

History of Initiative 276

The genesis of the Washington Public Disclosure Act

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Abstract

Initiative 276 was overwhelmingly approved by voters in 1972, leading to what would become the Washington Public Disclosure Act. This summary of the initiative's history, based on newspaper accounts from the time, initiative organizers' documents and memorandum housed at the University of Washington Special Collections, and interviews with principal players involved in the initiative, describes how the measure was publicly described, debated, and organized. The initiative focused primarily on campaign-finance disclosure. However, the general tenor of the public discussion also expressed a societal interest in open records for all government entities, including the executive, legislative and judicial branches at the state and local levels.

“Spirit of Initiative (2) 76”

It was the early 1970s, and the time was right for government reform. Even before Watergate became common knowledge in late 1972, the League of Women Voters, Common Cause and other national groups were calling for government accountability, particularly in campaign finance.²

In Washington state, concern arose regarding political contributions for candidates, whether it involved Seattle city politics or utility boards in Eastern Washington. Interested citizens came together under the group called the Coalition for Open Government. The group would become a broad-based cooperative effort, operating from 1971 until 1975, representing a variety of organizations: League of Women Voters, American Association of University Women, Municipal League of Seattle and King County, Washington Environmental Council, Common Cause, Young Republicans of King County, Metropolitan Democratic Club, Washington State Council of Churches, Citizens for Better Government, Young Lawyers, Washington Democratic Council, and 18 individuals, including Jolene Unsoeld, a leader of Common Cause who later went on to become a state legislator and U.S. representative for the 3rd District in Southwest Washington.³

Bennett Feigenbaum, coalition chairman, remembered the overall feeling of the times: “The concern was where do you draw the line between a campaign contribution and a bribe,” said Feigenbaum, who lives in New Jersey. “Very early on there was a

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² Common Cause was launched in 1970 to revitalize government and push for accountability. The press release announcing its beginning is at http://www.commoncause.org/about/jg_letter.htm

³ Coalition for Open Government Organizational Representatives membership list, Dec. 1, 1974, University of Washington Libraries, Special Collections, Coalition for Open Government Records, 1972-1976.

meeting of the minds. We were at the forefront nationally. This was to be a classic use of the initiative process because asking the Legislature to adopt laws to regulate themselves is asking a lot. It's human nature."⁴

In 1971 the Legislature approved public disclosure laws but they were not to the satisfaction of the coalition. So the coalition started its own initiative, drafting its final version by April 1972. The coalition hired a staff member, Michael T. Hildt of Seattle, to organize their efforts. Hildt, Feigenbaum and others traveled the state to hold forums and talk to civic organizations about the initiative.⁵ They gathered 162,710 signatures, far more than the 101,229 needed to put the measure on the ballot.⁶

Early on the measure was termed in the media as the "Spirit of Initiative (2) 76" for its intention on opening government. It was hailed in the press as the "toughest campaign and lobbying disclosure law in the nation."⁷

The Legislature put its own measures on the ballot, Referendums 24 and 25, but they were discounted in newspaper stories and editorials as weaker. Feigenbaum was quoted in a news story as saying, "Initiative 276 fills in the loopholes left by Referendums 24 and 25. Our initiative requires everything the referendums require and more."⁸ A clause in Initiative 276 stated that if it passed it would supercede the two referendums, which it did.

Campaign-finance disclosure

The impetus and main focus of the initiative was on campaign finance disclosure, according to Feigenbaum, newspaper reports, and the memorandum and meeting minutes from the Coalition for Open Government.⁹ Newspaper articles typically labeled Initiative 276 in headlines as the "campaign-finance disclosure measure."¹⁰

In a letter to the editor in *The Seattle Times*, Feigenbaum thanked the paper for its editorial support and thanked the signature gatherers for "giving Washington voters an opportunity in November to vote on disclosure of campaign financing and lobbyist activities."¹¹

In the voters pamphlet the initiative was labeled as "Disclosure – campaign finances, lobbying, records." The first three of the four-part initiative related to campaign finance, including the establishment of the Public Disclosure Commission. Specifically, the initiative required that campaign contributions be made public, including the name of the contributor and amount. The initiative also required lobbyists to register and report their expenditures, and required all elected officials and candidates to disclose substantial financial and ownership interests. The statement for the initiative started with this paragraph:

The People Have the Right to Know

⁴ Telephone interview with Bennett Feigenbaum on April 30, 2004.

⁵ Ibid.

⁶ Final number available at the Secretary of State Web site:

http://www.secstate.wa.gov/elections/initiatives/statistics_initiatives.aspx:

⁷ "3 to 1 OK for 276," *Seattle Post-Intelligencer*, Nov. 8, 1972, p. A8.

⁸ "Court battle predicted on '276'," *The Seattle Times*, Nov. 8, 1972, p. A16.

⁹ Coalition for Open Government records, 1972-1975, University of Washington Libraries, Special Collections.

¹⁰ "150,000 sign campaign-finance petition," *The Seattle Times*, July 6, 1972, p. A1.

¹¹ "Initiative 276" *The Seattle Times*, July 26, 1972, p. A13.

Our whole concept of democracy is based on an informed and involved citizenry. Trust and confidence in governmental institutions is at an all time low. High on the list of causes of this citizen distrust are secrecy in government and the influence of private money on governmental decision making. Initiative 276 brings all of this out into the open for citizens and voters to judge for themselves.

Open public records

A less talked about part of the initiative regarded public records in general. Feigenbaum recalls that most of the initiative discussion focused on campaign-finance disclosure but a section was added stating that public records shall be open. “I can’t remember exactly why we put it in there. It was really uncontroversial. I don’t remember any opposition.”¹²

The voters pamphlet included discussion of this fourth section: “Initiative 276 makes all public records and documents in state and local agencies available for public inspection and copying. Certain records are exempted to protect individual privacy and to safeguard essential government functions.”

Public discussion included references to open records in general. For example, a letter to the editor in *The Seattle Times* praised the initiative because “The people – all the people – have a right to know and to participate in government.”¹³ Another letter writer the same day stated, “This strong legislation drafted by the people, not the politicians, will open government. And an open government must be a cleaner, better government than one locked in secrecy.”

The limited discussion regarding this section of the initiative was the focus of a Seattle Times story explaining the implications of the measure. The story started:

Talk about Initiative 276 and it rings two bells with the average voter: the disclosure of campaign financing and lobbyists’ funding.

But another section in the initiative concerning access to public records has been the least discussed aspect of the open-government measure with appears on the November 7 ballot.

It may prove to be a “sleeper” for the public.¹⁴

The article then described the public records section and its implications, particularly regarding copying and retrieval costs. Also, concerns were raised in the article regarding the vague wording of the exemptions covering privacy and working papers.

For all government entities

In recent years, some legal scholars and court rulings have interpreted the Public Disclosure Act to exclude judicial records, but that is not the understanding of the initiative’s proponents or what is portrayed in news articles written at the time.

Initiative 276 was considered to apply to all government entities, executive, legislative and judicial, at the state and local level, Feigenbaum said. “It applied to

¹² Interview with Feigenbaum, April 30, 2004.

¹³ “Smoke screen against 276,” *The Seattle Times*, Oct. 20, 1972, p. A13.

¹⁴ “Initiative 276 may have a ‘sleeper’,” *The Seattle Times*, Nov. 3, 1972, p. A8.

everyone. Absolutely. It didn't really have to come up and be discussed because it was assumed." Karin Gates Hildt, who worked on the initiative with her husband, initiative organizer Michael T. Hildt, agreed.¹⁵ Then-state Sen. Charles E. Newschwander, who co-wrote the opposition statement for the voters pamphlet, said in 2004 that he does not remember specific discussions about whether the law would apply to the judiciary, but it was his belief that it should. "It should involve judges. Judges are a pain the butt as far as I'm concerned and if the law applied to me (as a legislator) it should apply to them."¹⁶

The voters pamphlet included language that implied oversight over all government agencies: "Initiative 276 makes *all* public records and documents in state and local agencies available for public inspection and copying." (emphasis added). Further, in the pamphlet's statement against the initiative, one stated drawback was the "added cost of government. Virtually every office of State and Local Government will incur added expenses... It is impossible to estimate the potential cost to State, County and City Government of making all public records available for inspection and copying."

In a *Seattle Times* story four days before the election, the implications of the public records section of the initiative were discussed in relationship to a variety of different kinds of records and agencies, including court records. Harold Potter, chief deputy to the clerk at the King County Courthouse, lamented in the article that the initiative would cost his department \$100,000 a year because he would no longer be able to charge \$1 per page to photocopy court records. The Public Disclosure Act limits photocopying costs of applicable public records to 15 cents per page.¹⁷

Feigenbaum said he remembers specifically that the courts and Legislature would be subject to the law because after the election he and other coalition organizers met to figure out how to handle the legal challenge of the measure's constitutionality. Because the law, in their mind, applied to the judicial system and every other government agency, they discussed how the matter could be litigated fairly in Washington.

"A few of us discussed the issue of conflict of interest for the judiciary because the law applied to the judges. We talked through where that would lead us, whether we should have the entire state judiciary recused from the case. Ultimately, we said we'll let's see what happens and let the chips fall."¹⁸

Overwhelming approval

While most groups and politicians endorsed Initiative 276, some opposed it. Opponents said the initiative was "overkill" and "would threaten individual privacy." They also said it would be costly to enforce.¹⁹ Then-state Sen. Charles E. Newschwander, who co-wrote the opposition statement for the voters pamphlet, said in a 2004 interview that he opposed the initiative because it would add more regulations and more costs to government. "I don't think we need the damn thing anyway. We don't need more regulations. Too many RCW's as it is. Book after book of them."²⁰

State Rep. James P. Kuehnle of Spokane challenged the constitutionality of the initiative, asking Attorney General Slade Gorton for an opinion. Kuehnle stated that the

¹⁵ Interview with Karin Gates Hildt on May 3, 2004. Michael T. Hildt, of Port Townsend, died in 1999.

¹⁶ Interview with Charles E. Newschwander, May 4, 2004.

¹⁷ "Initiative 276 may have a 'sleeper'," *The Seattle Times*, Nov. 3, 1972, p. A8.

¹⁸ Interview with Feigenbaum, April 30, 2004.

¹⁹ "Campaign financing, access to records," *The Seattle Times*, Nov. 5, 1972.

²⁰ Interview with Charles E. Newschwander, May 4, 2004.

initiative was unconstitutional because it included more than one subject.²¹ The constitutionality of the measure would eventually be taken to court following the election, but the measure would stand.

In the state general election, Nov. 7, 1972, voters approved the initiative with 959,143 votes in favor and 372,693 opposed, a 72 percent approval rate.

The battle after the battle

Following the passage of Initiative 276 the Coalition for Open Government worked for three more years to battle efforts to repeal or gut the Public Disclosure Act.

Dozens of amendments were proposed to the Legislature by the Association of Washington Business. School districts throughout the state wrote articles in education publications and newspapers explaining how the campaign finance disclosure requirements scared away potential school board members and caused some current board members to resign to avoid reporting who funded their campaigns. Corporate and business interests lobbied for changes to the campaign finance reporting laws.²²

Lee Sanders, a Common Cause leader from California and an initiative proponent, wrote following the election: "It is obvious that a well-financed campaign is underway to change public opinion in Washington. Misleading statements have been made by lobbyists and some legislators... The battle for the public mind continues although the election has passed. The special interests are uniformly aligned against 276. Virtually all their wealth and power are combined. Typical examples of the financiers of this campaign include, but are not limited to, the Boeing Company, Port of Seattle, Seattle First National Bank and the Association of Washington Business. The proponents of 276 are not financed and are suffering as a result of this campaign. If the efforts of the critics of 276 go unmatched, then it is reasonable to anticipate that public opinion will be reversed. Once the polls show a change in popular support, then the legislators will feel inclined to seriously alter or actually repeal 276... the capacity of the people to govern themselves hangs in the balance."²³

Four lawsuits were filed against the initiative, but the initiative was upheld by the state Supreme Court in *Fritz v. Gordon*, Jan. 4, 1974. Since the passage of Initiative 276 in 1972, hundreds of exemptions and changes to the Public Disclosure Act have been made and court rulings have modified its application. The Act in 2004 included more than 80 exemptions (RCW 42.17.310).

Endnotes

²¹ "Gorton's office responds to constitutionality query," *The Seattle Times*, Oct. 22, 1972, p. E11.

²² Historical sketch of 276 and Common Cause, written by Jolene Unsoeld, 1973. University of Washington Libraries, Special Collections, Coalition for Open Government Records, 1972-1975.

²³ *Ibid*, p. 2.