," asserted one advocate. The initiative's financing mechanism of an espresso tax had the effect of mobilizing opposition by local coffee shops and national coffee industry business interests within the state, who outspent the initiative's supporters by more than two to one.[533] And the proponents did not have funds to mount an effective response.

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[526] Winning Combinations, *supra* note 9, at 5.

[527] The opposition to Prop. 49 (which spent only about $10,000) was outspent by 1,000 to 1. League of Women Voters of Cal., *What's New? The Latest Stop 49 News* 2 (undated), *at* http://no49.ca.lwvnet.org/New.html (last visited June 12, 2005).

[528] Sand Boxes, *supra* note 9, App. 2, at 91.

[529] E-mail correspondence from Margaret Brodkin, Executive Dir., Coleman Advocates for Children and Youth, to Deborah Chalfie, Senior Counsel, National Women's Law Center (Feb. 4, 2004) (on file with National Women's Law Center).

[530] *Id.*

[531] According to one proponent interviewed, there was little campaigning and little spent on the first Denver measure because it was a "last-minute thing by the City Council."

[532] *See* Seattle Ethics & Elections Comm'n, 2003 Seattle Election Information, Expenditures by Type, Early Learning and Care Campaign Committee (2004), *available at* http://www.seattle.gov/ethics/el03a/report/exptype/bi_elc.htm (last visited June 13, 2005).

[533] *See id.* at JOLT, *available at* http://www.seattle.gov/ethics/el03a/report/exptype/bi_jlt.htm (last visited June 13, 2005).

Time is also a "cost" that must be considered in the cost-benefit equation. In addition to direct expenditures of cash for campaign expenses, the ECE/AS ballot campaigns studied required large investments of unpaid labor on the part of proponents, supporting organizations' personnel, and campaign volunteers.[534] To the extent an organizational supporter makes an in-kind donation of staff time to a campaign, there is a direct cost to the organization that pays the staff's salary, and an indirect cost in terms of what that staff could have been doing if not working on the ballot campaign. Moreover, the amount of time involved tends to be intense. Several interviewees reported that their ECE/AS ballot campaigns demanded the type of "24/7" schedule typical of a political campaign—for example, the Florida UPK, Prop. 10, and Prop. 49 initiative campaigns. And in a few cases individuals took leaves of absence from their jobs in order to work on the campaigns—for example, the Prop. 10 and Seattle Latte Tax initiative campaigns.

Moreover, because ballot campaigns ideally involve long lead times in order to ramp up and qualify for the ballot, this type of high-intensity work was being done over an extended period of time. From conception to election day, campaigns usually took from one to two years, with the most substantial investments of time occurring during signature-gathering and campaign phases. The proponents of the Portland Children's Investment Fund initiative reported that they began gathering information on other ECE/AS ballot measures two years before that measure appeared on the ballot, and conducted polling one year prior, though the campaign did not begin in earnest until six months prior to the election. The proponents of the Prop. 10 initiative reported that its drafting was completed in early 1997, nearly two years before the election, while the proponents of the Prop. 49 initiative reported that they began drafting their measure nineteen months before the election. Similarly the proponents of the Colorado Pre-K-12 initiative reported that they began drafting that initiative about two years before it appeared on the ballot. The petition drive for the Florida UPK initiative began about one year before the election, with polling and drafting work taking place before that, according to interviewees. Supporters of the 2001 Denver Kids' Tax measure reported that they devoted about one year to that effort, as did the proponents of the original San Francisco Children's Fund initiative,[535] while the proponents of the Seattle Latte Tax initiative said that they worked on and off (after the City Council put off the measure to a later election than originally planned) over a two-year period in support of that measure. Finally, supporters of the Tennessee Lottery referendum had close to two years between the time the lawmakers adopted the legislation submitting the referendum to the voters and the time the referendum appeared on the ballot, although some of them reportedly worked close to two decades to get the referendum legislation through the legislature.[536]

In addition, the time and monetary expense of a ballot campaign often did not end on election day. For example, as previously discussed, the day after the California Prop. 10 initiative was to begin being implemented, the tobacco companies filed lawsuits challenging the initiative. Also, in the very next general election after the Prop. 10 initiative passed, the tobacco companies placed

[534] The advocates who were interviewed had no way of knowing how many person-hours were spent on the campaigns, especially by volunteers, so it was not possible to quantify this element of the cost in dollar terms.
[535] *See* Sand Boxes, *supra* note 9, at 13.
[536] Janita Poe, *Election 2002: Issues: Referendums: Tennessee Voters OK Ga.-Style Lottery*, Atlanta Journal-Constitution, Nov. 6, 2002, at 19A [hereinafter *Tennessee Voters OK Ga.-Style Lottery*].

an initiative on the ballot (Prop. 28)[537] that, if passed, would have repealed Prop. 10. The repeal measure failed, but Prop. 10's proponents said that it took a considerable amount of time and another $3 million to fend off that attack. Similarly, as previously described, the proponents of the Colorado initiative have had to remain vigilant in protecting its mandate, and to defend the initiative from bearing the brunt of the state's budget pressures.

Even when successful ballot measures were not under direct attack, there were often substantial investments of time and money involved in shaping and watchdogging the implementation of an initiative. The complexity of a measure's implementation scheme—or lack of any real scheme—affects the amount of time and money needed to implement it. For instance, it took a couple of years under the Prop. 10 initiative for all the counties to create their local commissions, and more time still for them to obtain community input and design strategic plans for how they would carry out their work. In Florida, by leaving the substantive details and funding approach to the legislature to design, the UPK initiative necessitated substantial efforts by advocates, providers, and other stakeholders around the state for over two years after passage to participate in hearings and conferences, to communicate positions to the bodies formulating recommendations to the legislature, and to influence legislative action on the program—first on the legislation the Governor vetoed in July 2004 and then on the legislation he signed at the end of 2004. And these estimates do not include the work after the legislation passed to influence the proposed budget for the UPK program and the other aspects of its implementation scheduled for the fall of 2005.

In sum, the costs of mounting, winning, and implementing these ECE/AS ballot measures were substantial, in both time and money. Direct outlays of cash, mostly for signature-gathering and media advertising, often ran from hundreds of thousands to millions of dollars. In addition, the substantial cost of donated or unpaid labor, as in a political campaign, was intense and relatively lengthy.

2. Cost versus Payback

Although ballot campaigns to advance the ECE/AS agenda have, as a rule, necessitated a large investment of resources, they also appear to have delivered a big bang for the buck. Weighing cost-effectiveness from the standpoint of return on investment, the four ECE/AS ballot measures that were approved by the voters, for which money and time estimates are known and that have been fully implemented, have paid off handsomely. The most expensive of these four initiatives was the California Prop. 10 initiative; as previously described, a total of about $10 million (in 1998 dollars) was spent to win and another $3 million was spent to fend off a later repeal threat from a tobacco industry-sponsored initiative, in addition to the over four years of time invested before and after the initiative to get it on the ballot and protect and implement it.[538] Over the Prop. 10 initiative's first five years, the tobacco tax raised approximately $600 to $670 million each year for early childhood programs, of which a conservative estimate is that at least $20 million

[537] Prop. 28, *supra* note 278.

[538] The advocates who were interviewed had no way of knowing how many person-hours were spent on the campaigns, especially by volunteers, so it was not possible to quantify this element of the cost in dollar terms.

annually was devoted to ECE-related programs. Backers of the Portland Children's Investment Fund referendum reportedly spent about $500,000 and as much as two years on the campaign; as previously described, in just the first year of operation, nearly $4 million of the $8.7 million raised by the referendum was allocated for ECE/AS programs. The San Francisco Children's Fund initiative, as previously described, produced approximately $85.5 million from the Children's Fund and the Baseline Budget combined for FY 2002–2003 alone, of which nearly $16 million was allocated for ECE. That is millions in support for ECE/AS programs in just one year, in exchange for a one-time investment of about eleven months and $110,000 in the first campaign[539] and another one-time investment of $120,000 in the renewal campaign.[540] Even the Colorado Pre-K-12 initiative, whose mandated increases have fluctuated in its first few years of operation, as previously described, has managed to produce sizable gains in funding for education, including increased funding for preschool, compared to the amount of money and time it took to win the ballot campaign. In just the first year, the increase in base per-pupil expenditures for preschool alone totaled $905,000,[541] compared to the monetary cost of the entire Pre-K-12 ballot campaign —about $630,000,[542] although this calculation does not include the two years of time it took to secure the measure and still-ongoing time to protect it.[543]

In fact, once approved, ballot measures can actually *save* time and money for advocates. As previously described, to the extent a ballot measure creates a dedicated, stable, sizeable, protected funding stream for ECE/AS programs for years to come, advocates are freed from annual appropriations battles—constantly fighting off cuts and struggling to make progress. Time and resources not spent treading water are time and resources that can be concentrated on making additional improvements and fostering innovations.

Even the two measures that passed but have not yet been fully implemented have been cost-effective. Indeed, purely from the perspective of ECE/AS advocates, the Tennessee Lottery may well be a bonanza. As previously described, the referendum was designed to fund college scholarships first, with ECE/AS programs to receive a portion of the remainder. ECE/AS advocates reportedly were not involved in the effort to enact the lottery referendum legislation or in the referendum campaign itself—they invested neither time nor money. Thus, *any* increases in ECE/AS funding, let alone the $29 million that has been allocated for FY 2005–2006 and the

[539] *See* Sand Boxes, *supra* note 9, App. 2, at 91.
[540] *See* E-mail correspondence from Margaret Brodkin to Deborah Chalfie, *supra* note 529. For the 2000 renewal, an unknown amount of time was spent obtaining community input on suggested improvements and redrafting the proposal, *see* First Nine Years, *supra* note 9, at 49–50, securing passage by the Board of Supervisors, and campaigning in support of the measure.
[541] Calculations by National Women's Law Center based on increase in base per-pupil expenditures between FY 2000–2001 and FY 2001–2002, *see* Colorado FY 2004–2005 Appropriations Report, *supra* note 97, at 64.
[542] As previously described, advocates outside the campaign spent another $400,000 on an educational campaign in support of early education generally.
[543] Although interviews were not conducted regarding many of the earliest ECE/AS ballot successes such as the Florida CSCs, Seattle F&E Levy, and the Aspen Day Care referendum, and the investments of time and money required therefore were not available, because these measures (and their renewals, where applicable) have produced fifteen or more years of dependable funding for ECE/AS programs, it is very likely that the investments of money and time required to win the original measure (and their renewal) were cost-effective.

potential for millions more, would represent a windfall.[544] However, ECE/AS advocates elsewhere cannot count on getting something for nothing, and the Tennessee Lottery referendum did not materialize out of thin air. The referendum campaign spent about $250,000 to win,[545] and Senator Steve Cohen, the champion of the measure, reportedly fought for a lottery for nearly two decades.[546]

With respect to the California Prop. 49 initiative, even if its mandated funding increases are years away from being triggered, the funding floor established by the initiative, in and of itself, has value. As previously described, since the floor took effect in July 2004, it is responsible for maintaining AS funding at the 2003 level of $121.6 million, and it is credited by advocates with helping them restore an $8 million cut for FY 2003–2004. In a time of budget cuts, one could conclude that the initiative has already produced a "return" equal to the amount that AS funding might have been cut without the initiative.[547] At the point that the initiative's funding increases take effect, it should deliver an automatic funding increase of up to $424.8 million/year over FY 2003–2004 and FY 2004–2005 levels for after-school programs in exchange for a one-time $10 million investment and about eighteen months of campaigning. By these measures, the Prop. 49 initiative has already been cost-effective and may ultimately be a very profitable investment.

The cost-effectiveness of the one measure not yet in effect, the Florida UPK initiative, is more difficult to evaluate. As previously described, for the first year of the program (FY 2005–2006), the legislature has approved $387.1 million, far more than the $1.8 million and about eighteen months of campaigning it reportedly cost its proponents to pass the measure. Even taking into account the over two years of time and resources that advocates spent to educate the legislature and the governor on how to shape the design of the eventual UPK program after its passage, in terms of first-year dollars alone the measure has demonstrated substantial cost-effectiveness. However, as previously discussed, although the initiative may prove cost-effective in dollars delivered, it may not be cost-effective in the quality of the program it establishes. Time will tell whether Florida creates an effective program that was worth the cost.

For the two ballot measures that lost at the polls for which monetary and time estimates were obtained, it would be difficult to conclude that the outcome was worth the effort and expense of the campaign. According to proponents, about $80,000 was spent (not counting in-kind contributions) on Seattle's Latte Tax initiative, and about $250,000 was spent on the 2001 Denver initiative, not to mention the numerous hours invested, with no policy payoff at the end. As noted previously, this is not to say that there were no benefits from these efforts, or that nothing was gained. But, no advocate interviewed in those jurisdictions believed that these tangential benefits were sufficient to offset the cost in money and time of these efforts.

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[544] Only recently have ECE/AS advocates become somewhat involved as the prospect of receiving lottery funding for ECE/AS programs increased. *See, e.g.*, *Take Action This Month*, Tennessee eUpdate (Tenn. Stand for Children, Nashville), Sept. 2004, at 2, *available at* http://www.stand.org/tn/eUpdate/0904.asp (last visited June 12, 2005).

[545] *See Several Factors Propelled Lottery Proposal at Polls*, *supra* note 525.

[546] *Tennessee Voters OK Ga.-Style Lottery*, *supra* note 536.

[547] Given the current Governor Arnold Schwarzenegger's strong support for AS programs and sponsorship of this particular ballot measure, it might be argued that after he took office in 2004 there was less likelihood that AS funding would decrease, even without the initiative. But its passage has presumably strengthened his ability to protect against further cuts as well.

In short, for the four ballot measures that won at the polls, have been fully implemented, and for which campaign costs are known, the money and time spent to win them compared to the increased ECE/AS investments and other less tangible benefits that have resulted from their passage seem to have made them not only cost-effective, but a remarkably profitable endeavor for ECE/AS advocates. Even the two measures that have been only partially implemented have established their cost-effectiveness. One has increased investment in ECE/AS programs, beginning in FY 2005–2006, and the other has prevented a decrease in investment and helped to restore a cut. Both show promise for increasing investment still further, although their design and other contingencies make the timing and the amount of the increases difficult to determine, in both instances. One ballot measure has not yet been implemented, and though it will generate substantial new investment, it may not fully live up to it promise, decreasing its cost-effectiveness. The two remaining measures for which cost estimates were obtained demonstrate that it is certainly not cost-effective to lose on election day.

D. Are ECE Ballot Strategies More Effective than ECE/AS Legislative Strategies?

As shown above, ballot campaigns can be a productive and cost-effective means of advancing the ECE/AS agenda, but are they as effective as other advocacy strategies that might be pursued? Traditionally, the primary strategy used by ECE/AS advocates to achieve their policy agenda has been aimed at those who make the laws and their implementing regulations. Thus, it makes sense to weigh the merits of what advocates have been able to accomplish through ECE/AS ballot campaigns—and at what strategic risk—against the typical accomplishments and risks for advocates using legislative approaches.

Ballot initiatives can enable ECE/AS advocates to make dramatic policy advances of the sort that are infrequent and often resisted by lawmakers, and help to cement those gains using structural protections and political leverage. But direct democracy has drawbacks for advocates as well. Ballot campaigns are higher-stakes endeavors—they require advocates to mount larger-scale efforts than securing legislation typically requires, and a loss usually has a higher profile. Their use also raises some important questions about the desirability of making ECE/AS policy outside the legislative process and in some instances may not be an effective way of doing so.

1. Strategic Advantages of ECE/AS Ballot Campaigns

Ballot campaigns have some key advantages over legislative campaigns for advocates, and all of them are related to getting things done that are not getting done in the legislature. Proponents of several ECE/AS ballot initiatives said they turned to the ballot because they had become impatient with the breadth and/or the pace of legislative action on their issues and believed that an initiative would provide them the means to accomplish the substantive policy changes they wanted, and to accomplish them sooner. They were able to exercise much greater control over the content—to frame the proposal exactly as they wished—and get an up-or-down vote on it, without the political compromises and incrementalism usually inherent in the legislative process.

As a result, advocates were able to propose much bolder changes—in degree and in kind—than they realistically would have proposed or been able to obtain in legislation.[548]

For example, the initiative process afforded the proponents of the California Prop. 10 measure the opportunity to take the type of systemic, comprehensive approach to early childhood development that they believed was called for by child development research—establishing new health initiatives, pre-kindergarten and school readiness programs, educational programs on parenting, social services supports, and improvements in child care quality. It also gave them the opportunity to create a new revenue source to fund these measures and a new independent infrastructure to implement them. By thinking "outside the box" and going after what the proponents really wanted, according to one interviewee, the ECE/AS community was able to shape the outcome more effectively and thus win a much bigger payoff than it would have achieved in the legislature. Similarly, using the ballot enabled San Francisco advocates to win what had eluded them for years: a "children's budget" with a floor below which funding could not fall, plus additional revenues to make demonstrable improvements.

Even some of the ballot proposals that might not appear particularly "bold" produced significant changes. For example, the inflation-plus-1% spending mandate in the Colorado Pre-K-12 initiative has ensured that education, including preschool, receives annual increases. Although, under the terms of the initiative, the amount of these increases has ebbed and flowed, it has not fallen below the funding floor established by the measure.

With the Prop. 49 initiative, public investment had been heading in the right direction; the impetus was more the pace of progress. Although after-school advocates in California had succeeded in obtaining steady increases in annual appropriations for after-school programs over many years, the program still served only a fraction of children who needed such programs. Arnold Schwarzenegger, who was a longstanding booster of programs for youth, determined it would take a long time to get to $550 million—an amount advocates confessed they never expected to see—and consequently developed and launched the Prop. 49 initiative. Ironically, even after the Prop. 49 initiative's passage, because of its delayed effective date, budget trigger and the state of California's finances, the pace of desired funding increases has not yet quickened—AS funding has not increased for three consecutive years—and it may not in the near future. But it has not been cut either (beyond a small, one-time cut of $8 million in FY 2002–2003, before the initiative's effective date).

In some situations, ballot initiatives were selected as a strategy in lieu of legislation because they were seen as the only way around an inattentive or recalcitrant legislature. For example, before

[548] This is not to say that bold advances are never possible through the legislative process. North Carolina's Smart Start program, a comprehensive early childhood initiative, was established and continues to evolve through legislation. *See* Laurie Miller, Atelia Melaville, & Helen Blank, Children's Defense Fund, Bringing It Together: State Driven Community Early Childhood Initiatives 15–16 (2002); Financing Child Care, *supra* note 10, at 151–52. Smart Start is a public-private partnership that supports child care subsidies and quality improvements, health services, and family support services. *See* Act of July 9, 1993, 1993 N.C. Sess. Laws ch. 321 (codified as amended in scattered sections of N.C. Gen. Stat. §§ 120, 143B), *available at* http://www.smartstart-nc.org/overview/1993legislation.doc (last visited June 12, 2005).

passage of the UPK initiative in Florida, advocates there had spent several years lobbying the state legislature to establish a UPK program modeled after Georgia's. But lawmakers who were opposed kept the proposal bottled up, and it never even got out of its assigned committee. Though advocates continued to press their legislators, they said it became clear to them that if they couldn't break the logjam, they wanted to try to bypass it by taking their case directly to the voters. When asked why they decided to pursue a ballot initiative, the supporters interviewed all answered the same way: the legislature had left them no other choice.

The proponents of the Colorado Pre-K-12 initiative reported much the same experience, except not only had they been unable to make progress in their legislature, they had actually been losing ground.[549] Faced with two constitutional provisions that kept ratcheting down the revenues available for education, advocates reported they felt they had no choice but to fight fire with fire and enact a constitutional amendment initiative that would require increased spending. And in Seattle, what primarily prompted advocates to propose the Latte Tax initiative was the state legislature's across-the-board cuts in several child care programs, including its decision to stop funding the career and wage ladder program for child care workers. In other words, the legislative route was closed off as an option. Unfortunately for the Latte Tax measure's supporters, it turned out on election day that the ballot route was also closed off.[550]

Even when a measure passed, the effort to circumvent an unresponsive legislature wasn't always a successful one. In the case of Florida, the implementation of the UPK initiative and the design of the UPK program were, by the initiative's terms, reassigned to the same recalcitrant legislature that advocates were trying to bypass. As previously discussed, the issue was mired in legislative stalemate until the last day of the 2004 regular session, when the legislature produced a plan that skimped on both quantity and quality. Because of wide consensus regarding the flaws in the plan's design, the governor vetoed the bill, forcing the legislature to revise its plan. The new plan, however, produced a program that, in the view of many advocates, also falls short of the initiative's directive to create a "high quality" pre-kindergarten program. The lesson from Florida may be that an initiative that gives wide discretion on the design and implementation of a program to a legislature that has shown itself unresponsive to the initiative's goals may have a difficult time achieving those goals.

Similarly, the Colorado Pre-K-12 initiative handed the state legislature a mandate to change direction and increase spending on education, including preschool, and it has. However, as previously discussed, because the revenue-constricting effects of two previous constitutional amendments are at odds with the Pre-K-12 initiative's increased-spending mandate, there have been efforts by some political leaders over the last few years to weaken the initiative's mandate for increased spending. At this writing, the Pre-K-12 initiative's mandate does not face an imminent

[549] Although Colorado's modest preschool program was expanding and, in fact, had added 250 slots in 1999, the year before the initiative, *see* Helen Blank & Nicole Oxendine Poersch, Children's Defense Fund, State Developments in Child Care and Early Education 1999, at 90 (2000), according to Colorado advocates, the per-pupil expenditures were not keeping pace with inflation, threatening the program's quality.

[550] As previously discussed, after the Latte Tax initiative was defeated, its career and wage ladder program was included in the successful referendum to renew the Seattle F&E Levy.

threat, and, in fact, as previously discussed, a November 2005 referendum to limit the revenue-constricting effect of one of the previous constitutional amendments[551] may, if passed, relieve budgetary pressures and result in additional revenues for education for the next five years. On the other hand, if that referendum fails or circumstances change, legislative attempts to weaken the Pre-K-12 initiative may resurface. Thus, although the initiative constrained the legislature's discretion by requiring it to increase spending on education, the legislation retains many levers of authority over the implementation of the initiative's mandates.

It is possible that if ECE/AS advocates raised the kind of money and ran the kind of intense campaign for a legislative proposal that they have done for ballot measures, the campaigns might have just as much visibility and secure victories that are just as bold and long-lasting. But ECE/AS advocates often find it difficult to raise significant sums, especially for legislative activity. Morever, legislative campaigns can be relatively invisible to or remote from the public, and thus may not be able to attract the same level of funds and intensity of effort as an exciting, do-or-die ballot campaign. It simply may not often be possible to mobilize the same level of resources in support of legislation as for a ballot measure.

Moreover, as previously discussed, ballot initiatives have features that legislation typically lacks that contribute to making them more durable. In some jurisdictions, initiatives cannot by law be changed by legislators as easily as legislation. Even when they can be changed as easily, because victory at the polls confers the voters' imprimatur on the result, it is often politically harder for legislators to reverse that result.[552] It is this "staying power" that has in most cases made ballot measures effective in protecting and stabilizing ECE/AS funding in the face of economic pressures or competing priorities. But, as described by a proponent of the San Francisco Children's Fund initiative, "nothing is ironclad and there are always temptations." As previously described, over the course of the Children's Fund initiative's existence, there have been attempts made by the board of supervisors or the mayor to supplant general funds or otherwise diverge from the initiative's mandates, "but most have been prevented with legal or political arguments." Even in the tough economic times of the last several years, in none of the jurisdictions examined have legislators attempted to repeal the public mandate represented by an ECE/AS ballot measure though, as described above, there has been an active effort in Colorado to modify its Pre-K-12 initiative. By contrast, ECE/AS gains made through legislation can be and often are diminished or reversed in response to budget pressures.

2. Strategic Drawbacks of ECE/AS Ballot Campaigns

In comparison to legislation, the ballot process has some drawbacks as an ECE/AS advocacy strategy as well. Ballot campaigns require a much more extensive mobilization effort than ECE/AS advocates typically can or do mount in the course of legislative campaigns. For example, it takes only one or two lawmakers to introduce a bill, compared with the need to collect thousands of signatures to qualify an initiative for the ballot. Moreover, there are a limited number of "targets"

[551] *See* 2005 TABOR Limitation, *supra* note 487.
[552] This factor may make referendums harder to change as well, although they are by law more easily changed than initiatives.

(decision-makers) to communicate with and persuade in a legislative campaign, and the means of communicating with those targets used by ECE/AS advocates (e.g., fact sheets, information packets, press conferences) is typically inexpensive. Although broad-based, vocal, public support can be critical in moving a legislative proposal forward, in truth, ECE/AS advocates can often succeed in winning improvements with some persistent and effective lobbying by a small cadre of advocates, plus some kind of symbolic showing of grass roots support (e.g., a hearing witness, a press conference participant, a list of organizational supporters, maybe a lobby day at the capitol, etc.). With ballot measures, however, the number of targets is always far greater—the voting public—and the means of mass communication (advertising, mailings, etc.) are far more expensive. And that grass roots support cannot be merely symbolic or representative; it must be broad and it will be tested on election day. Several supporters of the Seattle Latte Tax and Denver Kids' Tax measures, for example, cited a lack of meaningful grass roots outreach and organizing as a key factor in their losses.

Moreover, compared to legislation, losing a ballot measure can have weightier consequences. When ECE/AS advocates fail to convince the legislature to adopt ECE/AS improvements or fail to stave off a setback, such as a budget cut, they can return the next legislative session to try again. Although advocates usually try to avoid votes they know they will lose, there is generally little stigma attached to not winning, because in these cases advocates can assert that legislators are failing to respond to public needs. The dynamics are different in the event of a loss at the ballot box. A loss at the polls, especially a big loss, is a rejection by the *voters* that leaves advocates unable to claim popular support for their policy position and less able to claim they represent the public's views, which in turn can weaken advocates' credibility and persuasiveness on that issue or even other aspects of their agenda. Moreover, because a ballot campaign loss often has a higher profile than a loss in the legislature, advocates may also find it tougher to press their case to the public. For instance, as previously described, when Denver advocates returned to the ballot for a second try, an even larger proportion of the electorate opposed their ECE/AS proposal.[553] On the other hand, the proponents of the Seattle Latte Tax initiative were ultimately successful in inserting at least part of their agenda into another, less controversial, measure—the renewed F&E Levy referendum.

As previously described, a particular drawback of ballot initiatives compared to legislation is that, in bypassing representative government, they may not produce sound public policy. By virtue of leaping over the legislature, initiatives, especially those that advance a single program such as after-school (the Prop. 49 initiative) or UPK (the Florida initiative), inherently assign a higher priority to the need underlying the initiative and necessarily limit the legislature's ability to weigh that need against competing needs and priorities. In isolation, there might be widespread support for AS or UPK among ECE/AS advocates. But, if advocates took into account the multitude of unaddressed needs in the ECE/AS field and weighed them against each other, AS and UPK might or might not emerge as higher priority needs than, for example, child care for infants and toddlers, or, for that matter, the myriad of other pressing needs for social services such as health care.[554]

[553] As previously described, CSC referendum proponents in Pasco County, Florida had the same experience: failing narrowly, trying again in the next election, and failing again by an even larger margin.

[554] This concern about misplaced priorities is diminished somewhat when a ballot measure takes a more comprehensive approach to children's needs beyond just ECE/AS services, as did the Prop. 10 and San Francisco Children's Fund initiatives—at least a broader range of services for children are not being placed in competition with one another.

While it is true that advocacy in support of a particular program in the legislature also represents an implicit contention or decision that that program is more important than others vying for passage, the involvement of the legislature interjects at least a theoretical weighing of competing priorities and consideration of the "big picture" that is not present when a ballot initiative vote propels a particular issue or program to the front of the pack.[555]

Because earmarks do not enlarge the "pie" of funds available, they magnify this potential that ballot measures will displace what perhaps may be higher priorities. All three measures studied that relied on earmarks—the San Francisco Children's Fund, Colorado Pre-K-12, and Prop. 49 initiatives—took affirmative steps to prevent or at least diminish the chances of displacement. They have in fact diminished the risk of displacement, but they are not infallible.

For instance, the continued spending on children's services required by the Baseline Budget in the San Francisco Children's Fund initiative ensured that the portion of property taxes dedicated to children's services did not replace existing funding for children's services. However, the Baseline itself is an earmark of sorts—a part of the city's budget that is dedicated for one purpose and is not available to fund other priorities. The California Prop. 49 initiative was structured to prevent displacement of other priorities by exempting and protecting education funding (Prop. 98 funds) from the calculus, by making any funding increases for AS contingent on substantial growth in the non-education portion of the budget, and by requiring AS funding increases to come from future budget growth rather than funds allocated for other important programs. But, as previously described, because the $1.5 billion trigger can be pulled by routine increases in the budget rather than by fiscal health and because even when fiscal health returns, other programs may merit higher priority, these concerns are eased but not erased by the $1.5 billion trigger. The inclusion of an escape hatch in the Colorado Pre-K-12 initiative—forgiving the mandate for a 5% general education fund increase when personal income growth in the previous year falls below 4.5%—has helped to avert displacement of other priorities during years of economic downturn. However, because in these years the legislature has had to use monies from the general fund to meet the initiative's other, inflation-plus-1%, requirement, fewer of these funds have been available to meet these priorities.

Legal and political barriers to legislative tinkering with successful ballot measures often make them more effective in protecting and stabilizing funding through thick and thin, but there is a trade-off. They also make them more difficult to change when there are unintended effects, or circumstances have changed. With legislation, the legislature remains at liberty to adapt to changed circumstances or make different choices. With a ballot measure, that ability is more limited.[556]

In sum, important policy advances can be won through the legislative process, and ballot measures are not impermeable to attack. However, the ballot clearly offers advocates another option for

[555] To some extent, this is an issue with referendums as well. Although the legislature presumably weighs competing priorities in determining to put a referendum on the ballot, in effect it is "referring" the ultimate judgment to the public on only one, or a limited number, of those priorities.

[556] In this respect, a ballot measure that leaves the design and funding of, or significant decisions about, its program to the legislature may be easier to "change."

advancing the ECE/AS agenda, an option that often permits more control over the substance, more sweeping improvements, and more long-term security than the legislative process may offer. Often, advocates are motivated to pursue a ballot measure as a way to bypass an uncooperative legislature. However, bypassing the legislature may be more difficult than it appears, and raises some important questions about the desirability of making ECE/AS policy outside of the legislative process. Moreover, the higher stakes that accompany ballot measures may cut both ways: the chance to make greater strides entails the greater risk of a high-profile loss at the polls and demands a much more resource-intensive campaign than is typically involved in a legislative campaign. Yet, on balance, ballot measures can be an attractive alternative to legislation in advancing the ECE/AS agenda.

* * *

Based on the record of the ballot measures studied, the ballot offers a promising avenue for advocates to advance the ECE/AS agenda. First, ECE/AS ballot measures have a good record of prevailing at the polls. Although some ran into difficulties for varying reasons, many different types of ECE/AS policies have been approved, suggesting that a range of proposals can be successful at the polls. While many types of financing mechanisms have also been approved, the funding source proposed does seem to have affected the success of some measures. Second, the ballot measures that have been enacted and have been fully implemented did what they set out to do. They significantly increased the amount of funding for ECE/AS programs, and thus far have been successful in preserving that funding. Although it is more difficult to assess the two ballot measures that won at the polls but have only been partially implemented, and the one that has not been implemented at all, two of these measures have generated some or significant increases in ECE/AS funding, but design contingencies, ambiguities and defects could impede both the timing and extent of the future accomplishments of all three measures. Third, although ECE/AS ballot measures took a significant investment of time and money to win, those that did win, have been fully or partially implemented, and for which monetary and time estimates are known, generated a sufficient—and sometimes significant—return on those investments, at least in terms of dollars delivered, rendering them a cost-effective approach over the long run. Fourth, though ECE/AS ballot measures are not without risk, they are often attractive alternatives to legislation. In particular, ballot initiatives offer advocates a greater ability to control the content of a proposal and thereby the opportunity to make bigger, faster leaps forward in ECE/AS policies. However, if lost, they can inflict higher-profile political setbacks.

IV. INGREDIENTS FOR A WINNING CAMPAIGN: LESSONS FROM THE FRONT

The analysis in Chapters I–III concludes that ballot measures can be an effective means of advancing the ECE/AS agenda, at least if they are successful. This chapter discusses how to maximize the chances for electoral success. Based on information gleaned from interviews of the key supporters of eight ECE/AS ballot measures and using those campaigns as examples,[557] this chapter imparts some of the strategies used and lessons learned from those campaigns. The key ingredients for mounting a successful campaign appear to be effective assessment of legal considerations, a political-campaign approach that includes hiring professionals and raising significant resources, a well-developed and popular proposal, good timing, and effective mobilization of supporters that includes coalition-building and well-designed and well-implemented communications and grass-roots organizing strategies.

A. Legal Considerations

Every phase and aspect of ballot campaigns—from determining what ballot options are available, to drafting a measure that will withstand challenge and navigating the qualification requirements, to fundraising and otherwise assessing the degree to which an advocate's organization can and should be involved in a ballot campaign—raise legal issues that advocates must consider and address. Because of this, it is vital for advocates who are considering a ballot campaign to seek the assistance of lawyers and others who are knowledgeable about and experienced in election law and tax-exempt organizations. It is beyond the scope of this report to address all of the potential legal issues here. However, this subsection highlights some of the legal considerations advocates should weigh in deciding whether and how to proceed.

1. Availability of and Options for Ballot Measures

It is important to understand the legal requirements for ballot measures and act accordingly. As previously described, ballot initiatives are a strategy with limited availability, in that not all states and localities allow them, and the ones that do may limit the types that are permitted and/or impose other restrictions. Referendums may be an option, but have their own limitations and restrictions.

[557] As previously described, individuals involved in the following campaigns were interviewed: the California Prop. 10 initiative, Colorado Pre-K-12 initiative, two Denver Kids' Tax measures, California Prop. 49 initiative, Florida UPK initiative, Portland Children's Investment Fund referendum, and Seattle Latte Tax initiative.

Assuming ballot initiatives are permitted, it is important to determine what type of initiatives are permitted—statutory or constitutional—and if both are permitted, which type is best suited to the goals of the measure. For example, in Florida, UPK advocates had no choice but to propose a constitutional amendment, as Florida does not provide for statutory initiatives. In Colorado, however, although statutory initiatives are permitted, as previously described, proponents of the Pre-K-12 initiative were convinced they needed to pursue a constitutional amendment because the two measures that were most responsible for the dwindling revenues available for education were both constitutional amendments that had been added by previous ballot measures.

It is also important to assess the limitations of the type of measure under consideration. For example, as previously described, a constitutional amendment initiative may pack more legal punch than a statutory initiative, but it also usually requires collecting a greater number of signatures and is therefore harder to qualify for the ballot. Moreover, a constitutional amendment initiative may be modified only by another constitutional amendment initiative or referendum, whereas a statutory initiative or referendum is more easily modified by lawmakers.

Finally, as previously described, there may be subject-matter limitations to navigate. Since most jurisdictions place at least some limits on the content of ballot initiatives, it is crucial to determine whether the desired ballot content fits within any restrictions and complies with any other content regulations such as single-subject rules. For example, if a strict single-subject rule such as Florida's seems to bar the inclusion of a funding source, this could affect the decision about whether the ballot is the right path for the particular policy outcome at issue.

If ballot initiatives are not available, referendums may be permitted. A referendum requires the cooperation of lawmakers, but sometimes legislators who are unwilling to adopt a particular policy themselves may be willing to place the issue on the ballot for disposition by the voters, especially when a tax increase is involved. In any case, even if a jurisdiction permits initiatives, referendums should be investigated as an option because they offer some advantages to advocates. Convincing lawmakers to place a referendum on the ballot involves time and effort, but it avoids the time, expense, and risk of having to qualify the measure for the ballot. Moreover, as previously described, referendums generally appear to have a higher rate of success than initiatives (although the success rate of ECE/AS referendums has thus far been about the same as the success rate of the ECE/AS initiatives). On the other hand, because lawmakers are necessarily involved, referendums afford advocates less control over their content compared to initiatives.

2. Organizational Issues

In addition to the legal issues attendant to the ballot process, there are also legal requirements that apply to those who participate in ballot campaigns. Many ECE/AS advocates who are interested in spearheading a ballot campaign may be employees of a charitable, non-profit, tax-exempt institution organized under § 501(c)(3) of the Internal Revenue Code[558] and thus need to be aware that some important legal issues must be investigated and addressed. One key concern is

[558] I.R.C. § 501(c)(3) (2003).

to avoid violating the rules related to an organization's federal tax status. Aware of the absolute prohibition on political activity,[559] some charities erroneously may think that because a ballot measure is decided in an election they cannot participate in a ballot campaign. For purposes of an organization's federal tax status, though, ballot measures are considered legislation, and thus activity in support of or opposition to a ballot measure is considered lobbying, *not* political activity.[560] Charitable § 501(c)(3) organizations may lobby, but they are limited in the total amount of lobbying they can undertake,[561] and their grass roots lobbying (encouraging others to contact lawmakers to influence legislation) is further restricted.[562] The good news is that the IRS considers ballot activity to be direct lobbying, not grass roots lobbying.[563] Still, the resource-intensive nature of ballot campaigns means that the amount of staff time, money and other resources devoted to the effort may need to be closely monitored.

Other regulation of ballot activity may need to be considered as well. Organizations that receive federal grants are prohibited from using federal funds for "electioneering," and the Office of Management and Budget, the federal agency that enforces the rules on advocacy activities by federal grantees, considers some activity related to ballot campaigns to be electioneering,[564] so obtaining legal advice about what is permissible will be important. In addition, there may be federal and state election law issues or other disclosure and reporting requirements that apply to ballot campaigns. Advocates who are considering ballot activity should consult the resources identified in Appendix B and lawyers or others with expertise in tax-exempt organizations and election law to help them navigate any applicable legal restrictions.

B. A Political Campaign Approach

By design, qualifying a measure for the ballot and winning a ballot campaign are no easy tasks. Veterans of ECE/AS ballot campaigns who were interviewed emphasized that advocates may be adept at navigating their legislature, but a ballot campaign is a *political* campaign, and it must be waged as such. That means hiring the requisite professionals early on, especially political professionals, and it means raising much more money than ECE/AS advocates may be accustomed to raising for other advocacy campaigns.

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[559] *Id.*

[560] Internal Revenue Service, Charitable Orgs [sic]: Political and Lobbying Activities 1 (2004), *available at* http://www.irs.gov/charities/charitable/article/0,,id=120703,00.html (last visited June 12, 2005); Gregory L. Colvin & Lowell Finley, Alliance for Justice, Seize the Initiative 9 (1996) [hereinafter Seize the Initiative].

[561] I.R.C § 501(c)(3) (2003); I.R.C. § 501(h) (2003). Charities that do not elect to report their lobbying expenditures under § 501(h) are limited to an "insubstantial" amount of lobbying activity. *See* 26 C.F.R § 1.501(c)(3)-1 (2001); Seize the Initiative, *supra* note 560, at 9–10. More specific lobbying limits apply to charities that elect to report their activities under I.R.C. § 501(h). 26 C.F.R. § 56.4911-1(c) (2003).

[562] I.R.C. § 501(h)(1)(B) (2003).

[563] 26 C.F.R. § 56.4911-2(b)(1)(iii) (2003). *See also* Seize the Initiative, *supra* note 560, at 10.

[564] Office of Management & Budget, OMB Circular A-122, Attachment B, Cost Item 25(a)(1), *available at* http://www.whitehouse.gov/omb/circulars/a122/a122.html; Seize the Initiative, *supra* note 560, at 6–7.

1. Hiring Professionals

It was the unanimous view of those who were interviewed that ballot campaigns are no place for amateurs. ECE/AS advocates can provide the spark, substantive issue expertise, knowledge of the political landscape based on years of working in the legislature, and network of supporters for the campaign, but it is absolutely essential, advocates say, to hire political professionals from the start and then to hand over the reins to them.

Seasoned campaign operatives know how to plot overall campaign strategy and manage the campaign. They have experience analyzing the political environment, voter demographics, voter turnout patterns, and other information in order to select the best timing for the campaign and the best messages. And they have experience running a campaign on a day-to-day basis, tweaking and continuing to test the messages, and directing communications efforts, fundraising, and voter-turnout activities.

The use of professionals has indeed made a difference in several ECE/AS ballot campaigns. The groundbreaking San Francisco Children's Fund initiative in 1991 seems to have gotten by without much assistance from political professionals.[565] But more recently, the campaigns with minimal involvement by campaign professionals such as the two Denver measures and the Seattle Latte Tax initiative have lost (whereas the coffee-related business interests that successfully defeated the Latte Tax initiative hired "one of the savviest political operatives in Washington," according to advocates there). The campaigns that utilized political professionals, on the other hand, met with more success: campaigns for both California initiatives, the Florida UPK initiative, and the Portland referendum all employed campaign pros. Proponents of the Colorado Pre-K-12 initiative reported a mixed approach. They did not hire political pros, but by virtue of their previous contacts in the Romer administration and financial support from a school board candidate with a campaign manager, they were able to tap the expertise of some political professionals.

Other professionals can play an important role from the beginning as well. Often, the officials charged with reviewing the ballot language can provide assistance with the drafting and assuring legal compliance. But advocates highly recommended enlisting lawyers who have expertise in ballot measures to draft an initiative proposal, its title, and the summary, as well as to obtain review and approval from the appropriate government officials. Lawyers are particularly critical if well-financed opponents are expected to challenge in court the initiative's placement on the ballot. In addition to meeting legal requirements, attention must be given to making the language—or the title and summary at a minimum—understandable and appealing to voters. Thus, it is also critical to have political pollsters involved early on; polls not only help test the policies but how best to frame them.

Assuming no pre-ballot challenges or litigation is involved, the toughest and most expensive part of the initiative process is gathering signatures on petitions. Tens of thousands, if not hundreds of thousands, of valid signatures must be collected, often within a relatively short period of time.

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[565] *See* Sand Boxes, *supra* note 9, App. 2, at 91.

Interviewees agreed that paid signature-gatherers are a must. As previously described, proponents of the Florida UPK initiative and both California initiatives hired signature-gatherers from the beginning and proponents of the Colorado Pre-K-12 initiative and the Seattle Latte Tax initiative ultimately relied on paid signature-gatherers to put them over the top as well.

2. Fundraising

As previously described, because of the expense of signature-gathering and the need to retain political campaign professionals from the beginning, initiative proponents must raise a substantial amount of money even to qualify for the ballot, let alone to finance the ballot campaign. Fundraising, therefore, must be an integral and early part of the effort. As the successful ECE/AS campaigns demonstrated, the amount of money needed to qualify and win a ballot measure varies from tens of thousands to millions, depending on the size of the jurisdiction, its legal requirements, the number and geographic dispersal of signatures needed, whether a legal challenge is lodged against the proposal, whether paid advertising will play an important role in reaching voters, and a multitude of other situation-specific factors.

In order to raise the kind of money needed, several successful ballot campaigns relied on "heavy hitters" to contribute themselves and raise funds from other large contributors. For the California Prop. 10 and Prop. 49 initiatives, the proponents were Hollywood celebrities who tapped their existing networks in the entertainment industry. For example, interviewees reported that with the Prop. 10 initiative, a small group of eight or so people who understood the importance of investing in early childhood, had the financial wherewithal, and were willing to provide money up front, donated the $2.5 million needed during the pre-qualification phase. In Florida, the combined business community contacts of then-Miami-Dade Mayor Alex Penelas and former *Miami Herald* editor David Lawrence provided fertile ground for early fundraising for the UPK initiative. In Colorado, the proponents of the Pre-K-12 initiative were "saved" by a large contribution from a wealthy dot.com philanthropist, enabling them to hire a firm to collect the signatures needed to qualify for the ballot. And in Portland, proponent Dan Saltzman and the business community provided the lion's share of the roughly $500,000 contributed in support of the Children's Investment Fund referendum.[566] In contrast, the Seattle Latte Tax initiative campaign did not appear to have had any "heavy hitters" involved, did not raise much money, and lost.

[566] *See* City of Portland Auditor's Office, Post-Election C&E, Summary Statement of Contributions and Elections, Committee for Safe and Successful Children 7 (2002), *available at* http://www.portlandonline.com/shared/cfm/image.cfm?id=46425 (last visited June 13, 2005).

C. A Well-Developed and Popular Proposal

The starting point in developing the content of an ECE/AS ballot proposal is the policy goal to be accomplished. As demonstrated earlier, several different kinds of substantive ECE/AS policies and financing schemes have shown they can win and deliver significant benefits. Especially in light of the significant investment and effort entailed in waging a ballot campaign, advocates should use the opportunity to "think big" and pursue the policies and programs that they really want. For instance, as previously described, the California Prop. 10 initiative ambitiously called for a "comprehensive, collaborative, and integrated system of information and services to promote, support, and optimize early childhood development…"[567] that would address early care and education, as well as prenatal care, parenting skills, social services, and health care. It also identified an effective source of new funds—increased tobacco taxes—to finance those programs, and it created a new state and local infrastructure to implement them. It required that the funds raised from the new tax be placed in a separate "trust fund" and included an anti-supplantation provision to try to ensure accountability in the way funds were spent. Both programmatically and structurally, Prop. 10 took a systemic approach to investing in early childhood development, and proposed dramatic advances.

The measure must be able to win voter support, too, however. To this end, advocates emphasized the importance of early polling, and focus groups if possible, to help draft the ballot proposal and craft campaign messages. They stated that they did not use polling to decide which ECE/AS policies to advance, but to test the appeal of the desired proposal—its key elements, its rationale, and voter response to different ways of framing and wording the initiative. For instance, when proponents of the California Prop. 49 initiative were deciding how to craft their proposal, they reported that, because of the state's emerging budget problems, they had leaned toward a phase-in of the increased funding for AS programs. But when focus groups reacted negatively to the idea, they decided to use a budget trigger instead. As previously described, choice of a financing mechanism can affect a ballot measure's chance of success, and accountability measures such as separate funds, anti-supplantation provisions, and even budget triggers may play some part in that success as well. Thus, this kind of early testing is important.[568]

Similarly, supporters of the Florida UPK measure reported that they "polled every word" of the initiative to test and improve its appeal. Polling also enabled them to tailor their arguments for particular audiences, emphasizing how improving ECE/AS programs was not only good for kids but good for whatever the particular audience cared about: school readiness and achievement, worker productivity now and a better workforce in the future, juvenile delinquency prevention, and a cost savings to society down the road. For instance, with seniors, supporters of the Florida UPK initiative focused their communications on the link between early childhood development and delinquency prevention; with the business community, they stressed preschool as an investment in today's and tomorrow's workforce.

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[567] Prop. 10 Full Text, *supra* note 73.

[568] Of course, when designing and drafting a proposal, it is important to think beyond success at the polls, to how well a measure will work in practice. For example, the amount of discretion the measure leaves to the governor or the legislature can be a significant factor in a measure's ability to achieve its goals, as illustrated by the Tennessee Lottery referendum and Florida UPK initiative experiences. Polling provides little help in resolving this question.

The proposal must not only be popular, it must be *very* popular. Voters have a tendency to vote "no" on initiatives about which they are confused or have doubts.[569] High levels of support are especially necessary if well-funded, organized opposition is expected. As a result, ballot measure experts[570] and the advocates interviewed recommended that pre-drafting polls show a very high level of public support from the start, preferably at 65% or higher, because once the proposal is unveiled, it can be criticized and opposed, eroding those initial levels support. Because a loss can inflict a political setback, several interviewees counseled that advocates should not pursue an initiative unless winning is a near certainty.

Still, even high levels of support in preliminary polls are no guarantee that the public will indeed approve the proposal. The authors of the Seattle Latte Tax initiative conducted polls prior to drafting that found very high levels of support: more than three-fourths of voters in the Seattle metropolitan area as a whole supported the career and wage ladder program and expanding early learning programs.[571] However, when asked about different types of possible taxes, just 54% of those polled supported the idea of a special tax on espresso, compared to more than 70% support for a special tax on beer or liquor.[572] This might have been a warning flag, except that 74% of those who lived in the city of Seattle said they *would* support a 10¢ espresso tax to fund preschool programs.[573] Yet, the measure lost by a large margin at election time.

It could be that the "right" questions were not asked, or they were not asked of the "right" voters. But it is just as likely that the espresso tax clashed with Seattle's "latte culture," a clash that business interests capitalized on in their effective opposition to the financing mechanism. Although Seattle had a history of supporting both pro-children proposals and tax increases, advocates learned it is also a place where espresso is not viewed as a luxury. Thus, it was probably a "cultural" mistake to portray the proposed espresso tax as a luxury tax (even though by law, that's what it was). As one advocate put it, "A lot of people were upset about the portrayal of latte drinkers as rich. The psychology of it was interesting." Indeed, a vote for the Latte Tax initiative seems to have been viewed by some as almost disloyal. "[Y]ou form a bond with your latte guy; if that person says, I hope you'll vote no, that's persuasive." Another advocate observed, "Anywhere else, Starbucks is a faceless, ubiquitous corporation like McDonald's, but in Seattle, Starbucks is a hometown success story." The *Seattle Times* opined, "Charging an extra tax on Seattle's iconic drink strikes some as weird, like a cheesesteak tax in Philadelphia or a jambalaya surcharge in New Orleans."[574] Although it is certainly true that the opposition effort by Seattle coffee interests played a big part in promoting the view that the initiative clashed with the local culture, it was a promotion that resonated.

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[569] Shaun Bowler & Todd Donovan, *Demanding Choices: Opinion, Voting, and Direct Democracy* 43–66 (1998).
[570] 10 Things, *supra* note 503, at 2.
[571] Economic Opportunity Inst., Early Learning and Care Statewide Survey, Slide 4 (2002) (on file with the National Women's Law Center). As previously described, support for the career and wage ladder program—without the espresso tax financing mechanism—was demonstrated the following year when the program was successfully incorporated into the Seattle F&E Levy renewal.
[572] *Id*. at Slide 14.
[573] *Id*. at Slide 15.
[574] Jim Brunner, *Espresso-tax Debate Has Foes Steaming*, Seattle Times, Aug. 24, 2003, at B1.

Perhaps surprisingly, based on the ballot campaigns whose proponents were interviewed, it is not at all clear that a prerequisite for public support is prior public awareness of ECE or AS issues. Some advocates in Florida contended that intensive, years-long, message-driven, public awareness campaigns about the value and importance of early childhood education laid the groundwork for the state's successful universal pre-kindergarten campaign. In most jurisdictions studied, however, there had not been any concerted "public will" effort prior to launching the initiative; it was more the other way around—the newsworthiness of the ballot campaign, as well as the myriad of public meetings and mass communications that accompanied the campaign, provided the hook for expanding public awareness.

D. Good Timing

Assuming that the proposal is well developed and has broad support, an essential next part of the calculation is to gauge the best timing for a vote. This calculus involves strategically combining what is learned about particular voters' support for, or opposition to, the proposal with what is known about voting patterns and election-cycle options.

Factors to be weighed include how many and which types of voters turn out for what types of elections, and the impact of the political races and other issues on the ballot at the same time that could affect turnout or affect how the initiative is portrayed. In general, voter turnout is larger for elections than primaries[575] and larger in presidential years than in off-years.[576] Thus, issues to consider are the demographics of voters in high- and low-turnout elections in the jurisdiction at issue and whether they match up with the demographics of voters who are most likely to be supportive of the ballot measure. These considerations should help determine which election cycle will maximize the turnout of supporters and minimize the turnout of opponents.

The experience with the Latte Tax initiative in Seattle provides an example of how demographics, timing, and turnout may influence the outcome. According to one advocate, Seattleites have a remarkable history of supporting measures for children (including the Families & Education Levy), given that "this is a city of people without children. More than 80% of households in the city of Seattle have no children in them."[577] This, as well as specific polling, suggested the initiative would have broad support. In terms of timing, the proponents of the Latte Tax initiative planned for their measure to be on the November 2002 general election ballot so that turnout would be good, but the initiative would not compete with the F&E Levy referendum (up for renewal in 2004) and require voters to approve two taxes at about the same time for similar programs. The

[575] L. Sandy Maisel, *Political Parties and Elections in the United States: An Encyclopedia* 1175–1176 (1991).
[576] *See* Bureau of the Census, U.S. Dep't of Commerce, Current Population Survey, 2002, Table A-1: Reported Voting and Registration by Race, Hispanic Origin, Sex and Age Groups: November 1964 to 2002, *available at* http://www.census.gov/population/socdemo/voting/tabA-1.pdf (last visited June 13, 2005).
[577] The advocate's assertion is supported by census data. Only 19.6% of households in Seattle have individuals under eighteen living in them. Bureau of the Census, U.S. Dep't of Commerce, Census 2000, Table DP-1: Profile of General Demographic Characteristics: 2000, Geographic area: Seattle city, Washington, *available at* http://www.psrc.org/datapubs/census2000/profiles/profiles/seattle.pdf (last visited June 13, 2005).

Latte Tax initiative proponents expected the City Council[578] to be cooperative in terms of the timing, but instead, the Council delayed action, which resulted in the election's being pushed off until September 2003, an off-year primary.

In an off-year primary election in which no high-profile races were at stake, a low turnout may be expected. In addition, the electorate may be dominated by voters who feel strongly about the particular issues on the ballot, which can help pass the initiative if they support it but can doom it to failure if they don't.[579] The turnout in September 2003 was indeed low, just 36% of registered voters,[580] compared to a turnout of 45% in November 2002.[581] Moreover, the few people who did vote, as it turns out, were people strongly opposed to the Latte Tax—and they turned out "in droves," according to several advocates. As one proponent surmised, had the initiative been on the November 2002 ballot as originally planned, when more people turn out to vote for national offices, the initiative "would not have driven who showed up for the election; rather, the election would have driven who showed up to vote." In hindsight, it might even have been better to place the Latte Tax measure on the same 2004 presidential-year primary election ballot as the F&E Levy referendum, as that is when turnout was expected to be high and the popularity of the levy might have attracted voters concerned about children and education to the polls. Ironically, when the Latte Tax initiative failed, and its career and wage ladder component was incorporated into the F&E Levy proposal up for renewal in September 2004, it passed.

Supporters of the Portland Children's Investment Fund referendum also planned the timing of their measure so as not to compete with other ballot measures raising taxes or focusing on children. But, like Seattle, the timing did not go as planned. Due to a rule requiring at least 50% of registered voters to vote in order for tax measures to pass, the referendum ended up sharing the ballot with two initiatives (on libraries[582] and parks[583]) that had not received enough votes in the previous election—measures that were also being promoted as beneficial for children and that also imposed new taxes. Proponents were concerned that the competition and burden of three new taxes would be damaging. However, the three were marketed as "A Triple Crown for Kids"[584] and all three passed. The timing and competition did not prove fatal, and may have even helped.

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[578] The City Council was involved in the process because Seattle's initiative process provides only for "indirect initiatives," meaning the legislative body is first given an opportunity to adopt the measure before it goes to the voters. *See* Seattle City Charter art. IV, §§ 1(B)–(D) (2002), a*vailable at* http://clerk.ci.seattle.wa.us/~publiccharter.htm#articleIV (last visited June 13, 2005).

[579] *Cf.* Caroline J. Tolbert, John A. Grummel, & Daniel A. Smith, *The Effects of Ballot Initiatives on Voter Turnout in the American States*, 29 American Politics Research 625, 637 (2001) (during midterm elections, the presence of ballot measures can increase voter turnout).

[580] Initiative 77 Results, *supra* note 159.

[581] King County, Wash., Records, Elections & Licensing Services Div., Official Final Results, Nov. 5, 2002 General Election 1, *available at* http://www.metrokc.gov/elections/2002nov/resPage1.htm (last visited June 13, 2005).

[582] Portland, Or., Measure No. 26–36, Renew Five-Year Local Option for County Library Services, *in* Multnomah County, Or. Election Division, Sample Ballot, General Election, Multnomah County, Oregon, November 5, 2002, *available at* http://www.co.multnomah.or.us/dbca/elections/2002-11/sample_ballot.pdf (last visited June 13, 2005).

[583] Portland, Or., Measure No. 26–34, Five-Year Levy to Restore Park Services, Repairs, Recreation Programs, *in* Multnomah County, Or. Election Division, Sample Ballot, General Election, Multnomah County, Oregon, November 5, 2002, *available at* http://www.co.multnomah.or.us/dbcs/elections/2002-11/sample_ballot.pdf (last visited June 13, 2005).

[584] Editorial, *A Triple Crown for Kids*, Portland Oregonian, Nov. 2, 2002, at E04.

In fact, sometimes other ballot measures and races can help by "taking the heat off" of an ECE/AS proposal. For example, some Florida UPK initiative advocates credited their election-day success, in part, to the presence of more controversial, high-visibility races and related issues being on the same ballot. There was a contentious governor's race in 2002 in which education was a key issue and there was a highly controversial ballot initiative to limit class sizes.[585] Next to the class-size amendment, advocates reported, the UPK initiative looked downright modest and affordable. Proponents of the Colorado Pre-K-12 initiative also partly attributed their success to the presence of another, more controversial, amendment proposal concerning suburban zoning rules that was on the same ballot; "the [Colorado Pre-K-12] initiative was under the radar screen for most of the election season," said one advocate, which may have helped it pass.

In sum, although it may not be easy or fool-proof, it is important to use polling to identify likely supporters and other demographics that may help predict which election cycle is likely to attract the most supporters (and least opponents), and to try to time the proposal's appearance on the ballot accordingly.

E. Effective Mobilization of Supporters

1. Early Coalition-Building

A successful campaign must engage in smart coalition-building—from the very start—beginning with developing and drafting the ballot proposal. The process used from the outset can have a large effect not only on the content of the measure but also on the way in which the internal and external politics of the campaign play out, including the likelihood that a broad group of individuals and organizations will actively support and actually campaign for the measure. The initiative proponents who sought and obtained input early on from ECE/AS and children's experts, budget experts, ECE/AS providers, advocates, and political leaders seem to have had the smoothest and most successful campaigns.

For instance, according to interviewees, the framers of the Florida UPK initiative used a highly collaborative and inclusive process to develop their proposal and build support for the initiative. Then-Miami Mayor Alex Penelas, one of the chief proponents, convened a statewide children's summit, bringing together more than 1,000 stakeholders to identify a priority agenda for children, and formed "focus groups" of educators, administrators, child-care workers, and others to help shape the UPK policy. Advocates served as part of a "concept review" team that participated in decision-making about key facets of the proposal. After the draft language had been run through lawyers and focus groups, a final meeting with key stakeholders was held to review the language. All of this consultation did not win unanimity, but it, along with substantially more meetings and conferences after the measure qualified for the ballot, resulted in "buy-in" and active support from

[585] *See* Fla., Amendment 9, Florida's Amendment to Reduce Class Size, *in* Supervisor of Elections, Brevard County, Florida, Official General Election Ballot, Brevard County, Florida, November 5, 2002.

most of the children's advocacy community and neutralized potential organized opposition—at least long enough to win the election.[586]

By contrast, advocates interviewed about the Seattle Latte Tax initiative had conflicting views on whether the process of developing that proposal had been inclusive enough. One stated that the proponents "brought together a broad group to discuss what the priorities should be," while others said "it would have been nice to have broader and deeper involvement in the crafting of the proposal," and "it would have been more strategic if [it had been] handled more collaboratively to increase buy-in, which might have helped voter turnout."

In addition to seeking the input and buy-in of supporters early on, it is crucial to anticipate potential opposition and take steps to alleviate any concerns, preferably in the drafting stages, in order to win over or at least neutralize potential opponents. For example, existing providers of AS programs are certainly supportive of expanding AS programs, but might have felt threatened if Prop. 49 had ignored or dismantled their network in favor of a whole new program. The California Teachers Association, also a likely supporter, might have opposed the initiative if the new after-school money was carved out of the existing education budget. Thus, the proponents of Prop. 49 sought input from existing after-school programs and decided to build on them rather than create a new program. They also took great care to create a funding mechanism that did not directly compete with or threaten funding for education, and therefore did not directly threaten the education establishment, which had the money and organization to be effective opponents. Anti-tax groups were courted by the absence of any new taxes and the promise that AS programs would save the state money over the long run. The proponents of Prop. 49 didn't win over everyone, however. Some children's advocacy, good-government and other groups focused on budget issues continued to voice concerns about the absence of any new funding for the AS expansion and the potential harm of another budget earmark, and some even opposed the measure because of these concerns.

Similarly, though supportive of UPK, many child care advocates in Florida were concerned that infant and toddler programs would suffer if a large new investment were made in pre-kindergarten. The inclusion of an anti-supplantation clause was central to easing those concerns. And after their loss, the proponents of the Seattle Latte Tax initiative pondered whether they might have defanged some of their opposition if they had just raised the revenue threshold at which a shop became subject to the espresso tax, thereby exempting more coffee shops and blunting some of the sentiment that "this will hurt small businesses." Prior to filing the Seattle Latte Tax initiative, the proponents did try to reach out to coffee interests and reach some sort of compromise; however, that effort reportedly only delayed the process long enough for the initiative to get put off to a less favorable election time.

Obviously, the coalition-building—recruiting supporters and allaying concerns of potential opponents—must continue after the proposal has been drafted and throughout the campaign.[587]

[586] As previously discussed, advocates reported that the consensus that helped pass the initiative broke down somewhat in the course of the legislative effort to establish the details of the program.
[587] As previously discussed, coalition-building is important to the successful implementation of a measure after it passes as well.

Moreover, it is helpful if the coalition-building extends not only to groups but to members of both major political parties. Several advocates who worked on winning ECE/AS ballot campaigns underscored the importance of making the campaign as bipartisan or nonpartisan as possible. If an initiative is perceived as aligned with one party or perceived as a political move, it will be more difficult to get the support of political leaders and the public. Thus, as a Republican, Arnold Schwarzenegger recruited Democratic Attorney General Bill Lockyer to co-chair the Prop. 49 campaign, and solicited the support of many groups traditionally aligned more with the Democratic Party's agenda. In Florida, the proponents of the UPK initiative were both Democrats, so they took pains to make sure all the messages and endorsements were nonpartisan. And, according to proponents, the Colorado Pre-K-12 initiative succeeded in maintaining a nonpolitical image because "the politicians didn't support or oppose it—they were helpfully absent" from the debate.

2. A Champion

The ECE/AS campaigns that were most often successful at the ballot box were those that had an effective, well-connected "champion"—someone who was passionate about the issue, was a credible spokesperson, and had connections to the business community or to political leaders that could be parlayed into concrete expressions of support. The champion need not be a celebrity, although, as some in California pointed out, having a celebrity as a champion has several advantages: celebrities are media savvy, they have an existing communications infrastructure that can be tapped, and they attract enormous amounts of free publicity without the usual political scrutiny that accompanies political figures.

To be effective, a champion must have credibility on ECE/AS issues based on position or achievements. In the case of the two California initiatives, Rob Reiner had already started a foundation on early childhood, and Arnold Schwarzenegger had been involved in physical fitness-related programs for kids for many years and more recently had started an after-school program called "Arnold's All-Stars." In the case of the Florida UPK initiative, David Lawrence had retired as editor of the *Miami Herald* in 1999 in order to work on early childhood issues, and then-Mayor Alex Penelas discovered the advantages of preschool when his own children attended it and he organized several local projects and state conferences to move the early childhood agenda forward. Cary Kennedy, a mother and a former education budget analyst for Gov. Roy Romer, was a credible spokesperson on the issue of education funding and the champion of the successful Colorado Pre-K-12 initiative. On the other hand, the Portland Children's Investment Fund referendum was championed by an energetic city commissioner, Dan Saltzman, and the Tennessee Lottery referendum was promoted by a persistent state senator, Steve Cohen, neither of whom appears to have had a reputation on ECE/AS issues per se.

Having an "unlikely messenger" as the champion of the ballot measure is helpful in gaining media coverage because the media consider it a more interesting story. Hollywood celebrities and businesspeople have indeed served as "unlikely messengers" in some of the ECE/AS ballot campaigns, such as the two California propositions and the Florida UPK initiative. Several advocates observed that, unfortunately, men are still considered "unlikely messengers" on child

care and related issues, though ballot campaigns headed by men were both successful and unsuccessful at the polls.[588]

3. Communications and Grass Roots Organizing

The effectiveness of the campaign's messages plays a significant role in how the issue is covered by the media and the terms in which the debate will be framed, and the outcome is often driven by whether the proponents or the opponents do a better job in framing their message. Communications strategies for getting the message out to voters and grass roots organizing also significantly affect the success of ballot campaigns.

The Seattle Latte Tax experience illustrates the importance of framing the debate. The real name of the initiative was "Quality Childcare Programs for Seattle's Children" yet the media, and sometimes the supporters themselves, only referred to it as "the espresso tax" or the "latte tax." Just this change in its popular title shifted the focus away from the goal of investing in child care and toward the funding mechanism, the more controversial part of the proposal.

Because the goal of the Latte Tax initiative was widely supported, the opposition's message, as previously described, was to reaffirm the goal but argue that the funding mechanism was the wrong way to achieve it. An especially disingenuous argument made by opponents was that quality child care was simply "*too important* to depend upon a random, ill-conceived tax." Ironically, from a tax policy point-of-view, the proposed tax on espresso was the least random and least ill-conceived of all the financing mechanisms examined in this study. The proponents settled on that tax because luxury taxes are one of the few taxes permitted (Washington has no state income tax) and there were already many property tax levies, which are regressive for homeowners with fixed incomes; an espresso tax would bring in money from tourists and commuters, and little from low-income people; there is not much leakage (people won't drive outside the city for a latte just to avoid the 10¢ tax); and the tax creates an increasing revenue stream (espresso sales haven't peaked yet) that appears to be recession-proof.

Nonetheless, the opponents' message dominated in the media, where the espresso tax became the object of ridicule. The novelty of Seattle, the home of Starbucks, taxing one of its premier products made national news—not hard news, but the light, isn't-that-amusing? part of the news. The proponents said the nail in their coffin came when opponents held a "Boston Tea Party" complete with white wigs and a snare drum, shouting "no taxation without representation" (a motto wholly irrelevant to the initiative, as one supporter pointed out), and threw burlap coffee bags filled with balloons into the lake. "We never recovered from that. They hijacked the debate and we never got it back," related one supporter. (Not coincidentally, as noted above, the opponents had political professionals heading up their public relations campaign, whereas the initiative proponents did not.)

[588] For example, in contrast to the successful campaigns led by men in California (Prop. 10 and Prop. 49 initiatives), Tennessee (Lottery referendum), Florida (UPK initiative), and Portland (Children's Investment Fund referendum) there were unsuccessful campaigns led by men in Denver (both the 2000 and 2001 Kids' Tax measures) and Seattle (Latte Tax). Moreover, women led successful campaigns in both San Francisco (Children's Fund initiative) and Colorado (Pre-K-12 initiative).

Framing messages effectively is a particular challenge when some of the arguments are, as one Prop. 49 opponent put it, "wonky"—based on complicated policy grounds that are hard to explain or that are without an obvious connection to people's everyday lives. With Prop. 49, the proponents had a distinct advantage with the simplicity and everyday appeal of their message, which one person characterized as "after-school programs are important, the California Teachers Association says the initiative won't hurt education, the anti-tax groups say it won't raise taxes, so why not?!" The opponents, on the other hand, were armed with academic arguments about the drawbacks of government-by-initiative, and complicated explanations about budget triggers, earmarks within earmarks, and the domino effect of the initiative process on the state budget, which they asserted would "rob Peter to pay Paul" and hurt more kids than it helped. The simpler and more down-to-earth argument won the day.[589]

Once the message is crafted, supporters of the measure must get the message out to voters through mass communications techniques (e.g., free and paid media, direct mail, etc.) and grass roots organizing (securing endorsers, mobilizing activists, engaging in voter turnout activities, etc.). Indeed, effective mass communication may help compensate for less effective grass root organizing, and vice versa.

For example, in California, perhaps because the state is so large, a combination of paid ads and news coverage seems to have played a larger role than grass roots organizing in the outcomes of both Prop. 10 and Prop. 49, according to the proponents and supporters interviewed. In fact, one of the supporters of Prop. 49 expressed surprise that the campaign had not involved much grass roots effort at all. But, according to another advocate, the campaign bought a lot of media advertising, especially in southern California, and "Arnold's appearances generated enormous amounts of free media."

The Colorado Pre-K-12 initiative's proponents also attributed their success more to media than to grass roots organizing. As previously described, the initiative was largely invisible during much of the campaign, but in the last two weeks of the campaign, its proponents made a big TV ad buy, leaving potential opponents little time to fight back. But proponents also reported that grass roots organizing was a part of the effort—"the traditional education community" got the word out via newsletters and telephone trees.

In other campaigns, a broad and deep grass roots organizing effort seemed to play a more significant role than paid advertising. For instance, the Florida UPK initiative won with good grass roots outreach and minimal advertising. In addition to paid advertising, according to proponents and supporters, the Portland referendum had a very strong grass roots effort that included trained volunteers who wrote letters to newspaper editors, worked on a phone bank, canvassed neighborhoods, and gave presentations "everywhere."

[589] "Wonky" arguments can, however, sway editorial boards, which often pride themselves on taking stands that may be unpopular but on the side of good public policy. Almost all of the major newspapers in California, and most of the minor ones as well, editorialized in opposition to Prop. 49 based on concerns about the cumulative effects of earmarks out of general funds. *See* League of Women Voters of Cal., Media: Editorials Against Prop 49 (undated), *available at* http://no49.ca.lwvnet.org/Media.html (last visited June 13, 2005).

In turn, the lack of grass roots organizing was seen as a decisive factor in the loss of some ballot measures. Proponents of the 2001 Denver initiative spent "several hundred thousand dollars" on paid television ads and thought they had run a good media/ad campaign. The supporters of the Seattle initiative also maintained that their direct mail communications had been "well-done" and reached "every mailbox." In spite of this, both the Denver and Seattle measures lost, and some of their supporters confided that they thought the grass roots organizing aspect of their respective campaigns had been lacking and was one of the key factors in their loss. One supporter of the Denver initiative said, "television ads are not enough—you still need to get out to the grass roots, and we didn't." And, the grass roots efforts must involve organizers beyond child care providers, advised many winners and losers. Child care providers may be supportive, but they cannot be relied upon for grass roots organizing because, as one Seattle supporter surmised, "they are generally too busy and too tired, and often feel disempowered and disconnected from the political process."

* * *

For ECE/AS advocates who have considered the options, weighed the benefits and drawbacks of a ballot campaign, and decided to go forward, there are many strategies that can maximize the chances of winning. The cumulative experience of those who participated in eight of the ECE/AS ballot campaigns for which interviews were conducted point the way to some lessons learned.

At the outset, advocates should evaluate whether and what types of ballot measures are legally available, and determine what type of ballot measure is the best option. They should also consider whether campaign activities will cause their organization to bump up against any lobbying limits or other regulations applicable to charitable nonprofits, and take steps to monitor their activities accordingly.

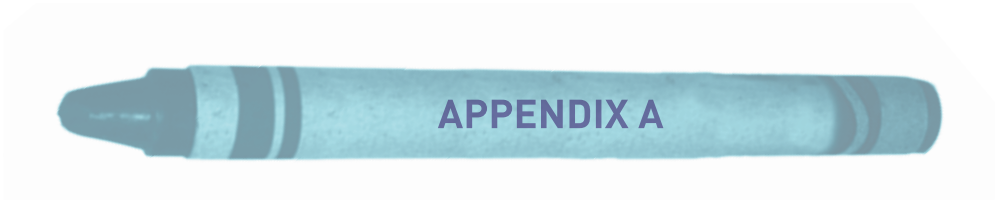
The campaign itself should be approached as a political campaign, which means hiring professionals as soon as possible to assist in polling, qualifying the proposal for the ballot, fundraising, and campaign strategy and communications. Ballot measure campaigns are very expensive, so it is no coincidence that the ECE/AS ballot measures studied here relied heavily on large donors. A well-connected champion can play a key role in attracting large contributions as well as political support for the ballot measure.

Advocates should do their homework to develop the strongest possible proposal. All types of ECE/AS policy proposals have proven they can win at the ballot box, but the choice of financing mechanisms can affect outcome. As part of the drafting process, proponents should use polling to test overall support for their proposal to make sure initial support is very high, as well as test support for specific elements of the proposal, the wording to be used, and how best to frame the arguments for it, including the ways in which any specific cultural considerations may affect the proposal's elements or its framing. As part of the process of developing the proposal, campaigns should also reach out early to stakeholders—both potential allies as well as potential foes—in order to maximize "buy-in" and minimize opposition. And once the proposal is developed, it is important to analyze voting patterns and demographics to determine the best election timing.

Finally, the ECE/AS ballot campaigns that were most successful at the ballot box were those that effectively mobilized supporters. Careful coalition-building and bipartisan support are important elements of a successful mobilization, as is an effective communications strategy that frames the measure in a way that is favorable to the proponents, and then gets the word out both through paid advertising and grassroots organizing. Together, these steps significantly enhance the odds that an ECE/AS ballot proposal will win on election day.

V. CONCLUSION

The costs of spearheading a ballot campaign in both time and money are sizeable, and losing at the polls can have repercussions beyond election day. However, this study has shown that ECE/AS ballot measures have a better than average chance of winning, and when they do, they can be remarkably effective both in generating increased public investments in ECE/AS programs and protecting newly allocated funds from being raided or used simply to supplant previous spending. The time and money required to win a ballot measure, stacked up against the money and stability that result from passage, reveal that ballot measures can be not only a cost-effective but highly profitable approach, and thus a potentially valuable tool in the strategic arsenal of ECE/AS advocates. For advocates who undertake such an effort, there is much to learn from those who have been through ballot campaigns. Heeding these lessons will significantly enhance the possibility that an ECE/AS ballot proposal is successful, both on election day and beyond.



Listed below are the individuals with whom in-depth interviews were conducted, as well as individuals who were consulted on selected issues, along with their organizational affiliations as of the time of the interviews and consultations.

Individuals Interviewed

California (Proposition 10 and Proposition 49 Initiatives):
Maryann O'Sullivan, Preschool California, Oakland, CA
Camden McEfee, California Strategies, San Francisco, CA
Eric Wooten, California League of Women Voters, Sacramento, CA
Andria Fletcher, California AfterSchool Partnership, Davis, CA
Nancy Strohl, Child Care Law Center, San Francisco, CA
Patty Siegel, California Child Care Resource and Referral Network, San Francisco, CA
Chad Griffin, I Am Your Child Foundation, Beverly Hills, CA
Sherry Novick, California Children and Families Association (now First 5 Association of California), El Cerrito, CA
Nicole Evans Kasabian, California Children and Families Commission, Sacramento, CA
Rory Darrah, Every Child Counts/First 5 Alameda County, San Leandro, CA

Florida (Universal Pre-K Initiative):
David Lawrence, Early Childhood Initiative Foundation, Miami, FL
Erica McKinney, Office of Miami Mayor Alex Penelas, Miami, FL
Representative Nan Rich, Florida House of Representatives, Tallahassee, FL
Phyllis Kalifeh, Florida Children's Forum, Tallahassee, FL
Roy Miller, Children's Campaign, Inc., Tallahassee, FL
Jack Levine, Voices for Florida's Children, Tallahassee, FL
Ted Granger, Success by Six/United Way, Tallahassee, FL
Suzanne Gellens, Early Childhood Association of Florida, Tampa, FL

Portland (Children's Investment Fund Referendum):
Commissioner Dan Saltzman, Portland City Council, Portland, OR
Shannon Campion, Stand for Children, Portland, OR
Carolyn Morrison, Child Care Development Services, Gresham, OR
Marie Hoeven, Children First for Oregon, Portland, OR

Colorado (Two Denver Kids' Tax Measures, Colorado Pre-K Initiative):
Councilwoman Carol Boigon, Denver City Council, Denver, CO
Barbara O'Brien, Colorado Children's Campaign, Denver, CO
Daniel L. Ritchie, University of Denver, Denver, CO
Gail T. Wilson, Colorado Office of Resource and Referral Agencies, Inc., Denver, CO

Cary Kennedy, Colorado Children's Campaign, Denver, CO
Julie Phillips, Boulder Valley School District Board of Education, Boulder, CO

Seattle (Latte Tax Initiative):
John Burbank, Economic Opportunity Institute, Seattle, WA
Dorothy Gibson, Center for the Child Care Workforce, Seattle, WA
Billie Young, Child Development Programs, Office of Seattle Mayor Greg Nickels, Seattle, WA
Elizabeth Bonbright Thompson, Washington State Child Care Resource & Referral Network, Tacoma, WA
Nancy Amadei, University of Washington Civic Engagement Project, Seattle, WA
Angie Maxie, Tiny Tot Development Center, Seattle, WA

Other Individuals Consulted on Selected Issues

Arlene Sakazaki, California Children and Families Commission, Sacramento, CA
Bill Skewes, Colorado Office of State Planning and Budgeting, Denver, CO
Brian Lee, Fight Crime: Invest in Kids California, Sacramento, CA
Cande Iveson, Citizens for Missouri's Children, Jefferson City, MO
Carolyn Kampman, Joint Budget Committee, Colorado General Assembly, Denver, CO
Deb Godshall, Colorado Legislative Council, Denver, CO
Ellen Marshall, Good Works Group, Boulder, CO
harry a. yates [*sic*], Children's Services Council of Martin County, Stuart, FL
Jan Bushing, Tennessee Department of Education, Nashville, TN
Jessica Markham, Ballot Initiative Strategy Center, Washington, DC
Jewel Scott, Kansas City Civic Council, Kansas City, MO
Jim Mills, Pinellas County, Juvenile Welfare Board, Pinellas Park, FL
John Sharp**,** Tennessee Department of Education, Nashville, TN
Ken Bukowski, Department of Children, Youth, and Their Families, San Francisco, CA
Larry Thoreson, City of Aspen Finance Department, Aspen, CO
Linda Lewis, California Department of Finance, Sacramento, CA
Linda O'Neal, Tennessee Commission on Children and Youth, Nashville, TN
Linda Tilly, Voices for Alabama's Children, Montgomery, AL
Lori Goodwin Bowers, Colorado Preschool Program, Denver, CO
M. Dane Waters, Initiative & Referendum Institute, Leesburg, VA
Marie Stringer, Office of Tennessee Governor Phil Bredesen, Nashville, TN
Margaret Brodkin, Coleman Advocates for Children and Youth, San Francisco, CA
Matt Myers, Campaign for Tobacco-Free Kids, Washington, DC
Meg McElroy, Portland Children's Investment Fund, Portland, OR
Michelle Elliott, Tennessee Department of Finance and Administration, Nashville, TN
Nancy Hamilton, Portland Children's Investment Fund, Portland, OR
Patricia Skelton, California Children and Families Commission, Sacramento, CA
Sen. Steve Cohen, Tennessee State Senate, Nashville, TN
Shari Golan, SRI International, Menlo Park, CA
Shirley Ritter, Kids First, Aspen, CO
Veronika Cole, California Child Care Resource and Referral Network, San Francisco, CA
William D. Bradley, Tennessee Department of Finance and Administration, Nashville, TN

Resources for Advocates

Organizations

- Initiative & Referendum Institute, Los Angeles, CA, www.iandrinstitute.org
- Ballot Initiative Strategy Center, Washington, DC, www.ballot.org
- Alliance for Justice, Washington, DC, www.afj.org

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- Jim Shultz, Democracy Center, *The Initiative Cookbook: Recipes and Stories from California's Ballot Wars* (1996)

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