THE VOICE OF THE CROWD—COLORADO'S INITIATIVE

FOREWORD

RICHARD B. COLLINS*

The six papers that follow were first presented at a conference sponsored by the Byron R. White Center for the Study of American Constitutional Law and by the *University of Colorado Law Review*, titled *The Voice of the Crowd—Colorado's Initiative*. The conference was held at the Colorado State Capitol in Denver on January 26, 2007.

University of Michigan Law School Professor Sherman J. Clark asks fundamental questions about the initiative. Does this method to make or change constitutions and laws make us better citizens? He argues it does not because we vote in secret, refusing to take public responsibility for exercising power over others. He asserts that we demand to know how our elected and appointed representatives act but shield our own actions from view. Arguing that anonymous wielding of power is inherently corrupting, he proposes that we adopt the town meeting virtue of a public vote.

The next paper is a collaboration of University of Florida Professor Daniel A. Smith, and University of Iowa Professor Caroline J. Tolbert and graduate student Daniel Bowen that analyzes the educative effects of direct democracy. They survey the work of legal scholars and find it deficient in its use of empirical research. They then rely on empirical research by political scientists and sociologists to explore whether direct democracy increases voter turnout and voter trust. They conclude that voter turnout is definitely increased by ballot measures, while studies on voter trust are in conflict. Finally, they pose a number of other important issues as subjects for further research.

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* Professor and Director, Byron R. White Center for the Study of American Constitutional Law, University of Colorado School of Law.

University of Florida Professor Daniel A. Smith argues that the initiative is biased against rural populations. He reviews the extensive scholarship on whether the initiative disadvantages minorities defined by race, ethnicity, language, religion, and sexual orientation and finds it inconclusive. He then draws on empirical data about Colorado voting on 56 statewide initiatives between 1992 and 2006 to make his case that initiatives systematically favor urban and suburban voters over rural voters. He explains that this result is not simply a matter of greater numbers. He compares direct democracy with representative democracy along the same urban-rural divide, concluding that representative institutions better serve rural communities.

University of Washington Professor John Gastil and graduate students Justin Reedy and Chris Wells analyze the degree and effectiveness of democratic deliberation during referendum elections on initiated and referred ballot measures. Based on a rich store of empirical data gathered from voter surveys in Washington, they conclude that deliberation is not very good. Voters often misunderstand ballot measures, fail to consider opposing arguments, are unaware of possible unintended consequences, and are gulled by systematic misinformation. To improve the process, they advocate use of citizens' review panels chosen by random selection to deliberate and report on proposed ballot measures.

University of California at Irvine Research Fellow Kevin O'Leary presents a much grander vision of citizens' review panels, which he calls citizens assemblies. Rather than using them to analyze ballot measures, he would establish panels to shadow every elected member of Congress and of state legislatures as an alternative to direct democracy. Arguing that our present system of direct democracy is deeply flawed, he terms his proposal for citizens' assemblies as the middle ground between the town meeting and our present form of representative government. He lays out a fully developed proposal for the size of assemblies, how they should be chosen, and how they would function, and he makes an extended argument in favor of selection by lottery.

University of Colorado Professor Michaele L. Ferguson replies to the Gastil and O'Leary papers. Her concern is the use of initiated or referred ballot measures to oppress minority interests, and she fears that citizens' review panels before elections are an insufficient solution. She reviews the 1992 Canadian referendum that rejected recognition of Québec as a "distinct society" and the 2006 Colorado referendum that rejected legal domestic partnerships for same sex couples. She suggests that citizens' review panels be used on a continuing basis and that minority viewpoints within them be promulgated along with the majority views.