WHEN GOOD VOTERS MAKE BAD POLICIES: ASSESSING AND IMPROVING THE DELIBERATIVE QUALITY OF INITIATIVE ELECTIONS

JOHN GASTIL, JUSTIN REEDY, AND CHRIS WELLS*

A majority of United States citizens reside in states that allow voters to directly decide questions of public policy through an initiative or referendum process. Although originally instituted as a check on elitist legislatures, the initiative process has generated its own set of electoral problems. Voters may find themselves under informed or confused about complex public policy issues, while interest groups attempt to manipulate the public with misinformation campaigns. In an examination of research findings from a 2006 statewide poll of likely voters in Washington, this article explores public perceptions, misperceptions and choices in initiative and referendum elections. The authors also discuss a proposal to reform direct democratic elections: the Citizens' Initiative Review (CIR), which would create a citizen panel to deliberate on proposed initiatives and give voters recommendations on the initiatives. The CIR could help make initiative elections more thoughtful and deliberative, and lead to the enactment of better public policy in states practicing direct democracy.

INTRODUCTION

A growing body of theory and research on public deliberation has established the normative and practical importance of

---

* John Gastil is an Associate Professor in the Department of Communications at the University of Washington. Justin Reedy and Chris Wells are graduate students in the Department of Communication at the University of Washington. The authors would like specifically to thank Jamie Moshin and the editors of the *University of Colorado Law Review* for their editorial assistance. The University of Washington Department of Communication and Ned Crosby provided grant assistance to pay for the research reported herein.

deliberation within formal democratic processes.[1] There exist multiple understandings of what public deliberation entails, but a common overarching definition characterizes deliberation as a thoughtful, substantive exchange of ideas, perspectives, and information oriented toward making a decision.[2] An axiom in this literature is the straightforward idea that the more deliberation, the better the decision. In modern democracies, almost all federal and state laws are created by elected legislatures that render their policy decisions through institutionalized deliberative procedures. These legislatures have established rules and routines for deliberation—such as public hearings, floor debates, and nonpartisan public research services—that, though imperfectly employed in practice, can serve them well if used properly.[3]

During direct democratic elections, however, it is the larger electorate that makes the decisions, and more than 200 million Americans live in a city or state that has used the referendum and initiative process for many years.[4] Now used in a majority of American states, statewide ballot initiatives and referenda often decide important fiscal, social, and environmental policy issues that affect millions of citizens and regulate the flow of billions of dollars in public funds.[5]

With so much on the line in direct elections, it is important to improve our understanding of how much voters know about the issues on which they vote. Some researchers have argued

---

1. *See* JAMES F. BOHMAN, PUBLIC DELIBERATION: PLURALISM, COMPLEXITY, AND DEMOCRACY (1996); Joshua Cohen, *Deliberation and Democratic Legitimacy*, *in* DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS (James F. Bohman & William Rehg eds., 1997); JOHN S. DRYZEK, DELIBERATIVE DEMOCRACY AND BEYOND: LIBERALS, CRITICS, AND CONTESTATIONS (2000); JAMES S. FISHKIN, THE VOICE OF THE PEOPLE (1995); JOHN GASTIL, BY POPULAR DEMAND: REVITALIZING REPRESENTATIVE DEMOCRACY THROUGH DELIBERATIVE ELECTIONS (2000) [hereinafter BY POPULAR DEMAND]; JOHN GASTIL, POLITICAL COMMUNICATION AND DELIBERATION (2008) [hereinafter POLITICAL COMMUNICATION]; AMY GUTMANN & DENNIS F. THOMPSON, WHY DELIBERATIVE DEMOCRACY? (2004).

2. *See* FISHKIN, *supra* note 1; DAVID MATHEWS, POLITICS FOR PEOPLE: FINDING A RESPONSIBLE PUBLIC VOICE 111-116 (1994); Stephanie Burkhalter, John Gastil, & Todd Kelshaw, *A Conceptual Definition and Theoretical Model of Public Deliberation in Small Face-to-Face Groups*, 12 COMM. THEORY 398 (2002).

3. JOSEPH M. BESSETTE, THE MILD VOICE OF REASON: DELIBERATIVE DEMOCRACY AND AMERICAN NATIONAL GOVERNMENT (1994).

4. JOHN G. MATSUSAKA, FOR THE MANY OR THE FEW: THE INITIATIVE, PUBLIC POLICY, AND AMERICAN DEMOCRACY (2004).

5. *Id.*

that voters in direct elections are able to follow the same kind of partisan cues that guide them in candidate elections.[6] If there were a one-to-one correspondence between voters' partisan allegiances and the positions of major parties on issues, these partisan cues would suffice. But voters' policy preferences, let alone their more reflective policy judgments, do not neatly align with these parties.[7] Moreover, partisan cues provide little aid to the significant proportion of voters with vague or non-existent partisan leanings.[8]

Thus, direct elections leave voters to fend for themselves. To make a sound decision reflective of his or her core values, a voter faced with an initiative, referendum, or ballot measure must self-educate. To make sound decisions, these voters need to develop a basic grasp of the proposed law, consider the strongest arguments for and against it, and take into account relevant pieces of information. Even if only for a short period of time, these voters must *deliberate*. Our contention in this essay is that voters encounter both tools and obstacles on the path toward reaching an informed vote in a direct election. It is important that we understand and explore these tools and obstacles to improve the democratic process.

We begin this essay in Section I by reviewing what is known about voter knowledge and behavior in initiative and referendum elections. This review leads us to ask our central question: in direct democratic situations, do conventional electoral mechanisms, such as partisan advertising and media coverage, produce a quasi-deliberative electoral process? Initiative elections can stir passions and even increase voter turnout.[9] In Section II, we review some of the obstacles that keep the public from becoming well informed about initiatives and referenda. In Section III, we endeavor to shed light on these considerations by examining the evidence from recent initiative elec-

---

6. SHAUN BOWLER & TODD DONOVAN, DEMANDING CHOICES: OPINION, VOTING, AND DIRECT DEMOCRACY 158 (1998).

7. JOHN ZALLER, THE NATURE AND ORIGINS OF MASS OPINION 93 (1992).

8. *See* BY POPULAR DEMAND, *supra* note 1; POLITICAL COMMUNICATION, *supra* note 1. *But see* Anders T. Jenssen & Ola Listhaug, *Voters' Decisions in the Nordic EU Referendums of 1994: The Importance of Party Cues*, *in* REFERENDUM DEMOCRACY: CITIZENS, ELITES AND DELIBERATION IN REFERENDUM CAMPAIGNS 169–90 (Matthew Mendelsohn & Andrew Parkin eds., 2001).

9. *See generally* Mark A. Smith, *Ballot Initiatives and the Democratic Citizen*, 64 J. POL. 892 (2002).

tions, particularly the November 2006 contests in the state of Washington.

Many readers may view the results presented in Section III as evidence of the initiative process's failure, but we believe it is foolhardy simply to condemn the process as irretrievably flawed and, therefore, worthy of elimination. The initiative is popular, and in all likelihood, politically invulnerable to repeal.[10] Thus, it is more useful to examine how to improve the process. In this spirit, we present one promising proposal for increasing the deliberative quality of direct elections in Section IV. We scrutinize the Citizen Initiative Review proposal created by civic reformers Ned Crosby and Pat Benn to assess its ability to improve the deliberative judgments that voters make. Inspired by earlier deliberative innovations, particularly the Citizen Jury,[11] the Citizen Initiative Review aims to link small, randomly-selected deliberative bodies to the decisions made by large proportions of the mass electorate. We will assess its ability to improve direct elections and conclude with practical suggestions for implementing this and similar electoral reforms. Our conclusion in Section V draws together the evidence we have considered and explores its relationship to democratic theory and possibilities for implementation.

I. VOTER KNOWLEDGE AND DELIBERATION

In their seminal text, *What Americans Know about Politics and Why It Matters*, Michael Delli Carpini and Scott Keeter argue that knowledge about politics is important because it facilitates citizens' access to and influence in the democratic process.[12] Citizens with greater political knowledge are better able to meet their political needs and fulfill their civic responsibilities.[13] Citing data from presidential elections, Delli

---

10. In the statewide survey reported herein, for instance, voters were asked, "Overall, do you think that statewide initiative elections are a good thing for the state, a bad thing for the state, or that they don't make much difference?" Sixty-seven percent said it was a "good thing," compared to only thirteen percent who said it was a "bad thing."

11. Ned Crosby & Doug Nethercutt, *Citizens Juries: Creating a Trustworthy Voice of the People*, *in* THE DELIBERATIVE DEMOCRACY HANDBOOK 111 (John Gastil & Peter Levine eds., 2005).

12. MICHAEL X. DELLI CARPINI & SCOTT KEETER, WHAT AMERICANS KNOW ABOUT POLITICS AND WHY IT MATTERS 218–19 (1996).

13. *Id.*

Carpini and Keeter show that the best informed voters can consistently connect their underlying values and policy views to their voting choices; under-informed voters can do so only most of the time, and the least informed vote haphazardly.[14]

Though their research, and that of other political knowledge scholars, does not extend to initiative elections, it is plausible that general political knowledge is also crucial to successful navigation of direct democratic elections. Understanding a ballot measure, its political context, and the relevant facts surrounding it would seem to be critical to effective voting.

Only the strictest conception of deliberation, however, would require each voter to gather substantial issue-specific and general systemic political knowledge to make a fully informed choice on a ballot question. A more modest goal, supported by at least some advocates of deliberative democracy[15] and consistent with cognitive psychological research on political behavior,[16] is that voters must at least be able to follow reliable cues that guide them to a voting choice consistent with their deeper values and understandings. The heuristic turn in public opinion theory holds these cues are sufficient guides for politically sophisticated voters[17] as well as for less sophisticated voters who can at least track the endorsements made by recognizable organizations.[18] Arthur Lupia demonstrated this phenomenon during a direct democratic election in which five insurance reform measures were put before voters in California.[19] Predictably, respondents in his study varied in the degree to which they could correctly answer questions about the context and substance of the measures. What was remarkable was that respondents who had little knowledge of the measures, *but knew the position the insurance industry had taken on*

14. *Id.*

15. *See, e.g.*, BY POPULAR DEMAND, *supra* note 1; POLITICAL COMMUNICATION, *supra* note 1.

16. *See generally* PAUL M. SNIDERMAN ET AL., REASONING AND CHOICE: EXPLORATIONS IN POLITICAL PSYCHOLOGY (1991).

17. JOHN ZALLER, THE NATURE AND ORIGINS OF MASS OPINION 218 (1992).

18. Jenssen & Listhaug, *supra* note 8; Arthur Lupia & Richard Johnston, *Are Voters to Blame? Voter Competence and Elite Maneuvers in Referendums*, *in* REFERENDUM DEMOCRACY: CITIZENS, ELITES AND DELIBERATION IN REFERENDUM CAMPAIGNS (Matthew Mendelsohn & Andrew Parkin eds., 2001).

19. Arthur Lupia, *Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88 AM. POL. SCI. REV. 63 (1994). For a refutation in an electoral context, see Larry M. Bartels, *Uninformed Votes: Information Effects in Presidential Elections*, 40 AM. J. POL. SCI. 194 (1996).

the measures, cast votes very similar to those of their better informed peers.[20] Subsequent studies have reported similar results.[21]

This literature suggests it would be a mistake to focus solely on voter knowledge about a ballot measure. Rather, any assessment of initiative deliberation should also assess the degree to which voters pick up endorsement cues. When voters fill out their ballots, do they know where the major parties and other concerned organizations stand on each ballot measure? Such knowledge does not guarantee a rigorous, substantive deliberative process,[22] but at least it would allow voters to rely on the deliberative judgment of parties and other entities who have studied the ballot issues.

II. SIGNS OF INADEQUATE DELIBERATION IN INITIATIVE ELECTIONS

Initiative elections typically receive significantly less media coverage and public attention than the more widely-studied contests for President, United States Senator, or Governor.[23] In such a low-information, low-attention environment, it is all too easy for citizens to be mistaken or misled about the complex policy issues on the ballot. Voters are also less likely to encounter or attend to the few arguments advanced for or against the measures.[24] In forming an initial opinion on an issue, vot-

20. Lupia, *supra* note 19. For a refutation in an electoral context, see Bartels, *supra* note 19..

21. *See* Lupia & Johnston, *supra* note 18; Shaun Bowler & Todd Donovan, *Do Voters Have a Cue? Television Advertisements as a Source of Information in Citizen-Initiated Referendum Campaigns*, 41 EUR. J. POL. RES. 773 (2002); Thomas Christin, Simon Hug & Pascal Sciarini, *Interests and Information in Referendum Voting: An Analysis of Swiss Voters*, 41 EUR. J. POL. RES. 759 (2002). For a review of research on voters and direct democracy, see Arthur Lupia & John G. Matsusaka, *Direct Democracy: New Approaches to Old Questions*, 7 ANN. REV. POL. SCI. 463 (2004).

22. In fact, there is evidence that endorsement cues can systematically mislead voters, including those who are engaged in relatively rigorous information processing when making voting choices. *See* Mark Forehand, John Gastil & Mark A. Smith, *Endorsements As Voting Cues: Heuristic and Systematic Processing in Initiative Elections*, 34 J. APPLIED SOC. PSYCHOL. 2215 (2004).

23. Mark A. Smith, *Ballot Initiatives and the Democratic Citizen*, 64 J. POL. 892 (2002).

24. Chris Wells, Justin Reedy, & John Gastil, Mass Deliberation in Initiative Elections: A Study of Political Knowledge, Partisanship, and Misperception (2006)

ers may also incorporate distorted information about the issue, based on biased presumptions or deliberately misleading campaign messages.[25] All three of these symptoms—misunderstanding, failure to consider opposing views, and misperception—are indicative of inadequate deliberation. In this Section, we examine the recent historical record of initiatives, referenda, and other ballot measures for each of these symptoms.

A. *Misunderstanding the Initiative*

In many recent municipal and state elections, voters have had good reason to be confused or mistaken about a pending ballot measure. First, legislative language is often archaic and complicated, filled with legal or bureaucratic jargon, and difficult for the average citizen to understand. In 1997, Washington State's Initiative 673, for example, asked, "Shall health insurance plans be regulated as to provision of services by designated health care providers, managed care provisions and disclosure of certain plan information?"[26] Voters may not have realized the measure was designed to allow them to retain their personal physician when switching to another health-care plan.[27] One-third of citizens polled in the campaign's final days admitted they did not understand the measure, which was rejected by voters on Election Day.[28]

Such situations are not uncommon with ballot measures. The public may show strong support for a *concept*, but reject the actual *policy* because they cannot connect the two. Recent referenda on affirmative action have illustrated this development. Washington's Initiative 200, in 1998, and a proposition in the city of Houston in 1997, both sought to ban the use of affirmative action in city or state business.[29] However, the

---

(Paper presented at the annual convention of the National Communication Association, San Antonio, TX) (on file with author John Gastil).

25. *Id.*

26. Associated Press, *Poll: Voters Confused by Initiative 673*, COLUMBIAN (Vancouver, Wash.), Oct. 24, 1997, at B1.

27. *Id.*

28. Susan Gilmore, *Seattle Times Washington Poll—Ballot Measures Left Many Confused—Fewer Than 1 in 5 Voters Had a Clear Grasp of All Issues*, SEATTLE TIMES, Nov. 5, 1997, at A1.

29. Editorial, *Initiative 200 Designed to End Affirmative Action: YHR Opposes I-200*, YAKIMA HERALD-REPUBLIC (Yakima, Wash.), Oct. 23, 1998, at A4; Julie

measures stated that the government should not discriminate *or* give preferential treatment to anyone based on their race, ethnicity, sex, or national origin, suggesting that the measures would actually *prevent* discrimination.[30] Houston citizens were confused enough by this ambiguous wording that a poll showed a massive divide between the 28% opposed to the city's affirmative action policy and the 69% supporting a measure banning that policy.[31]

Another common problem in initiative elections is the counterintuitive nature of the ballot questions, which often seek to repeal or overturn existing laws or regulations, setting up a situation in which a "Yes" vote is a vote *against* a policy, and vice-versa for a "No" vote.[32] For example, Floridians were asked in 2004 to decide on a previously approved high-speed rail connection, requiring a "Yes" vote to reject the project and a "No" vote to retain it.[33] In 1998, a controversial electricity deregulation rule was put to the voters of Massachusetts, asking them to vote to overturn the deregulation or to preserve it, making for a sort of electoral double-negative in which a "Yes" vote is both a vote against a policy and a vote in favor of stricter controls on the electricity market.[34]

More recently, Washington voters in 2003 were faced with a bewildering situation after the state enacted sweeping requirements for ergonomically friendly work environments, and pro-business groups responded by trying to overturn the regulations through Initiative 841.[35] A poll of several hundred registered voters in the state's largest county conducted just prior to the election found widespread confusion about the effect of

---

Mason, *In Ballot Battle, Confusion Rules: Poll on Affirmative-Action Issue Finds Language Makes Difference*, HOUSTON CHRON., Oct. 3, 1997, at A1.

30. *Initiative 200 Designed to End Affirmative Action: YHR Opposes I-200, supra* note 29; Mason, *supra* note 29.

31. Mason, *supra* note 29.

32. *See, e.g.*, Peter Callaghan, *Initiative No. 1: 'Yes' Should Mean Yes; 'No' Should Mean No*, NEWS TRIB. (Tacoma, Wash.), Oct. 27, 2002, at B01; Rachel Graves, *Voters Split on Same-Sex Benefits, Support Light Rail; Confusing Ballot Wording Could Affect Outcome of Proposition 2*, HOUSTON CHRON., Nov. 4, 2001, at A17.

33. Jerome R. Stockfisch, *Minimum Wage Rises; High-Speed Rail Falls*, TAMPA TRIB., Nov. 3, 2004, at 2.

34. Sue Reinert, *Confusion Feared on Electric Deregulation Question*, PATRIOT LEDGER (Quincy, Mass.), Sept. 30, 1998, at 19.

35. Chris McGann, *Foes of Initiative 841 Vow to Put Up a Tough Fight*, SEATTLE POST-INTELLIGENCER, Nov. 6, 2003, at B4.

their votes. About three out of four voters who had decided how they would vote on the initiative were unsure whether the measure would overturn the ergonomics rules or retain them.[36] In fact, roughly one-in-six of those voting for the initiative mistakenly believed it would actually enact ergonomics rules.[37]

B. Opposing Arguments and Unintended Consequences

In addition to the widespread confusion often seen in referendum elections, there also seems to be a paucity of substantive debate and discussion on the issues raised during elections. Rather than becoming a marketplace of competing ideas, the public sphere turns into a barren field with few options or arguments for citizens to consider when deciding on a policy question.

The debate on Washington's I-841, for instance, saw citizens failing to even consider some of the key arguments surrounding the issue. Poll results suggest that few voters could connect the initiative to the conflicts between government intervention and business freedoms, regulatory burdens and employee health and safety, or business profit margins and the economic cost of workplace injuries.[38] Whatever semblance of an open debate on the initiative that did take place only reinforced the biases of voters. About ninety percent of initiative proponents could recall an argument supporting their side, and ninety percent of those opposed could give reasoning in support of their position.[39] Less than half of voters in either group, however, could recall an argument from the opposing side, indicating that the majority of voters were missing or simply ignoring those arguments to which they were already opposed.[40] In any case, the election fell well short of not just an idealized deliberation, but even a more pragmatic expectation for a deliberative election, in which voters might have relatively easy

36. John Gastil & Ned Crosby, Editorial, *Voters Need More Reliable Information*, SEATTLE POST-INTELLIGENCER, Nov. 6, 2003, at B7, *available at* http://seattlepi.nwsource.com/opinion/147013_uninformed06.html.

37. *Id.*

38. Gastil & Crosby, *supra* note 36.

39. *Id*

40. *Id.*

access to well-considered arguments and reasoning from two or more sides in the debate.[41]

This failure to consider opposing arguments is most problematic when voting on a ballot measure that may have consequences contrary to those intended by its sponsors or assumed by its supporters. Some measures seem straightforward to voters but could actually open a Pandora's box after being enacted, leading to predicaments concerning constitutionality, enforcement, enactment, and funding.[42] Though some consequences may be unknown on Election Day, in many cases the public could have known about such problems before voting had it attended to the strongest contrary arguments.

In the Houston municipal election in 2001, for example, voters had to decide on two propositions related to a light-rail system already under construction: one would have required a public vote on any expansion of the system, whereas the other would have required a vote on future expansion *and* a vote on the portion of the project already under construction.[43] Legal experts speculated that approval of the second proposition would have required the city to destroy the rail line that was under construction at the time, which voters may not have understood.[44]

Other seemingly innocuous proposals with dangerous and far-reaching consequences have actually won approval from voters. In 2006, a group in Colorado proposed a state constitutional amendment aimed at limiting the impact of lobbyists on state government.[45] The measure, Amendment 41, banned

41. *See, e.g.*, BY POPULAR DEMAND, *supra* note 1; POLITICAL COMMUNICATION, *supra* note 1.

42. Norma Anderson, Editorial, *Amendment 41: Standards of Conduct in Government on the One Hand...and on the Other: Voters Who Take the Time to Read Amendment 41 Are Likely to Be Confused, But They Shouldn't Worry, Because Most Lawyers Are Confused by the Measure, Too; It Goes Too Far and Invades Privacy*, DENVER POST, Oct. 15, 2006, at E02; *see also* Katie Kerwin McCrimmon, *Implications of Ethics Law Unknown*, ROCKY MOUNTAIN NEWS (Denver, Colo.), Nov. 11, 2006, at 13A.

43. Graves, *supra* note 30, at 17; Rad Sallee, *Rail Proposals May Daze Voters / Propositions 1 and 3 Appear to be Competing, Confusing*, HOUSTON CHRON., Nov. 1, 2001, at 30.

44. Sallee, *supra* note 43.

45. The Colorado Secretary of State's official website contains background information on the amendment. Colorado Secretary of State Elections Center, http://www.elections.colorado.gov/DDefault.aspx?tid=835&vmid=748 (last visited June 4, 2007).

outright any gifts from lobbyists to state legislators or other state employees, and limited all gifts to state employees and their family members. The amendment required a "cooling-off period" of two years before former legislators could become lobbyists, and established an independent ethics commission to oversee violations of the new requirements. Proponents argued that the measure would "level the playing field" of state politics between moneyed interests and regular citizens,[46] and prevent future scandals in which legislators take gifts in exchange for political favors.[47] The amendment was overwhelmingly approved by voters.[48]

Before the 2006 election, however, opponents of the amendment warned that it would have sweeping effects on all state employees, and inadvertently outlaw harmless gifts and in-kind donations at all levels of government.[49] They warned that businesses might not be able to sponsor Little League uniforms for a team that included the child of a government employee, or that state workers' children might be disqualified from some college scholarships that qualified as gifts.[50] Other possible side effects included preventing state employees from accepting free child care from a neighbor, or an invitation to a home-cooked dinner at a friend's house.[51]

Amendment 41 opponents might not have been doomsayers, either. Since the measure won handily and later took effect, authorities like the president of the University of Colorado and the state's attorney general have warned that the amendment does indeed bar many college scholarships for state employees and their children, and prevents university faculty

---

46. April M. Washington, *Measure's Effect on Scholarships Unclear*, ROCKY MOUNTAIN NEWS (Denver, Colo.), Oct. 13, 2006, at 34A.

47. *See* Editorial, *Amendment 41 is a Blueprint for Ethics; The Measure Would Restrict Gifts from Lobbyists to Officials and Employees of State and Local Governments. We Urge Voters to Approve it on Nov. 7*, DENVER POST, Oct. 20, 2006, at B06.

48. Approximately 63% of voters backed the measure. State of Colorado, Colorado Cumulative Report, http://www.sos.state.co.us/pubs/electionresults (last visited June 4, 2007).

49. Chris Frates, *Battle Lines Drawn on Gift Ban: Opposition Group Says Ballot Item Would Bar Kids from Scholarships; Backers of Amendment 41 Dispute That the $50 Limit Extends to the Activities of Public Officials' Children*, DENVER POST, Sep. 21, 2006, at B02; *see also* Anderson, *supra* note 42.

50. Frates, *supra* note 49.

51. Editorial, *Dangerous Overkill in Amendment 41; A Draconian Measure in the Name of Ethics*, ROCKY MOUNTAIN NEWS (Denver, Colo.), Oct. 2, 2006, at 38A.

from collecting money from academic awards like the Nobel Prize.[52] At least one prospective college student has already been summarily disqualified from a scholarship program because his mother works for the state public defender's office.[53] Though backers of the measure claimed that state legislators could clarify the amendment to exclude such ridiculous restrictions, legal experts have warned that such action may not be possible, as the "plain language" of the amendment supersedes the stated intent of the parties who drafted the law.[54] Even now, the amendment's constitutionality and enforceability are being debated in the courts and the Colorado state legislature.[55]

In a non-deliberative election, voters may be swayed by the *general* intention of a proposed law without considering the opposition's concerns about its *specific* consequences. If their only exposure to an initiative is the title and wording on the ballot, voters' existing biases are activated, making it unlikely they will strongly consider further the consequences of their votes. In a more deliberative election, voters would have a straightforward means of hearing the strongest arguments from the proponents and critics of a measure, along with relatively unbiased experts. The confluence of these arguments would result in a significantly lower likelihood of the enactment of laws with unintended consequences.

C. *Systematic Misinformation*

Voters in initiative elections not only have to worry about misunderstanding a proposal or failing to consider its unintended consequences, they also need to be aware of the possibility that they are fundamentally mistaken about the facts surrounding a policy issue. Voters can fall prey to manipulation at the hands of political campaigns, or through a self-deception of

52. McCrimmon *supra* note 42; *see also Suthers: Amendment 41 Prohibits Nobel Prize Money*, DENVER BUS. J., Dec. 28, 2006, at http://denver.bizjournals.com/denver/stories/2006/12/25/daily25.html.

53. Mike Saccone, *Ethics Measure Disqualifies Local Scholarship Aspirant*, DAILY SENTINEL (Grand Junction, Colo.), Jan. 31, 2007, at 1A.

54. *Suthers: Amendment 41 Prohibits Nobel Prize Money*, *supra* note 52.

55. *See, e.g.*, Cara DeGette, *# 41: Colorado's Hottest Political Football*, COLO. CONFIDENTIAL, Feb. 2, 2007, http://www.coloradoconfidential.com/showDiary.do?diaryId=1398.

their own design.[56] Campaign influences range from subtle prodding, such as opponents claiming that a "problem" being addressed by an initiative is not a problem at all, to outright falsehoods and gross manipulation, such as lying to prospective voters about an initiative's effects.

For example, Michigan residents signing a petition for an anti-affirmative action referendum in 2006 claim that they were told the measure would actually protect affirmative action. The ban passed by nearly a sixty to forty percent margin and is now being contested in court on constitutional grounds.[57]

People have also been manipulated or misinformed by the inclusion of alternate measures on the ballot. When two or more initiatives in one election cover the same issue, voters can become confused about whether they should support one, neither, or both. In a recent election in California, consumer advocates had backed a proposition addressing the rising price of prescription drugs.[58] The pharmaceutical industry supported a proposition on the same issue, but that measure relied on voluntary participation by drug companies and would have lowered drug prices for fewer people than the consumer-supported proposition. A political scientist in California argued that the measure was a ploy by the pharmaceutical industry—which spent $80 million on the campaign—to flummox voters on the issue of prescription drug prices, leaving them unsure as to which one would give more benefit to consumers. Both measures failed, and observers labeled the dual defeat as a victory for the pharmaceutical industry.

A similar dynamic arose in the 2001 Houston municipal election on light rail, in which two propositions sought to require a public vote on any rail-system expansions.[59] However, one of the measures would have required a separate vote on the portion of the rail system already under construction. Supporters of public transit were pushing for a "Yes" vote on one measure, and a "No" vote on the other, so voters could easily

56. For a general discussion of these problems, see DAVID BRODER, DEMOCRACY DERAILED (2001).

57. Paul Egan, *Group Will Sue to Block Affirmative Action Ban*, DETROIT NEWS, Nov. 9, 2006, *available at* http://proquest.umi.com.offcampus.lib.washington.edu/pqdweb?did=1159254091&sid=2&Fmt=3&clientId=8991&RQT=309&VName=PQD

58. Ethan Rarick, Editorial, *Tactical Confusion; It's a California Ballot Tradition—Confound the Voter Any Way You Can*, L.A. TIMES, Oct. 31, 2005, at B11.

59. Sallee, *supra* note 44; Graves, *supra* note 32.

have confused the two propositions. Indeed, though the proposition requiring a vote on rail expansions passed, the other proposal, which had the same vote requirement but would have repudiated the rail project already under way, narrowly lost, 54% to 46%.[60] Such competing measures can obfuscate an issue enough to leave voters confused in the voting booth, even if they believed they had their mind made up in support of citizen oversight for light rail or of limiting prescription drug prices.

A more insidious shift of electoral outcomes, however, comes when voters become misinformed about the facts surrounding an issue. Survey data from two recent Washington State elections has shown that voters can be mistaken about the empirical world in a way that systematically affects their policy preference.[61] That is, they hold a false belief about an issue, and that belief makes them more likely to vote a certain way than someone who is not confused about the facts.

In the 2003 campaign on Washington's I-841, for example, people who incorrectly believed that only a handful of the state's workers suffered ergonomics-related injuries each year were more likely to vote to overturn recently enacted workplace-ergonomics regulations, compared to voters who correctly believed that tens of thousands suffered such injuries each year.[62] Likewise, those who incorrectly believed that most other states had similar ergonomics regulations—indicating that Washington was just following along with other states on this issue—were more likely to vote to keep the regulations than those who knew that the state's rules were unlike anything else in the country.[63]

A more recent study of three Washington initiatives on the 2006 ballot found the same results. People whose factual beliefs were systematically wrong were also more likely to vote in the direction of their misperceptions—pro-initiative for believing falsehoods that favored the measure, and anti-initiative for holding wrongheaded beliefs in opposition to the initiative.[64]

---

60. Rad Sallee, *And the Winner Was . . .*, HOUSTON CHRON., Nov. 24, 2001, at 41.

61. John Gastil & Ned Crosby, *Taking the Initiative: Do Washington Voters Know What They're Doing When They Take the Law into Their Own Hands?*, SEATTLE TIMES, Nov. 26, 2006, at D6; Wells et al., *supra* note 24.

62. Wells et al., *supra* note 24.

63. *Id.*

64. Gastil & Crosby, *supra* note 61.

These findings have provided the basis for a new theoretical model of voter decision-making in non-deliberative elections.[65] According to this model, voters' ideology and underlying attitudes affect not just their policy preferences, but also their processing and retention of empirical facts. The implications are staggering: one might expect that strong partisans are more likely to support a particular policy or issue because of their partisanship, but in this model, voters may literally be filtering out, ignoring, or disbelieving facts that do not match their partisan conception of reality. Previous models of opinion formation and voter decision-making have allowed for the possibility that strong partisans will filter out strategic messages from ideological opponents, but did not allow for the possibility of facts themselves being shaped by partisanship or ideology.[66]

D. Summary

Initiative elections in the United States today are replete with problems, many associated with greatly limited deliberation. The preceding discussion has illustrated some of the symptoms of such elections: confusion about a ballot measure's direct effects and secondary consequences; failure to consider opposing arguments, particularly regarding the unintended effects of passing a measure; and reinforcement of voters' existing ideologies and biases, misunderstanding similar or competing measures, and even the systematic misperception of the fundamental facts at hand.

III. INITIATIVE KNOWLEDGE IN WASHINGTON STATE

It is useful at this point to complement these illustrative cases with a more in-depth portrait of voter knowledge in a single campaign. The aim here is to get a better sense of what voters know in a given election and where they get their information. In particular, it is important to see how much of an information advantage the more politically knowledgeable voters have over their less-informed peers. It is unclear whether general political knowledge leads to more engagement with and

---

65. *See* Wells et al., *supra* note 24.
66. ZALLER, *supra* note 17.

understanding of initiatives. Moreover, it remains unclear what level of knowledge these more sophisticated voters reach.

A. Research Setting

In many ways, the 2006 cycle in Washington was a typical midterm election for the state. At the high-profile federal level, the state's junior, and by most accounts more liberal Democratic senator, Senator Maria Cantwell, was wrapping up a campaign that had begun close but widened in its last months, undoubtedly helped by the Republican party's national problems.[67] Washington's Congressional delegation, however, was unaffected by the Democratic surge, with even Republican Congressman Dave Reichert, from the state's most hotly contested Eighth District, winning re-election.[68]

At the state level, 2006 was not an election year for the Governor, and to little surprise Democrats gained several seats in the state legislature.[69] The highest profile state-level contests were the three initiatives to be considered here:

- Initiative 920 would have repealed Washington state's estate tax.[70]
- Initiative 933 would have required the state to compensate landowners for the expense of compliance with land-use regulations.[71]
- Initiative 937 would have mandated that particular percentages of the state's energy come from renewable sources.[72]

These served as a good set of initiatives to study, as each had appeared previously in one form or another in other states. Outside Washington, other voters had previously debated whether to repeal estate taxes (e.g., Virginia),[73] require com-

67. Alex Fryer, *Cantwell Cruises by McGavick for Second Term*, SEATTLE TIMES, Nov. 8, 2006, at B1.

68. Ralph Thomas, *Democrats Make Big Gains in State*, SEATTLE TIMES, Nov. 8, 2006, at A1.

69. *Id.*

70. Washington Secretary of State, Proposed Initiatives to the People - 2006, http://www.secstate.wa.gov/elections/initiatives/people.aspx?y=2006 (last visited June 23, 2007).

71. *Id.*

72. *Id.*

73. Dan B. Fleming, *'Death' Tax Repeal Will Cost Much, Benefit Few*, THE ROANOKE TIMES, Feb. 16, 2006, *available at*

pensation for land use rules (e.g., Oregon),[74] or mandate renewable energy portfolios (e.g., Colorado).[75]

Moreover, the profile of the three initiatives was typical for statewide initiatives in Washington. All three received editorial attention from the state's major papers, and all three were the focus of organized pro and con campaigns.[76] There was variation in popularity among the three (with I-920 and I-933 receiving more media attention than I-937), but it is reasonable to assume that an attentive citizen would have been exposed to and had the opportunity to learn information about the three initiatives from the major Washington media. Thus, we might presume that the 2006 Washington election provided at least as good an opportunity for deliberative and informed public policy decision-making as did any other conventional election.

B. Survey Sample

The data presented here were generated as part of the Washington Poll's analysis of voter attitudes just prior to the 2006 elections in Washington State.[77] Pacific Market Research implemented a telephone survey based on a randomly selected telephone number list that interviewed 700 registered Washington voters from October 25–31, 2006.[78] At the outset of the

---

http://www.roanoke.com/editorials/commentary/wb/wb/xp-52819 (last visited July 13, 2007).

74. Christopher Cooper, *Politics and Economics: Court's Eminent-Domain Edict Is a Flashpoint on State Ballots*, WALL ST. J., Aug. 7, 2006, at A4.

75. *Legislation to Brag About*, ROCKY MOUNTAIN NEWS (Denver, Colo.), May 5, 2007, *available at* http://www.rockymountainnews.com/drmn/government/article/0,2777,DRMN_23906_5522106,00.html (last visited July 13, 2007).

76. *See* K.C. Golden, *Initiative 937: Vote "Yes" for a Clean Energy Future*, SEATTLE TIMES, Oct. 20, 2006, *available at* http://seattletimes.nwsource.com/html/opinion/2003313268_kcgolden20.html (last visited July 13, 2007).; Andrew Garber, *Does Clean-Energy Initiative Promise More Than it Can Deliver?*, SEATTLE TIMES, Oct. 11, 2006, at A1; Andrew Garber, *Estate Tax: A Debate Over Equity*, SEATTLE TIMES, Oct. 23, 2006, at B1; Editorial, *The Elite's Inequity*, SEATTLE POST-INTELLIGENCER, Oct. 31, 2006, at B6; Gregory Roberts, *Money is Surging Through Campaigns Special Interests, Rich Individuals on All Sides Giving*, SEATTLE POST-INTELLIGENCER, Oct. 18, 2006, at B1.

77. *See* The Washington Poll, http://www.washingtonpoll.org (last visited June 23, 2007).

78. *Id.* (Minimum effective sample size was 463 for each initiative. All 700 respondents took the general survey, but for the initiative-specific knowledge items, randomly-created sub-samples were used to limit the total survey duration).

survey, respondents were screened such that all of the respondents were registered voters who had a steady history of voting in statewide elections.[79] When asked, 95.6% of those surveyed said it was "almost certain" they would vote on November 7 or before by absentee ballot.[80]

C. *Survey Design*

The survey was designed to tease out the questions of voter attitudes, knowledge, and misperceptions described above. In addition to questions of preference—such as "Will you vote yes or no on I-920?"—the survey included factual right-or-wrong items pertaining specifically to the initiatives being studied.[81] It also asked respondents whether they were aware of the positions of four prominent political groups on each initiative (the "Endorsement Questions").[82]

In presenting the results of this survey, respondents were divided into two groups based on their political sophistication. The 41.9% of respondents who were able to correctly answer at least four out of five state and national political knowledge questions (e.g., "Do you happen to know what federal office is now held by Alberto Gonzales?") were labeled as having a high level of political sophistication. The remainder were labeled as low-sophistication voters.

D. *Use of the Voters' Pamphlet*

One set of questions in the survey asked voters whether they recalled receiving in the mail and reading the Voters' Pamphlet.[83] In the State of Washington, this pamphlet is mailed by the Secretary of State to every registered voter, and it is presumed to be a useful means of delivering relevant information to voters on initiatives and referenda.[84]

---

79. *Id.*
80. *Id.*
81. *See* Appendix A.
82. *Id.*
83. *See Id.* The wording of the two questions displayed in Table 1 is displayed in Appendix A under the heading 'Table 1.'
84. Press Release, Washington Secretary of State, 2006 Voters' Pamphlet reaches Washington Mailboxes (Oct. 6, 2006), http://www.secstate.wa.gov/office/osos_news.aspx?i=x7KGEolrZqbLLadxvccp%2FQ%3D%3D (last visited July 16, 2007).

At the time of the survey, these official pamphlets had all been mailed, and Table 1 shows that 89.6% of voters recalled receiving the Voters' Pamphlet in their mailbox. A slightly higher proportion (94.8%) reported that they usually read the Pamphlet before deciding how to vote on a statewide initiative. High-sophistication voters were significantly more likely to report receiving and using the Pamphlet than were their low-sophistication counterparts, but the figures were high for both groups.

Table 1: ***Recalling Receipt and Use of the Washington Voters' Pamphlet, by Political Sophistication***

Political Sophistication			
Survey Question	**Overall**	**Low**	**High**
Received 2006 Voters' Pamphlet	89.6%	87.4%	92.7%*
Typically reads Voters' Pamphlet	94.8%	93.6%	96.6%*

* *t*-test comparison of low vs. high sophistication was significant, $p < .05$. N =700.

Voters who typically read the Pamphlet did not consider all of the sections to be of equal value. As shown in Table 2, interviewers asked how helpful each of three parts of the Pamphlet were and found that a majority (55.2%) reported the pro and con arguments as being "very helpful," with a total of 93.4% finding this section at least "somewhat helpful." The explanatory statement, which summarizes an initiative, was "very helpful" to 43%, and the fiscal statement was "very helpful" to just 30.1%. The average rating of each section was similar for low- and high-sophistication groups, except that the high-sophistication group reported finding more utility in the explanatory statement. For example, 48.2% rated it as "very helpful," whereas 38.9% of low-sophistication voters gave it a similar rating.

Table 2: ***General Utility of Different Sections of the Washington Voters' Pamphlet***

Pamphlet Section	Very helpful	Somewhat helpful	Not helpful	Total
Explanatory statement	43.0%	49.4%	7.6%	100%
Fiscal statement	30.1%	57.1%	12.8%	100%
Pro and con arguments	55.2%	38.2%	6.6%	100%

N=700.

E. Exposure to Campaign Messages

One of the purposes of the Voters' Pamphlet is to reach those voters who are not routinely following the news about initiatives and referenda.[85] Table 3 shows Washington voters' responses when asked how closely they followed the news about each of the three statewide initiatives in 2006. Two-thirds reported following two of the initiatives (I-920 and I-933) at least "somewhat closely," compared to the minority (48.6%) who paid as much attention to I-937. Across the three issues, more voters reported following each issue "not too closely" or "not at all" than "very closely."

Table 3: ***How Closely Washington Voters Followed the 2006 Initiatives***

Following news	I-920 (Estate)	I-933 (Property)	I-937 (Energy)
Not at all	10.7%	9.5%	20.2%
Not too closely	21.8%	21.6%	31.2%
Somewhat closely	43.1%	42.5%	37.5%
Very closely	24.4%	26.4%	11.1%
Totals	100%	100%	100%

85. *Id.*

For each of the three initiatives, high-sophistication voters were more likely to follow the news surrounding these ballot measures, and these differences were considerable and statistically significant.[86] On I-920, 76.7% of high-sophistication voters followed the issue at least "somewhat closely," compared to 60.8% of low-sophistication voters. For I-933 and I-937, the comparisons were 76.8% to 63.1% and 53.5% to 45.1%, respectively.

Based on these results and the ones shown in Table 4, it appears that voters were more likely to be getting information from news coverage of initiatives than they were from direct contacts from the pro and con campaigns. When asked the rate at which campaigns were "sending out mailings, airing TV commercials, and making phone calls and visits" to their homes, a majority often said that such contacts occurred once-a-month or less (50.6% for I-920, 43.7% for I-933, and 63.0% for I-937).[87] At the other extreme, roughly 10 to 25% of voters reported that these contacts were coming at least once a day.

Table 4: ***Frequency of Recalled Campaign Contacts on 2006 Washington Initiatives***

Rate Contacted	I-920 (Estate)	I-933 (Property)	I-937 (Energy)
Not at all	38.1%	31.6%	48.9%
About once a month	12.5%	12.1%	14.1%
About once a week	28.0%	32.7%	25.1%
About once a day	13.3%	16.6%	8.1%
More than once a day	8.1%	7.0%	3.8%
Totals	100%	100%	100%

N=700.

There were differences between the average campaign contact rates reported by low- and high-sophistication voters, and they followed the same general pattern. On I-933, 52.2% of low-sophistication voters recalled at least weekly contacts,

86. All statistically significant comparisons are from directional *t*-tests, $p < .05$.

87. *See* Appendix A, *infra*. Question wording is under the heading Table 4.

compared to 61.9% of high-sophistication voters. For I-937, the rates were 33.8% and 41.5%, respectively. No significant difference was found for I-920.

F. Voter Knowledge

Thus far, the results show that high-sophistication voters are, as one would expect, more engaged and attentive in initiative campaigns. But does their greater attention and exposure to the Voters' Pamphlet, news media, and campaign communications translate to substantially greater knowledge about the initiatives themselves? And how high is that knowledge, relative to what we might imagine as an absolute standard for deliberation?

To assess voter knowledge on initiatives, a battery of eight factual questions was asked of a sub-sample of voters on each initiative.[88] These were a mix of true or false and multiple-choice questions that assessed knowledge of relevant law, statutory precedent inside and outside Washington, and other policy-relevant facts. For example, on I-920, which proposed repealing the state estate tax, interviewers asked, "What dollar amount of assets is required for a household to have to pay the estate tax? Is it $10 million, $2 million, $750,000, $500,000, or $300,000?"[89] All but the $2 million response was coded as incorrect/don't know.

By guessing alone, a respondent could statistically be expected to answer approximately three out of eight questions correct (37.5%). Table 5 shows that the actual percentage of correct responses was not much greater than that ratio, with the highest accuracy level obtained for I-920 (40.4% of questions answered correctly).

88. *See Id.*
89. Appendix A, Q22C.

Table 5: ***Percentage of Correct Answers to Eight Knowledge Items for Each of Three 2006 Washington Initiatives, Broken Down by Political Sophistication***

	Political Sophistication			
Initiative	N	Overall	Low	High
I-920 (Estate)	471	40.4%	35.4%	47.6%*
I-933 (Property)	463	34.0%	30.2%	38.7%*
I-937 (Energy)	466	37.7%	35.0%	41.7%*

* *t*-test comparison of low vs. high sophistication was significant, $p < .05$. N=700.

It is interesting then to compare the performance of high-sophistication voters with that of their low-sophistication counterparts. Recall that, by definition, these voters had greater knowledge of national and state politics, having correctly identified public officials or principles of government in a battery of five generic political knowledge questions. When confronted with questions about specific initiatives, these high-sophistication voters had higher knowledge scores on all three initiatives. For example, for I-920, high-sophistication voters answered 47.6% of the factual questions correctly, whereas low-sophistication voters offered correct answers to only 35.4% of the questions. Nevertheless, it is at least as noteworthy that the average high-sophistication voter could not correctly answer half the factual questions posed.

Far from a trivia contest, these factual items tested critical knowledge about the nature of the proposed law, the status quo, and related issues.[90] Washington voters were, in effect, voting on repealing taxes and creating or limiting regulations without a firm grasp of these proposals, or their legal and historical context. Moreover, this was true not just for the less attentive or sophisticated voters, but it was also true for even those voters who generally claim to follow initiatives and their respective campaigns.

90. See Appendix A for the specific wording and content of these items.

As discussed previously, some observers would argue at this juncture that voters do not need all this information.[91] In this view, all they need to know is who the key supporters and opponents are on these initiatives. Table 6, however, shows that voters are unclear about the key endorsements in each contest. For each election, voters were asked about the positions taken by four organizations—the two major parties and the single most widely-known and relevant proponent and opponent. Across the whole population, voters correctly identified the positions of between 33.6% (I-937) and 44.1% (I-933) of endorsers and opponents.

Table 6: *Percentage of Correct Answers to Four Endorsement Knowledge Items for Each of Three 2006 Washington Initiatives, Broken Down by Political Sophistication*

Political Sophistication				
Initiative	**N**	**Overall**	**Low**	**High**
I-920 (Estate)	471	40.6%	31.6%	54.1%*
I-933 (Property)	463	44.1%	33.7%	56.8%*
I-937 (Energy)	466	33.6%	29.8%	39.3%*

* *t*-test comparison of low- vs. high-sophistication was significant, $p < .05$.

High-sophistication voters, once again, fared better than their low-sophistication counterparts (See Table 6). These gaps are the largest reported, and they testify to the power of political savvy as a means of tracking key endorsement information. Even here, however, sophisticated voters could only pin down correctly two of the four endorsements for two of the three initiatives. By guessing alone, one could have correctly guessed half the endorsements, or roughly a third of them, if also considering "no position taken" as a possible reply.

Looking across the full electorate, Initiative 920 provides an illustration of what these endorsement-knowledge scores mean. For that ballot measure, roughly a third of all voters (36.1%) could not correctly identify the position of any of the

91. ZALLER, *supra* note 17. *See also* Jenssen & Listhaug, *supra* note 8.

four endorsing organizations. Another third (31.8%) knew one or two of them, and the remaining third (32.1%) of voters knew three or four. In sum, a third of voters—a group including both the high-sophistication and the low-sophistication voters—had a solid grasp of who was on which side of an issue, but a roughly equal proportion completely lacked such heuristic information.

G. Summary

Looking across these data, it is evident that most likely voters—even most of those who fall in the high-sophistication category—have significant gaps in their knowledge, both of substantive ballot issues and related endorsements. Most voters pay some degree of attention to these issues during elections and receive some periodic contact from campaigns but often still fail to sort out the issues and key players accurately.

Critics may see data like these as vindication of their calls for the restriction or abolishment of the initiative process. However, given the widespread mistrust of politicians, it seems unlikely that citizens would welcome any restriction or elimination of their direct democratic powers in states and municipalities that already allow ballot measures. Rather, we suggest thinking in terms of *adding* to rather than subtracting from the electoral process. Specifically, reforms aimed at making initiative elections more deliberative could be the key to improving direct democratic systems.

IV. DELIBERATIVE REFORM

Some observers would say the best way to address low voter knowledge would simply be to amplify the current electoral process.[92] In other words, campaigns work, but they just need to be stronger, louder, and longer. This approach, however, is more theoretical than practical, and would be difficult to implement. Exhortations to initiative proponents and opponents to spend more money are unlikely to have any real effect. Public funding to augment initiative campaigns that already spend millions of dollars promises little more. Moreover, it is

92. See the concluding chapter of SAMUEL L. POPKIN, THE REASONING VOTER: COMMUNICATION AND PERSUASION IN PRESIDENTIAL CAMPAIGNS (2d ed. 1994).

unlikely that such campaigns would reach much deeper into the electorate, given that rational campaigns ruthlessly target voters, routinely exclude the less engaged and avoid their most strident opponents.[93] The net result of more campaigning likely would be more systematic misperception without any increased understanding of other views, or the initiative measure itself.

The most attractive alternative is to create a new and powerful deliberative public space in the existing electoral arena. We will describe one such approach below, but first we begin by looking at an important precedent for deliberative politics—the Citizens' Assembly recently created in British Columbia.

A. *The British Columbia Citizens' Assembly*

Many deliberative public meetings both large and small are changing the social and political landscape in countries across the globe.[94] Many of these meetings succeed by breaking out of the mold of conventional public hearings and the like, bringing together citizens and policymakers in novel settings and for special purposes.

The recent experience of British Columbia, Canada provides a good illustration of this new kind of public meeting. To put the system in context, British Columbia's provincial elections, akin to state legislative contests in the United States, occur in geographically separate districts. The top vote-getters in each district—called a "riding" in Canada—become elected members of the provincial assembly.[95] By winning with narrow margins in key districts, a party can win a majority of elections with less than a majority of the votes. In 1996, the New Democratic Party (NDP) won 39% of the votes across the prov-

---

93. This is a cornerstone principle of most effective Get-Out-the-Vote campaigns. *See* Donald P. Green & Alan S. Gerber, GET OUT THE VOTE: HOW TO INCREASE VOTER TURNOUT (2004), *passim*.

94. *See generally* THE DELIBERATIVE DEMOCRACY HANDBOOK: STRATEGIES FOR EFFECTIVE CIVIC ENGAGEMENT IN THE TWENTY-FIRST CENTURY (John Gastil & Peter Levine eds., 2005).

95. *See* CBC Archives, How the West Is Won: B.C. Election 1952–2003, http://archives.cbc.ca/IDD-1-73-1637/politics_economy/elections/british_columbia_elections (last visited June 29, 2007) (Reviewing British Columbia elections); *see also* Encyclopedia of British Columbia, http://www.knowbc.com.

ince yet managed to retain a majority in the House (thirty-nine out of seventy-five seats). The party winning the second-most seats, the BC Liberals, won a greater proportion of the total votes yet earned fewer seats. This prompted the Liberals' leader, Gordon Campbell, to promise that if the Liberals won a majority in the House, they would create a special citizen body to draft reforms to the system by which votes are counted in the provincial elections.

In 2001, the BC Liberals won 57% of the vote province-wide, and the same distortion occurred, this time in their favor: the Liberals took a remarkable seventy-seven out of the seventy-nine seats in the province. In spite of winning nearly every seat under the existing electoral system, Premier Campbell pushed forward the proposed idea of having everyday citizens develop campaign reforms. This came to fruition in the 2004 British Columbia Citizens' Assembly.

The Assembly consisted of 160 randomly-selected citizens, one man and one woman from each riding, plus two at-large Aboriginal members.[96] Over the course of the year, the Assembly met face-to-face several times to study different electoral systems and consider ways they could be adapted to the unique circumstances of British Columbia. The Assembly also held public hearings across the province, giving the general public the chance to comment and offer suggestions as the Assembly weighed different alternatives to the current electoral system. In October 2004, the Assembly voted 146 to 7 in favor of replacing British Columbia's electoral system with a Single Transferable Vote model, which lets voters rank candidates within multi-member districts.

Part of what made the Assembly's meetings unique was the power they wielded. From the outset, it was understood that the Assembly's recommendation would be put before the people of British Columbia for ratification. Indeed, the Assembly's proposal was submitted to the electorate as a referendum

96. The best overview of the Assembly is provided in DESIGNING DELIBERATIVE DEMOCRACY (Mark Warren & Hilary Pearse eds., forthcoming). Earlier articles of use include R.S. Ratner, *The B.C. Citizen's Assembly: The Public Hearings and Deliberations Stage*, 28 CAN. PARLIAMENTARY REV. 24 (2005); R.S. Ratner, *British Columbia's Citizens' Assembly: The Learning Phase*, 27 CAN. PARLIAMENTARY REV. 20 (2004), *available at* http://www.parl.gc.ca/Infoparl/english/issue.htm?param=160&art=286 (last visited June 23, 2007).

in the May 17, 2005 general election in British Columbia. A majority of voters in all seventy-seven of British Columbia's seventy-seven ridings approved the Assembly's proposal, with 57% of all votes cast in favor of the proposal. British Columbia's legislature, however, previously had set the bar for passage at 60% of the popular vote. Because of the large majority supporting the proposal—and because of the short duration of the campaign—British Columbia's government has chosen to let the voters consider the proposal one more time in 2009.[97]

B. *Citizens' Initiative Review*

The British Columbian Citizens' Assembly was a bold step forward, and Ontario convened a similar Assembly of its own in 2006-2007.[98] The Assembly simply illustrates the potential power of citizen deliberation. A similar approach can be used in initiative contests to promote a more deliberative electoral process for those issues already appearing on the ballot through other means, including signature gathering for initiatives, and referenda passed on by the legislature.

The Citizens' Initiative Review (CIR) is likely the best candidate to take on that task. The basic concept of the CIR is to have a body of one's peers assess initiatives and communicate its findings to the general public.[99] Similar to a jury, the review panel is drawn by lot from the public at large, but unlike a jury, it summarizes key issues and arguments and sometimes makes an implicit recommendation, rather than rendering a decisive judgment. It is more like a Citizens' Assembly, in that it has a period of public deliberation during which it hears different points of view. Unlike an Assembly, however, a CIR panel's work is done in one week, rather than a period of months, owing to the timing of the electoral cycle.

In fact, the CIR bears resemblances to a wide variety of deliberative practices, most notably the Citizens' Jury.[100] This is

97. *See* Citizens Assembly Blog, http://snider.blogs.com/citizensassembly/2006/04/citizens_assemb.html (last visited June 23, 2007) (discussing updates on Assembly Referendum).

98. *See* Citizens Assembly on Electoral Reform, http://www.citizensassembly.gov.on.ca (last visited June 23, 2007).

99. *See* Citizens Initiative Review, www.cirwa.org (last visited June 23, 2007) (describing the Citizens Initiative Review).

100. *See* Gastil & Levine, *supra* note 94 (summarizing the different processes).

not surprising, as Ned Crosby, the originator of the Citizen Jury concept, was also the co-creator of CIR, along with Pat Benn.[101] The basic CIR model is adaptable to a variety of states, levels of government, or other contexts, but the most concrete proposal has been written as legislation for the State of Washington.[102]

As proposed in Washington, the CIR would be an independent commission governed by a board made up of six citizen alumni from previous CIR panels (or equivalent experience to populate the first year's board), plus three trained moderators (with CIR experience after the first year), and three appointees from state government.[103] The board would hire a director, who would run the day-to-day operations of the CIR, including the hiring of administrative staff.[104]

In any given year, the CIR would proceed as follows: when an initiative qualified for the ballot, the Secretary of State would inform the CIR director, who would then assemble neutral witnesses to provide background testimony, along with pro and con witnesses.[105] They would be chosen in the same manner as is currently employed to write pro and con Voters' Pamphlet statements.[106] The CIR director would also commission a nonpartisan survey institute to gather a representative random sample of the general public, from which a panel of twenty-four citizens would be drawn to make up the initiative's CIR panel.[107]

The CIR panel would convene for a week, following a schedule that might look like the one below:

- **Day 1:** General orientation and background presentations by neutral witnesses.
- **Days 2–3:** Pro and con testimony, cross-examination, and panel deliberation.

---

101. Others who have offered substantial input into the design of the CIR include Paul Becker, John Gastil, Duncan Holloman, Alice Ostdiek, Larry Pennings, and Susan Latham.

102. *See* Appendix B.

103. *Id.*

104. *Id.*

105. *Id.*

106. The "pro" side is headed up by the official proponents of an initiative, whereas the "con" side consists of a coalition of opponents. As with the Voters' Pamphlet in Washington and most other states, any disputes among opponents can be resolved by the Secretary of State's office.

107. *Id.*

- **Day 4:** Panel deliberation and feedback from pro, con, and neutral witnesses and interested members of the public.
- **Day 5:** Drafting and presentation of final panel statement.

The final product of the panel is its one-page statement appearing in the Voters' Pamphlet. It would consist of three elements: a consensus statement, noting all the considerations and relevant facts on which the panel was unanimous; the strongest pro and con arguments; and the balance of its judgments, such as fourteen for, and ten against the initiative. The pro arguments would be offered by those who, after deliberating for four days, found themselves favoring the initiative, and the cons would be written by those opposing it. Importantly, both pro and con sides would present their draft arguments to the full panel, so they could obtain feedback from fellow panelists before finalizing their statements.

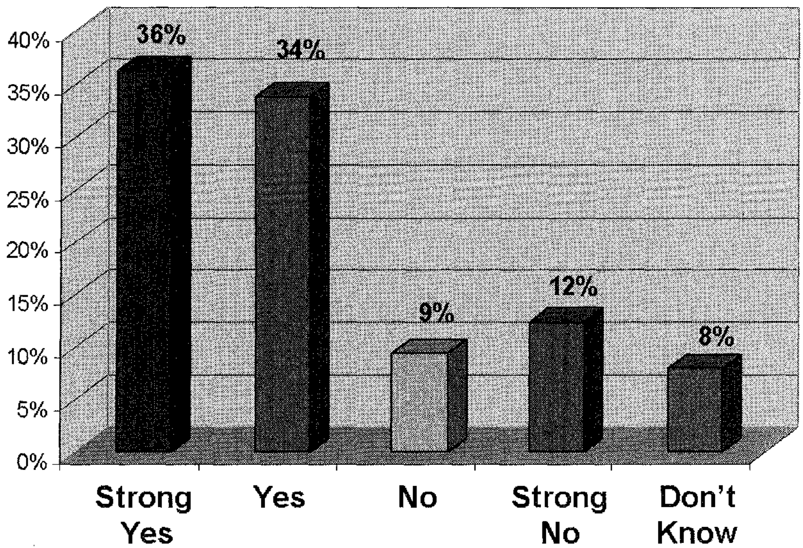
After the panel completed its work, the Secretary of State's office would distribute the panel's final statement through the Voters' Pamphlet, which is mailed to every registered voter in the state. Recalling the high percentage of Washington voters using the Pamphlet, it is likely that this alone could have considerable impact. In addition, CIR staff would make available online video and transcripts from the panel deliberations, so those voters and interested parties who want to know more could scrutinize the process. This would provide a public record of the ability—or inability—of proponents and opponents to present persuasive arguments that can withstand critical scrutiny.

Would the public support such a process? In the same Washington Poll cited in the previous Section, likely voters were asked about the CIR in the following question:

> [o]ne proposal being considered for state law would establish independent panels of Washington citizens to provide voters with more reliable information about initiatives. Each panel would consist of a cross-section of Washington citizens, who would spend a full week hearing testimony and deliberating on the merits of each initiative. The Secretary of State would publish the citizens' final reports in the Voters' Pamphlet, and the panel proceedings would be made

available online. If a vote to adopt this measure were taken today, would you support it or oppose it?[108]

Figure 1: ***Support and Opposition to the CIR Concept among Likely Washington Voters in 2006***



After testifying on behalf of the CIR proposal in 2006, Crosby and Benn introduced legislation to implement the CIR before the Washington State legislature in the 2007 session. Though it earned more than twenty co-sponsorships, no hearings were held, and the bill died. It may be reintroduced in 2008, and a similar idea may be gaining momentum in Oregon.[109]

CONCLUSION

Democratic theorist Robert Dahl, famous for his defense of pluralist democracy in the 1950s, came to advocate additional reforms to help voters reach more enlightened judgments on the choices they must make in an electoral democracy.[110] In

108. *See* discussion *supra* Part III.
109. *See* Healthy Democracy Oregon, http://www.healthydemocracyoregon.org (last visited June 30, 2007).
110. ROBERT A. DAHL, ON DEMOCRACY 187–88 (1998).

1998, he argued, "One of the imperative needs of democratic countries is to improve citizens' capacities to engage intelligently in political life."[111] He believed that in the coming years, "older institutions will need to be enhanced by new means for civic education, political participation, information, and deliberation that draw creatively on the array of techniques and technologies available in the twenty-first century."[112]

Citizen Initiative Reviews could serve this very purpose. Initiative elections are precisely one of the contexts in which voter information is inadequate, where deliberation suffers, and where public policy outcomes are suboptimal as a result. Whether the CIR would remedy these problems can only be known for certain after implementation. The British Columbia Citizens' Assembly has demonstrated the general efficacy of this sort of deliberative procedure, as have the hundreds of other intensive deliberative experiments—Citizen Juries, consensus conferences, planning cells, and similar efforts.[113]

If implemented, the best way to judge the effectiveness of the CIR will be to assess the extent to which it achieves the two goals it was designed to meet: first, sound judgments by the CIR panelists that, in turn, achieve the second goal of providing influential information for voters. The CIR might yield additional benefits by changing how citizens, public officials, and campaign professionals think and act, but the key will be its internal validity as a deliberative process and its external efficacy as a means of facilitating voter education, reflection, and deliberation. On the promise of those likely outcomes, the CIR is likely one of the most efficacious ways of improving the quality of modern initiative elections.

---

111. *Id.* at 187.
112. *Id.* at 187–88.
113. Gastil & Levine, *supra* note 94.

Appendix A: Survey Wording

Below are the complete item wordings for data reported in this essay, organized by the tables that present their findings—though not shown below, responses could also be categorized as "Don't know/Unsure" or "Refused."

Political Sophistication Items

Q Q39A
Which political party currently has the most seats in the U.S. House of Representatives in Washington, D.C.?
01 Republican
02 Democratic
03 Both
04 Neither

Q Q39B
Which political party currently has the most seats in the Washington State Senate in Olympia?
01 Republican
02 Democratic
03 Both
04 Neither

Q Q39C
Do you happen to know what state-level office is now held by Sam Reed?
01 Attorney General
02 Insurance Commissioner
03 Secretary of State
04 State Auditor

Q Q39D
Do you happen to know what federal office is now held by Alberto Gonzales?
01 Attorney General
02 U.S. Trade Representative
03 Secretary of State
04 Treasury Secretary

Q Q39E
Whose responsibility is it to determine if a federal law is constitutional or not? Is it the president, the U.S. Senate, the House of Representatives, or the Supreme Court?
01 President
02 U.S. Senate
03 House of Representatives
04 Supreme Court

Table 1

The Secretary of State sends out an official Voters' Pamphlet to every household in Washington before each election. Have you received a copy of this Pamphlet for the upcoming November election?
01 Yes
00 No

Do you typically look at the Voters' Pamphlet before you decide how you're going to vote on a statewide initiative?
01 Yes
00 No

Table 2

Please tell me whether each of the following sections is very helpful, somewhat helpful, or not at all helpful in making your decisions on statewide initiatives:
* the neutral explanatory statement
* the set of arguments for and against the initiative
* the fiscal impact statement
03 Very helpful
02 Somewhat helpful
01 Not helpful at all

Table 3

In general, how closely would you say you followed news about [e.g., Initiative 920, regarding the estate tax]?
01 Very closely
02 Somewhat closely
03 Not too closely

04 Not at all
99 Don't know / Refused

Table 4

The campaigns for and against Initiative 920 have been sending out mailings, airing TV commercials, and making phone calls and visits to voters' homes. How frequently are you receiving campaign messages on [e.g., Initiative 920]? More than once a day, about once a day, about once a week, about once a month, or not at all?
01 More than once a day
02 About once a day
03 About once a week
04 About once a month
05 Not at all

Tables 5-6: I-920

"Family farms and ranches are exempt from the estate tax." To the best of your knowledge, would you say that the statement is true or false?
01 True
02 False
98 Unsure / Don't know

Q Q21B
"When they die, Washingtonians must pay estate tax on their primary residence." To the best of your knowledge, would you say that the statement is true or false?
01 True
02 False
98 Unsure / Don't know

Q Q21C
"Savings in private retirement accounts are exempt from the estate tax." To the best of your knowledge, would you say that the statement is true or false?
01 True
02 False
98 Unsure / Don't know

Q Q21D
"Even small businesses that are handed down within a family can be subject to the estate tax." To the best of your knowledge, would you say that the statement is true or false?
01 True
02 False
98 Unsure / Don't know

Q Q22A
What percentage of Washington residents have enough assets to make them subject to paying the estate tax? Is it . . .
01 30%
02 20%
03 10%
04 5%
05 Less than 5%

Q Q22B
What percentage of Washington's state budget is currently funded by the estate tax? Is it . . .
01 About 9%
02 About 7%
03 About 5%
04 About 3%
05 1% or less

Q Q22C
What dollar amount of assets is required for a household to have to pay the estate tax? Is it . . .
01 Ten million dollars
02 Two million dollars
03 $750,000
04 $500,000
05 $300,000

Q Q22D
How many of the 50 states in the U.S. currently have a state-level estate tax? Is it . . .
01 Almost none
02 About 10
03 About 20
04 About 30

05 40 or more

For each one, please tell me to the best of your knowledge whether the organization officially supports, opposes, or has taken no position on Initiative 920.

Q Q23A
The Washington State Democratic Party
01 Supports
02 Opposes
03 No position

Q Q23B
The Washington State Republican Party
01 Supports
02 Opposes
03No position

Q Q23C
The Association of Washington Business
01 Supports
02 Opposes
03 No position

Q Q23D
The Washington Education Association
01 Supports
02 Opposes
03 No position

Tables 5-6: I-933

Q Q28A
"Initiative 933 would protect property owners from having the government buy their land through eminent domain." To the best of your knowledge, would you say that the statement is true or false?
01 True
02 False

Q Q28B
Washington landowners can be forced to leave their land unused if it provides habitat for an animal that's not even endangered. To the best of your knowledge, would you say that the statement is true or false?
01 True
02 False

Q Q28C
Current Washington law lets government officials decide how to use private property. To the best of your knowledge, would you say that the statement is true or false?
01 True
02 False

Q Q28D
The Washington Constitution requires the government to compensate landowners when it uses eminent domain. To the best of your knowledge, would you say that the statement is true or false?
01 True
02 False

Q Q29A
According to the Office of Financial Management, what financial impact would passing this initiative have on state agencies, counties and cities over the next several years? Would it . . .
01 Save the state about fifteen to twenty billion dollars
02 Save the state about five to ten billion dollars
03 Have no significant fiscal impact
04 Cost the state about five to ten billion dollars
05 Cost the state about fifteen to twenty billion dollars

Q Q29B
How many other states in the U.S. have already enacted laws or regulations that, like Initiative 933, reimburse private property owners for land they're not allowed to use or develop how they see fit? Is it . . .
01 Fewer than two states
02 About five states
03 About ten
04 About twenty

05 Thirty or more states

Q Q29C
After the State of Oregon passed a law similar in some respects to Initiative 933, some Oregon landowners requested compensation from the state or local government for regulations limiting the use of their land. Approximately how much compensation has been sought in Oregon under this law? Is it . . .
01 About 100 million dollars
02 About one billion dollars
03 About five billion dollars
04 About ten billion dollars
05 About twenty billion dollars

Q Q29D
In response to the same law, the Oregon legislature recently appropriated money for simply processing legal claims. Approximately how much did the state allocate for handling these claims? Was it . . .
01 Less than five million dollars
02 About fifty million dollars
03 About one hundred million dollars
04 About two hundred million dollars
05 More than two hundred million dollars

For each one, please tell me to the best of your knowledge whether the organization officially supports, opposes, or has taken no position on Initiative 933.

Q Q30A
The Washington State Democratic Party
01 Supports
02 Opposes
03 No position

Q Q30B
The Washington State Republican Party
01 Supports
02 Opposes
03 No position

Q Q30C
The Washington Farm Bureau
01 Supports
02 Opposes
03 No position

Q Q30D
The Sierra Club-Northwest
01 Supports
02 Opposes
03 No position

Tables 5-6: I-937

Q Q35A
I-937 does NOT consider hydropower to be renewable energy. Please say whether you believe it is true or false.
01 True
02 False

Q Q35B
Washington State does not get enough sun or wind to make wind or solar projects efficient sources of energy. Please say whether you believe it is true or false.
01 True
02 False

Q Q35C
Energy production is the leading source of air pollution in Washington State. Please say whether you believe it is true or false.
01 True
02 False

Q Q35D
At least 20 other states already have energy standards comparable to those put forth by I-937. Please say whether you believe it is true or false.
01 True
02 False

Q Q36A
The U.S. Department of Energy ranks the 50 states according to how much carbon dioxide is emitted for each megawatt hour of energy produced. To the best of your knowledge, what is Washington's ranking? Is it . . .
01One of the ten states with the MOST carbon dioxide emissions
02 Between 10th and 20th
03 Between 20th and 30th
04 Between 30th and 40th
05 Among the ten states with the FEWEST carbon dioxide emissions

Q Q36B
The Washington State Office of Financial Management has estimated how much Initiative 937 would cost the state government if it passes. According to this estimate, what would the administration of the initiative cost the state?
Is it . . .
01 No cost at all
02 About twenty thousand dollars
03 About two hundred thousand dollars
04 About two million dollars
05 More than two million dollars

Q Q36C
Currently, Washington State gets what percentage of its energy from burning fossil fuels, such as coal and natural gas? Is it . . .
01 Less than 10%
02 About 10%
03 About 30%
04 About 50%
05 More than 50%

Q Q36D
Under I-937, if it is not meeting renewable energy goals at lower cost, what PERCENTAGE of its retail revenue must a utility spend in trying to meet those goals? Is it 64% of retail revenue, 44%, 24%, 4%, or is there no cap on how much utilities must spend?
01 64%

02 44%
03 24%
04 4%
05 No cap

For each one, please tell me to the best of your knowledge whether the organization officially supports, opposes, or has taken no position on Initiative 937.

Q Q37A
The Washington State Democratic Party
01 Supports
02 Opposes
03 No position

Q Q37B
The Washington State Republican Party
01 Supports
02 Opposes
03 No position

Q Q37C
The Washington Public Utility Districts Association
01 Supports
02 Opposes
03 No position

Q Q37D
The Washington Farm Bureau
01 Supports
02 Opposes
03 No position

Figure 1

One proposal being considered for state law would establish independent panels of Washington citizens to provide voters with more reliable information about initiatives. Each panel would consist of a cross-section of Washington citizens, who would spend a full week hearing testimony and deliberating on the merits of each initiative. The Secretary of State would publish the citizens' final reports in the Voters' Pamphlet, and the panel proceedings would be made available online. If a vote to adopt this measure were taken today, would you support it or oppose it? Do you feel strongly about that?

01 Strongly yes
02 Yes
03 No
04 Strongly no

Appendix B: The Citizens' Initiative Review

Below is the language of the bill approved by the Code Reviser's Office for the 2007 Washington State legislative session (Bill Req. # H0331.1/07). A more recent, alternate version of the legislation has been developed for a potential initiative in Oregon.[114]

BRIEF DESCRIPTION: facilitating the statewide initiative and referendum processes under Article II, section 1 of the state Constitution.
AN ACT Relating to facilitating the statewide initiative and referendum processes under Article II, section 1 of the state Constitution; amending RCW 29A.32.070, 29A.72.250, and 29A.72.260; adding a new chapter to Title 29A RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
NEW SECTION. Sec. 1. LEGISLATIVE INTENT. The legislature affirms the state's long-standing policy of promoting informed public discussion and understanding of statewide ballot measures and declares that it is in the best interests of the state to provide for an independent and impartial analysis of those measures to be made available to voters so that they may thoughtfully evaluate the measures. In support of these declarations, the legislature makes the following findings:
(1) In Article II, section 1 of the state Constitution, the people of the state of Washington reserved the right to initiate and vote on legislation through the initiative and referendum processes;

114. *See* Healthy Democracy Oregon, http://www.healthydemocracyoregon.org (last visited June 30, 2007).

(2) It is the long-standing policy of the state and an underlying premise of democratic government that informed public discussion will enhance the direct legislation process. This is supported by recent studies and surveys, presented to the legislature, suggesting that review by an impartial and independent panel of Washington voters would lead to better, more informed public discussion and would thus enhance the direct legislation process;

(3) The most effective way to make available this type of independent and impartial information is for the state to convene panels of voters, demographically representative of the state as a whole, who will study and evaluate ballot measures through a quasi-legislative hearing process, and to make the panels' findings public by inclusion in the Voters' pamphlet.

NEW SECTION. Sec. 2. CITIZENS' INITIATIVE REVIEW COMMISSION CREATED; GOVERNING BOARD. The citizens' initiative review commission is created as an independent commission within the legislative branch of government. The commission's purpose is to ensure that citizens' panels are convened as specified in this chapter; that the activities of these panels are conducted in a fair and impartial manner; that the funds of the commission are spent efficiently and effectively; and that appropriate training is provided to the panels, the panel moderators, and commission staff. The board of commissioners shall consist of twelve commissioners appointed to serve as follows:

(1)(a) Except as provided in (b) of this subsection, each commissioner's term shall be three years. The governor, the attorney general, and the secretary of state shall each appoint one commissioner. Six commissioners shall be chosen by the evaluation panels from among the former citizen panelists, in accordance with section 7(2)(d) of this act. Three commissioners shall be chosen by the panel of moderators from among former moderators in accordance with section 7(3)(d) of this act. The terms of the commissioners shall be staggered so that four commissioner terms expire each year.

(b) The commissioners appointed to the initial board shall be appointed and serve in accordance with section 12 of this act.

(2) Commissioners must be registered voters of the state of Washington and may not serve in any publicly elected office while serving on the commission.

(3) Commissioners shall take office on January 1st of each year, except in the case of the initial board appointed in ac-

cordance with subsection (1)(b) of this section. Each commissioner shall serve until a successor is appointed and takes office. Vacancies shall be filled by appointment in the same manner as for the commissioner so vacating. If a vacancy results other than from expiration of a term, the vacancy shall be filled for the unexpired term. Commissioners may not be appointed to successive terms, except that if a commissioner is appointed to fill an unexpired term of two years or less, or if an initial commissioner is appointed to a one or two-year term, he or she may also fill the next successive term.

(4) No commissioner may permit his or her name to be used or make any campaign contribution in support of or opposition to any statewide ballot measure.

(5) The commission shall meet at least three times per year and may appoint its own chair, vice-chair, and other officers and committees as it deems appropriate and make rules for orderly procedure.

(6) Commissioners shall be compensated for their attendance at commission meetings and reimbursed for their travel expenses related to attendance at those meetings, in the same manner as citizen panelists under section 4(3) of this act.

(7) The commission shall make all rules facilitating the conduct of the commission and its activities under this chapter.

NEW SECTION. Sec. 3. CITIZENS' INITIATIVE REVIEW COMMISSION POWERS. The citizens' initiative review commission has the following powers:

(1) To select and employ an executive director and such research, technical, and clerical personnel and consultants as the commission deems necessary, whose salaries shall be fixed by the commission, and who are exempt from the provisions of the state civil service law, chapter 41.06 RCW;

(2) To make any contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, corporations, and individuals, and to pay for services rendered or furnished;

(3) To make such rules as are necessary to carry out its responsibilities, including, without limitation, rules to ensure that each panel and its panelists are able to carry out their responsibilities under this chapter in a manner that is fair and impartial and is reasonably perceived to be fair and impartial;

(4) To lease, purchase or otherwise contract for the use of real or personal property or any interest therein, as it finds necessary to carry out the activities conducted under this chapter; and

(5) To do other acts and things necessary or convenient to execute the authority expressly granted to it.

NEW SECTION. Sec. 4. CITIZENS' PANELS. Beginning in 2008, a citizens' panel shall be convened not more than forty-five days after the Citizens'initiative review commission receives a certificate of sufficiency from the secretary of state regarding a statewide ballot measure. One panel shall be convened for each measure so certified.

(1) Each Citizens' Panel shall consist of twenty-four registered Washington voters. The commission shall provide for alternate panelists as it deems appropriate. The commission shall adopt rules for selection of panelists that:

(a) Provide for the anonymous selection of panelists from a representative sample of Washington voters, using survey sampling methods that, to the extent practicable, give every Washington voter a similar chance of being selected; and

(b) ensure, to the extent practicable and legally permissible, that the demographic makeup of each panel fairly reflects the population of the state as a whole, with respect to characteristics including but not limited to age, education, and geographic location.

(2) The commission shall adopt such uniform rules regarding service on a Citizens' panel as the commission deems appropriate in order to keep the Citizens' panel process from being unduly influenced by persons having special knowledge of or a special interest in the ballot measure being evaluated. These rules shall provide, as an example and not by way of limitation, that: (a) Persons who have made a contribution in support of or in opposition to a ballot measure, or who receive compensation for their efforts in support of or opposition to a ballot measure, may not serve on a panel evaluating that measure; and (b) persons who hold a statewide elective office or serve as a commissioner on a state board or head of a state agency may not serve on any Citizens' panel.

(3) Compensation shall be paid to each panelist per day served. This per diem payment shall be calculated based on an eight-hour day paid at the mean hourly wage for all occupations as published in the most recent Washington State occupational employment and wage estimates using the occupational employment statistics data collected by the United States department of labor's bureau of labor statis-

tics. Each panelist shall also be reimbursed for travel expenses in accordance with reimbursement policies established by the commission.

(4) From the time of his or her appointment through the conclusion of the citizens' panel's activities, no panelist may at any time permit his or her name to be used, or make any contribution, in support of or opposition to any ballot measure reviewed by that panelist. Persons serving on a citizens' panel shall comply with the appearance of fairness doctrine provisions as described in RCW 42.36.060, 42.36.080, and 42.36.090 as if the panelists were members of a decision-making body in proceedings subject to that statute. However, neither the appearance of fairness doctrine nor chapter 42.36 RCW may form the basis of any challenge to any report submitted by a citizens' panel. A citizens' panel is not an agency of the state, the commission, or any other governmental body and is exempt from chapters 42.30 and 42.56 RCW.

NEW SECTION. Sec. 5. CITIZENS' PANEL PROCESS; DISTRIBUTION OF REPORTS.

(1) Each citizens' panel shall meet for five days, during which time its activities shall be moderated by two moderators, chosen in accordance with section 8 of this act, and supported by citizens' initiative review commission staff. Each panel shall conduct its activities as follows:

(a)(i) Each panel shall hold open public hearings, which may be interspersed with the small group work sessions described under (b) of this subsection. During these public hearings, a team of proponents and a team of opponents, each identified pursuant to section 6(3) of this act, shall be given equal time within which to present its arguments and supporting information, including but not limited to presentations given by persons of its choosing. The public hearings shall also provide time for discussion among panelists and shall provide the panelists with time to question the proponents' team, the opponents' team, and any other person who has provided a presentation to the panel.

(ii) The office of financial management shall provide, at the public hearings, an analysis of the fiscal impact of the measure prepared pursuant to RCW 29A.72.025.

(iii) The commission shall adopt rules to permit the panelists, by majority vote of the citizens' panel, to request additional background information or presentations to be provided in the public hearings. Panelists shall be permitted to choose from sources identified by commission staff,

which include each person who has registered with the commission as interested in providing information or a presentation, and such additional persons or sources as may meet the criteria established by the commission.

(b)(i) The panelists shall meet in small group work sessions, which may be interspersed with the public hearings described under(a) of this subsection. The work sessions shall be attended only by the panelists, moderators, and commission staff.

(ii) A final report on the measure, as described in subsection (2) of this section, shall be prepared in small group work sessions. A report is final once each component has been submitted by its authors as described in subsection (2) of this section. No final report or any component is subject to revision by the panel as a whole, the commission, or any other governmental body. No person has any right to appeal or challenge a report or any component of a report except as described in RCW 29A.32.090.

(c) The panel shall adjourn once the citizens' panel report is final and the panelists have chosen members to participate on an evaluation panel as described in section 7 of this act.

(2) The report shall be prepared in a form provided by commission staff, which includes the following:

(a) The ballot title and full text of the ballot measure;

(b) Position statements of not more than two hundred fifty words, explaining the reasoning and position taken by the group of panelists in favor of the measure, by those opposed to the measure, and by those undecided on the measure. Each group shall author one position statement representing the consensus of that group. The position statement shall identify the number of panelists taking that position, and no position statement is required for a position if no panelists take that position.

(c) A panel consensus statement of not more than one hundred fifty words explaining the points, if any, upon which all panelists agree;

(d) The following disclaimer: "The statements and opinions expressed are those of the panel members, developed through the citizens' panel process. These are NOT official opinions or positions endorsed by the state, the citizens' initiative review commission, or any government agency. The state is prohibited from editing or redacting the content of these statements. A citizens' panel is not a judge of the constitutionality or legality of any ballot measure, and any statements about such matters are not binding on any court of law."

(3) After each citizens' panel report is final, the commission staff shall:

(a) Within two business days, transmit to the secretary of state for inclusion in the Voters' pamphlet, in accordance with RCW 29A.32.070, the serial number identifying the ballot measure evaluated and the information described in subsection (2)(b) through (d) of this section; and

(b) Within fifteen business days, make available on a commission web site the final report and such other information as the commission may by general rule require.

NEW SECTION. Sec. 6. PROCEDURES FOR CITIZENS' PANELS. (1) The citizens' initiative review commission shall adopt rules to ensure that citizens' panels are conducted in a fair and impartial manner, including, at a minimum, provisions for the release of citizens' panel reports and media relations. To facilitate the process of convening citizens' panels in a timely manner, the rules may provide for panelist selection and notification to begin before ballot measures are certified. The rules must provide for instruction to panelists regarding use of information gathered outside of the panel proceedings.

(2) No more than one week after receiving a certification under RCW 29A.72.250 or 29A.72.260, the commission must provide notice to the sponsor of the ballot measure, to every person who has requested notification of ballot title language under RCW 29A.72.070, to the persons chosen to write arguments for the Voters' pamphlet pursuant to RCW 29A.32.060, and to any other person who makes written request to the commission for such notification. This notice must include the dates, time, and place of the hearings and must explain how to register to provide information or a presentation to the panel. Information regarding the persons who so register will be provided to the citizens' panel, and those persons may be called by the panel during the open public hearings at the discretion of the panel. The notice shall establish a deadline for registration that is two weeks prior to the date the citizens' panel is scheduled to convene.

(3)(a) The sponsor of a ballot measure, as registered with the secretary of state, shall serve as the leader of a proponent team, who shall be charged with providing to the citizens' panel information and presentations in favor of the ballot measure. In the case of a measure referred or proposed by the legislature, the proponent team leader shall be chosen from among those writing the Voters' pamphlet statement in favor of the measure in the same manner as the opponent team leader is chosen in (b) of this subsection.

(b) The members of the committee chosen pursuant to RCW 29A.32.060 to prepare a statement for the Voters' pamphlet in opposition to the measure shall be notified of the opportunity to serve as leader of the opponent team. If no individual from this group volunteers to serve, or if more than one individual volunteers to serve, the commission staff shall attempt to facilitate an agreement among those individuals as to who should lead the team. If no decision can be reached among the individuals, commission staff shall choose a team leader. No person has the right to appeal or challenge the choice of team leader.

(4) Prior to the date that the citizens' panel convenes, commission staff must prepare an agenda for the citizens' panel proceedings, including the agendas or outlines submitted by each team, and send that schedule to each panelist and to each person to whom notice was sent under subsection (2) of this section.

NEW SECTION. Sec. 7. EVALUATION PROCEDURES.

(1) The citizens' initiative review commission shall annually evaluate the conduct of the citizens' panels. To facilitate this evaluation, the commission shall, after the statewide general election each year that a citizens' panel was convened:

(a) Conduct a statewide study of Washington voters and collect other data to determine the usefulness of the citizens' panels and their reports, the results of which must be made public; and

(b) Convene no later than February 1st of the following year, an evaluation panel in accordance with subsection (2) of this section, and a moderator panel in accordance with subsection (3) of this section.

(2)(a) Prior to convening the first citizens' panel in a calendar year, the executive director, or in the absence of an executive director the commission, shall choose the number of citizen panelists that comprise the evaluation panel. The number chosen must be between eight and eighteen and must be based on the number of expected ballot measures, so that each citizens' panel elects, pursuant to section 5(1)(c) of this act, an equal number of its members to serve on the evaluation panel.

(b) The evaluation panel shall meet for not more than three days to conduct its review. The evaluation panel shall submit a report and may make recommendations to the commission on all procedural aspects of the citizens' panel proceedings.

(c) Panelists serving on the evaluation panel shall be compensated for their attendance at evaluation panel meetings and reimbursed for their travel expenses in the same manner as citizen panelists under section 4(3) of this act.

(d) The evaluation panel shall choose two of its members to serve on the commission for a three-year term, in accordance with section 2 of this act.

(3) In each year in which a citizens' panel is convened, the commission shall convene a panel of moderators to meet no later than February 1st of the following year.

(a) The panel of moderators shall consist of all those who served as moderators of the citizens' panels for the most recent election cycle.

(b) The panel of moderators shall meet for one or two days to conduct its review. They shall submit a report and may make recommendations to the commission on all procedural aspects of the citizens' panel proceedings.

(c) Panelists shall be compensated for their attendance at moderator panel meetings at the same daily rate they were paid as moderators of the citizens' panels, and reimbursed for their travel expenses in the same manner as citizen panelists under section 4(3) of this act.

(d) The panel of moderators shall choose one of its members to serve on the commission for a three-year term, in accordance with section 2 of this act.

NEW SECTION. Sec. 8. CITIZENS' PANEL MODERATORS. (1) The citizens' initiative review commission shall establish minimum qualifications for citizens' panel moderators, including but not limited to: (a) Minimum levels of experience in facilitation or mediation and completion of at least two days of training specifically designed for moderators of citizens' panels under this chapter; and (b) such additional qualifications as the commission deems appropriate in order to ensure that the citizens' panel process is conducted in a fair and impartial manner.

(2) The commission shall request the qualifications of potential moderators and shall designate a pool of moderators. The commission shall contract with two moderators for each citizens' panel to be convened. The contract for services shall cover compensation for the moderators for their services in preparation for a citizens' panel, moderating a citizens' panel, and participating on the subsequent panel of moderators.

(3) No moderator may at any time permit his or her name to be used, or make any contribution, in support of or opposi-

tion to the ballot measure reviewed by the citizens' panel he or she is involved with moderating.

Sec. 9. RCW 29A.32.070 and 2003 c 111 s 807 are each amended to read as follows:

The secretary of state shall determine the format and layout of the Voters' pamphlet. The secretary of state shall print the pamphlet in clear, readable type on a size, quality, and weight of paper that in the judgment of the secretary of state best serves the voters. The pamphlet must contain a table of contents. Federal and state offices must appear in the pamphlet in the same sequence as they appear on the ballot. Measures and arguments must be printed in the order specified by RCW 29A.72.290.

The Voters' pamphlet must provide the following information for each statewide issue on the ballot:

(1) The legal identification of the measure by serial designation or number;

(2) The official ballot title of the measure;

(3) A statement prepared by the attorney general explaining the law as it presently exists;

(4) A statement prepared by the attorney general explaining the effect of the proposed measure if it becomes law;

(5) The fiscal impact statement prepared under RCW ((29.79.075)) 29A.72.025;

(6) The total number of votes cast for and against the measure in the Senate and House of Representatives, if the measure has been passed by the legislature;

(7) An argument advocating the voters' approval of the measure together with any statement in rebuttal of the opposing argument;

(8) An argument advocating the voters' rejection of the measure together with any statement in rebuttal of the opposing argument;

(9) Each argument or rebuttal statement must be followed by the names of the committee members who submitted them, and may be followed by a telephone number that citizens may call to obtain information on the ballot measure;

(10) The information received from the citizens' initiative review commission under section 5(3)(a) of this act; and

(11) The full text of each measure.

Sec. 10. RCW 29A.72.250 and 2003 c 111 s 1825 are each amended to read as follows:

If a referendum or initiative petition for submission of a measure to the people is found sufficient, the secretary of state shall:

(1) Immediately upon each such finding of sufficiency, provide to the citizens' initiative review commission, created under section 2 of this act, the serial number and ballot title of that ballot measure; and

(2) At the time and in the manner that he or she certifies to the county auditors of the various counties the names of candidates for state and district officers certify to each county auditor the serial numbers and ballot titles of the several initiative and referendum measures to be voted upon at the next ensuing general election or special election ordered by the legislature.

Sec. 11. RCW 29A.72.260 and 2003 c 111 s 1826 are each amended to read as follows:

Whenever any measure proposed by initiative petition for submission to the legislature is rejected by the legislature or the legislature takes no action thereon before the end of the regular session at which it is submitted, the secretary of state shall certify the serial number and ballot title thereof to the citizens' initiative review commission created under section 2 of this act and to the county auditors for printing on the ballots at the next ensuing general election in like manner as initiative measures for submission to the people are certified.

NEW SECTION. Sec. 12. APPOINTMENT OF INITIAL BOARD OF COMMISSIONERS. The initial commissioners shall be appointed and serve as follows:

(1) The governor, the secretary of state, and the attorney general shall each appoint one commissioner. These commissioners shall be randomly assigned to a one, two, or three-year term.

(2) The three initial commissioners occupying the moderators' seats shall be appointed by the governor, the secretary of state, and the attorney general, choosing from a list of trained moderators that has been provided by a nonprofit organization registered under section 501(c)(3) of the internal revenue code that has conducted pilot projects in Washington State using methods similar to the citizens' panel review process, which pilot projects have drawn together microcosms of the public for meetings lasting for more than one full day. If more than one organization meeting these criteria provides a list, the first three commissioners shall choose which list to use. The commissioners appointed pursuant to this subsection shall be randomly assigned to a one, two, or three-year term.

(3) Of the six citizen panelist seats, only four shall be filled initially. The majority and minority leaders of the house of

representatives and senate shall each appoint one of the commissioners from a list of persons provided by the non-profit organization described in subsection (2) of this section. Each of these initial commissioners shall be assigned to a two or three-year term, so that two seats expire in each year. The remaining two citizen panelist seats shall be filled by individuals chosen by the first evaluation panel.

NEW SECTION. Sec. 13. CODIFICATION. Sections 1 through 8 and 12 of this act constitute a new chapter in Title 29A RCW.

NEW SECTION. Sec. 14. CAPTIONS. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 15. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.