

REPRESENTATION AND THE SPATIAL BIAS OF DIRECT DEMOCRACY

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Daniel Smith analyzes whether direct democracy favors urban and suburban voters' interests at the expense of rural voters' interests. After reviewing existing academic literature on the (sub)urban rural divide in direct democracy contests, the author performs an empirical analysis of county-level voting data on numerous recent Colorado ballot initiatives. The author concludes that there is a significant regional bias concerning popular votes on ballot initiatives, and that rural communities of interest will likely continue to be tyrannized by (sub)urban majorities in statewide ballot contests.

INTRODUCTION

Is the practice of direct democracy in the American states systematically biased against rural populations? In this essay, I examine (sub)urban and rural voting patterns to determine what, if any, effect direct democracy may have on the representation of rural interests. To date, few scholars have considered the possibility that regional population imbalances within states may affect direct democracy outcomes. Yet asymmetric (sub)urban/rural population distributions in states with direct democracy may have severe policy consequences for the representation of rural populations. County-level analyses of voting

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patterns on ballot measures in Colorado between 1990 and 2006, and of animal protection and term limit initiatives passed in other states, suggest that there is a persistent regional bias against citizens living in rural areas.

In critically examining whether there is a (sub)urban/rural divide within the American states with respect to voting on ballot initiatives, I begin in Part I with a review of studies that empirically test whether direct democracy harms minority populations. In Part II, I assess the concept of “rurality” and question how rural representation in the American states may be construed. In Part III, I provide empirical evidence of a spatial bias inherent in the practice of direct democracy. Using county-level data in Colorado, I examine voting patterns on fifty-six statewide initiatives appearing on the ballot between 1992 and 2006 to assess if there is a (sub)urban/rural divide in the support of ballot measures and if voters living in rural counties are systematic losers. In Part IV, I examine the passage of two animal protection initiatives and one term-limit ballot initiative in three states, ballot measures that state legislators subsequently assailed with counter-majoritarian bills. After demonstrating the distinct (sub)urban/rural patterns of voting on these ballot measures, I examine the micro-level determinants of the legislative efforts to overturn these initiatives. In comparing the statewide popular vote for the initiatives with the legislature’s subsequent counter-majoritarian effort to overturn the measures, I flesh out the contrasting systems of direct and representative democracy along a geographic dimension. In the Conclusion, I argue that the empirical evidence (from Parts III and IV) suggests there is a significant regional bias concerning popular votes on ballot initiatives, and that barring legislative remedies, rural communities of interest potentially will continue to be tyrannized by (sub)urban majorities in statewide ballot contests.

I. DIRECT DEMOCRACY AS A MAJORITARIAN INSTITUTION

One of the fundamental questions concerning the practice of direct democracy in the American states is the consequence the process has on representation of minority interests. Axiomatically, of course, direct democracy is a majoritarian system of representation. “As a majoritarian institution,” Todd Donovan, Jim Wenzel, and Shaun Bowler argue, “direct democracy

requires majorities of voters to support a particular policy and, by definition, minority groups are disadvantaged.”¹ In *Federalist No. 10*, James Madison wrote critically of what he termed “pure democracies,” claiming they “have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have in general been short in their lives, as they have been violent in their deaths.”² Unlike a republican form of government, whereby elected representatives are able to deliberate on and modify policies before adopting them, direct democracy foregoes procedurally the rights of the minority via winner-take-all ballot questions offering a binary choice to alter or uphold status quo.³ Direct democracy, the political theorist Simone Chambers warns us, undermines iterative deliberation because it “introduce[s] an extreme form of majoritarianism that is inappropriate for deep constitutional questions,” as it “often present[s] the voter with the image of inflexibility (debate cannot alter the framing of the question) and irreversibility (constitutional proposals are entrenched outside the on-going iterative process of normal politics).”⁴

Scholars have debated the question of minority rights for nearly a century, yet a consensus has yet to emerge as to whether the rights of minorities are systematically compromised from ballot measure outcomes.⁵ When it comes to the empirical evidence of minority representation as it relates to questions of race, ethnicity, language, religion, and sexual ori-

1. Todd Donovan et al., *Direct Democracy and Gay Rights Initiatives After Romer*, in *THE POLITICS OF GAY RIGHTS* 161, 173 (Craig A. Rimmerman et al eds., 2000).

2. *THE FEDERALIST NO. 10*, at 46 (James Madison).

3. For further discussion of the arguments made for and against direct democracy, see DANIEL A. SMITH & CAROLINE J. TOLBERT, *EDUCATED BY INITIATIVE: THE EFFECTS OF DIRECT DEMOCRACY ON CITIZENS AND POLITICAL ORGANIZATIONS IN THE AMERICAN STATES* 1–22 (2004); David B. Magleby, *Let the Voters Decide? An Assessment of the Initiative and Referendum Process*, 66 U. COLO. L. REV. 13 (1995).

4. Simone Chambers, *Constitutional Referendums and Democratic Deliberation*, in *REFERENDUM DEMOCRACY: CITIZENS, ELITES AND DELIBERATION IN REFERENDUM CAMPAIGNS* 231 (Matthew Mendelsohn & Andrew Parkin eds., 2001).

5. See JAMES D. BARNETT, *THE OPERATION OF THE INITIATIVE, REFERENDUM, AND RECALL IN OREGON* 3–6 (1915); Charles A. Beard, *Introductory Note*, in *DOCUMENTS ON THE STATE-WIDE INITIATIVE, REFERENDUM AND RECALL* 1 (Charles A. Beard & Birl E. Shultz eds., 1912); George H. Haynes, *People's Rule on Trial*, 28 *POL. SCI. Q.* 18, 18–33 (1913).

entation, scholars are far from agreement on the impact direct democracy has on minority rights.

This is not to say that both sides of the debate have not made strong cases. The seminal argument that direct democracy systematically “creates a crisis for the rights of racial and other discrete minorities” was advanced a quarter century ago by Derrick Bell.⁶ “[B]ecause it enables the voters’ racial beliefs and fears to be recorded and tabulated in their pure form,” Bell argued, “the referendum has been a most effective facilitator of that bias, discrimination, and prejudice which has marred American democracy from its earliest day.”⁷ In addition to providing anecdotal evidence in support of his claim,⁸ several scholars have tried to test Bell’s pronouncement empirically, finding that voters have cast votes on ballot initiatives with discriminatory outcomes for various minority groups.⁹ They have also found a racial divide in voting patterns on health policy,¹⁰ criminal justice,¹¹ support for government spending and taxation,¹² and a range of other policy issues.¹³ The harm

6. See Derrick A. Bell, Jr., *The Referendum: Democracy’s Barrier to Racial Equality*, 54 WASH. L. REV. 1, 2 (1978).

7. *Id.* at 14–15.

8. See DAVID S. BRODER, *DEMOCRACY DERAILED: INITIATIVE CAMPAIGNS AND THE POWER OF MONEY* 9 (2000); LYDIA CHAVEZ, *THE COLOR BIND: THE CAMPAIGN TO END AFFIRMATIVE ACTION* 195 (1998); RICHARD J. ELLIS, *DEMOCRATIC DELUSIONS: THE INITIATIVE PROCESS IN AMERICA* (2002); PETER SCHRAG, *PARADISE LOST: CALIFORNIA’S EXPERIENCE, AMERICA’S FUTURE* 21 (1998); Bruce E. Cain, *Voting Rights and Democratic Theory: Toward a Color-Blind Society?*, in *CONTROVERSIES IN MINORITY VOTING: THE VOTING RIGHTS ACT IN PERSPECTIVE* 261 (Bernard Grofman & Chandler Davidson eds., 1992); Julian N. Eule, *Representative Government: The People’s Choice*, 67 CHI.-KENT L. REV. 777 (1991); Hans A. Linde, *On Reconstructing “Republican Government”*, 19 OKLA. CITY U. L. REV. 193 (1994); Hans A. Linde, *When Initiative Lawmaking Is Not “Republican Government”: The Campaign Against Homosexuality*, 72 OR. L. REV. 19 (1993).

9. See Barbara S. Gamble, *Putting Civil Rights to a Popular Vote*, 41 AM. J. POL. SCI. 245 (1997); Donald P. Haider-Markel et al., *Lose, Win, or Draw?: A Re-examination of Direct Democracy and Minority Rights*, 60 POL. RES. Q. 304 (2007); Caroline J. Tolbert & Rodney E. Hero, *Race/Ethnicity and Direct Democracy: An Analysis of California’s Illegal Immigration Initiative*, 58 J. POL. 806 (1996).

10. See Caroline J. Tolbert & Gertrude A. Steuarnagel, *Race/Ethnicity and Referenda on Redistributive Health Care Policy*, in *RACE AND THE POLITICS OF WELFARE REFORM* 279 (Sandord F. Schram, Joe Soss & Richard Fording eds., 2003).

11. See STEPHEN NICHOLSON, *VOTING THE AGENDA: CANDIDATES, ELECTIONS AND BALLOT PROPOSITIONS* (2005).

12. See MARK BALDASSARE, *CALIFORNIA IN THE NEW MILLENNIUM: THE CHANGING SOCIAL AND POLITICAL LANDSCAPE* (2000).

caused to minority groups by ballot measures may in some cases even be indirect; the actual process of direct democracy may engender further discrimination of minorities by the mass public.¹⁴ When comparing the representation afforded to minorities under ballot measures and under the traditional legislative process, still other scholars contend that the initiative process can marginalize minorities by silencing their voices, limiting their ability to negotiate more consensual legislation.¹⁵

There is an equal body of scholarship, though, that suggests that initiatives do not systematically deprive minorities of their rights.¹⁶ Thomas Cronin, for one, contends that "direct democracy devices can only rarely be faulted for impairing the rights of the powerless."¹⁷ Arguing that anti-minority voting behavior on ballot initiatives should not be taken as a given, even on measures ostensibly targeting minorities, Clayton Gillette suggests that there are numerous considerations that shape every voter's decision to support or oppose a ballot measure.¹⁸ Contributing to the debate from a public choice perspective, Lynn Baker contends that minorities, though perhaps unlikely to prevail on Election Day, are able nonetheless to influence the process of direct democracy.¹⁹ Perhaps most definitively, a comprehensive study of forty-seven initiatives on

13. See Regina P. Branton, *Examining Individual-Level Voting Behavior on State Ballot Propositions*, 56 POL. RES. Q. 367 (2003).

14. See Jim Wenzel et al., *Direct Democracy and Minorities: Changing Attitudes About Minorities Targeted by Initiatives*, in CITIZENS AS LEGISLATORS: DIRECT DEMOCRACY IN THE UNITED STATES 228 (Shaun Bowler, Todd Donovan & Caroline J. Tolbert eds., 1998).

15. See DAVID B. MAGLEBY, DIRECT LEGISLATION: VOTING ON BALLOT PROPOSITIONS IN THE UNITED STATES (1984); Sherman J. Clark, *A Populist Critique of Direct Democracy*, 112 HARV. L. REV. 434 (1998); Daniel A. Smith, *Homeward Bound? Micro-Level Legislative Responsiveness to Ballot Initiatives*, 1 ST. POL. & POL'Y Q. 50 (2001) [hereinafter Smith, *Homeward Bound*].

16. See Todd Donovan & Shaun Bowler, *Direct Democracy and Minority Rights: An Extension*, 42 AM. J. POL. SCI. 1020 (1998); Bruno S. Frey & Lorenz Goette, *Does the Popular Vote Destroy Civil Rights?*, 42 AM. J. POL. SCI. 1343 (1998); Zoltan L. Hajnal et al., *Minorities and Direct Legislation: Evidence from California Ballot Proposition Elections*, 64 J. POL. 154 (2002).

17. THOMAS CRONIN, DIRECT DEMOCRACY: THE POLITICS OF INITIATIVE, REFERENDUM, AND RECALL 92 (1989).

18. See Clayton P. Gillette, *Plebiscites, Participation, and Collective Action in Local Government Law*, 86 MICH. L. REV. 930 (1988).

19. See Lynn A. Baker, *Direct Democracy and Discrimination: A Public Choice Perspective*, 67 CHI.-KENT L. REV. 707 (1991); see also JOHN G. MATSUSAKA, FOR THE MANY OR THE FEW: THE INITIATIVE, PUBLIC POLICY, AND AMERICAN DEMOCRACY 117 (2004).

the California ballot between 1980 and 1998 found that racial and ethnic minorities—and Latinos, in particular—lost regularly on a number of racially targeted propositions, but that the differences in the probability of various racial and ethnic groups' being on the winning side of ballot propositions were quite small, with Latinos, Asians, blacks, and white non-Hispanics tending to be on the winning side a majority of the time.²⁰ Other studies suggest that ballot measures targeting the rights of minorities tend to be incremental—not radical—in their outcomes.²¹ Finally, some scholars contend that the judicial review of ballot measures (either pre-election or post-adoption) constrains the underlying threat of majority tyranny in direct democracy ballot contests.²²

The scholarly debate over the consequences for minority rights in direct democracy contests is far from settled. While scholars have marshaled much empirical evidence to assess the status of racial, ethnic, sexual, and language minorities under systems of direct democracy, they have overlooked another potential minority—rural populations. It is this spatial dimension of direct democracy, and the possibility of an inherent bias of direct democracy against rural voters, that I now address.

II. "RURALITY" AND THE (SUB)URBAN/RURAL DIVIDE IN THE AMERICAN STATES

The failure of scholars to examine the spatial dimension of majority tyranny in direct democracy contests is somewhat surprising, as among scholars of state politics, there is a long-standing appreciation of (sub)urban and rural²³ differences within the American states.²⁴ Perhaps most prominently, V.O. Key found that "[a]ll over the South actual or fictional antagonisms between urban and rural areas are exploited for political

20. See Hajnal et al., *supra* note 16.

21. See Donovan et al., *supra* note 1.

22. See Anne Campbell, *In the Eye of the Beholder: The Single Subject Rule for Ballot Initiatives*, in *THE BATTLE OVER CITIZEN LAWMAKING* 131 (M. Dane Waters ed., 2001).

23. The United States' rural population has fallen steadily over the past half century, from 36% of households in 1950 to 25% in 1990. U.S. CENSUS BUREAU, UNITED STATES URBAN AND RURAL POPULATION: 1970 TO 1990 (1993), available at <http://www.census.gov/population/censusdata/table-4.pdf>.

24. See RODNEY E. HERO, *FACES OF INEQUALITY: SOCIAL DIVERSITY IN AMERICAN POLITICS* 30 (1998); Hajnal et al., *supra* note 16; Joel Liske, *Regional Subcultures of the United States*, 55 J. POL. 888 (1993).

purposes,”²⁵ and that a “metropolitan-outstate cleavage” exists the American states.²⁶

As I discuss at greater length elsewhere,²⁷ numerous scholars have analyzed American state politics through a spatial lens. The (sub)urban/rural fissure has long been evident in the American states with regard to legislative apportionment and redistricting,²⁸ as the courts generally have upheld the notion of distinct geographic “communities of interest,” including the “classic bifurcation” of urban and rural.²⁹ Scholars have drawn on (sub)urban/rural distinctions when explaining popular support for or opposition to public policies at the state³⁰ and national³¹ levels, and more generally have shown how the social context in which citizens participate—i.e., the sharing of a common social space³²—can shape electoral participation.³³ Yet while some scholars have acknowledged the existence in many states of Key’s “metropolitan-outstate cleavage,” few political scientists or legal scholars have used a spatial framework to probe how the (sub)urban/rural divide might affect popular support for ballot measures and the rights of rural populations.³⁴ However, a spatial dimension—and how a col-

25. V.O. KEY, *SOUTHERN POLITICS IN STATE AND NATION* 115 (1949).

26. V.O. KEY, *AMERICAN STATE POLITICS: AN INTRODUCTION* 227–37 (1956).

27. See Daniel A. Smith, *Ballot Initiatives and the (Sub)Urban/Rural Divide in Colorado*, in *COLORADO’S FUTURE: MEETING THE NEEDS OF A CHANGING STATE* 17 (Daphne T. Greenwood ed., 2003) [hereinafter Smith, *Ballot Initiatives in Colorado*].

28. See MARK MONMONIER, *BUSHMANDERS AND BULLWINKLES* 23 (2001); Glen T. Broach, *A Comparative Dimensional Analysis of Partisan and Urban-Rural Voting in State Legislatures*, 34 J. POL. 905 (1972); Malcolm E. Jewell, *State Legislatures in Southern Politics*, 26 J. POL. 177 (1964).

29. RICHARD SCHER ET AL., *VOTING RIGHTS AND DEMOCRACY* 155–57 (1997).

30. ROBERT S. ERICKSON ET AL., *STATEHOUSE DEMOCRACY* 83–86 (1993).

31. Michael S. Lewis-Beck, *Agrarian Political Behavior in the United States*, 21 AM. J. POL. SCI. 543 (1977).

32. ROBERT HUCKFELDT & JOHN SPRAGUE, *CITIZENS, POLITICS, AND SOCIAL COMMUNICATION* (1995); Robert Huckfeldt et al., *Alternative Contexts of Political Behavior: Churches, Neighborhoods, and Individuals*, 55 J. POL. 365 (1993).

33. HERO, *supra* note 24; Claudine Gay, *The Effect of Black Congressional Representation on Political Participation*, 45 AM. POL. SCI. REV. 589 (2001); Kim Quaile Hill & Jan E. Leighley, *Racial Diversity, Voter Turnout and Mobilizing Institutions in the U.S.*, 27 AM. POL. Q. 275 (1999).

34. There are some notable exceptions. See, e.g., Michael Alvarez & Tara L. Butterfield, *The Resurgence of Nativism in California? The Case of Proposition 187 and Illegal Immigration*, 81 SOC. SCI. Q. 167 (2000); D. Stephen Voss & Penny Miller, *Following a False Trail: The Hunt for White Backlash in Kentucky’s 1996 Desegregation Vote*, 1 ST. POL. & POL’Y Q. 62 (2001). Generally speaking, rural populations tend to have culturally distinct interests from (sub)urban populations.

lective understanding of social space can forge and politicize a population's identity when that population is faced with a perceived threat to its shared "lifestyle"—may provide some leverage in our understanding of voting patterns on ballot initiatives and the threat they pose to the representation of rural populations.³⁵

III. BALLOT INITIATIVES AND THE (SUB)URBAN/RURAL DIVIDE IN COLORADO³⁶

A. *The Growing Divide between (Sub)Urban and Rural Colorado*

Colorado experienced a drastic population explosion in the 1990s. Between 1990 and 2000, the state's population increased more than 30%, growing by over one million people.³⁷ The population boom affected (sub)urban counties in the Denver Metro and Front Range regions as well as less populated counties;³⁸ only five³⁹ of the state's then-sixty-three⁴⁰ counties

See Robert C. Bealer et al., *The Meaning of "Rurality" in American Society: Some Implications of Alternative Definitions*, 30 RURAL SOC. 255 (1965); C.K. Nichols, *A Suggested Technique for Determining Whether a Community Can Be Classified as Rural or Urban*, 5 RURAL SOC. 454 (1940); Raymond Pahl, *The Rural-Urban Continuum*, 6 SOCIOLOGIA RURALIS 299 (1966).

35. Admittedly, sociologists have had difficulty defining "rural." See Bealer et al., *supra* note 34; Nichols, *supra* note 34; Pahl, *supra* note 34. See Smith, *Ballot Initiatives in Colorado*, *supra* note 27, for a lengthier discussion of alternative definitions of rurality.

36. The findings presented in this section build upon Smith, *Ballot Initiatives in Colorado*, *supra* note 27. Data from sixteen initiatives on the ballot from 2001–2006, not available at the time of the publication of that article, are included in the present study, with the empirical results reflecting the addition of these cases.

37. See U.S. CENSUS BUREAU, CENSUS 2000 PHC-T-2, RANKING TABLES FOR STATES: 1990 AND 2000 (2001), available at <http://www.census.gov/population/cen2000/phc-t2/tab01.pdf>. Only the populations of Nevada (+66%) and Arizona (+40%) grew faster.

38. Data on the population of Colorado counties is available for download, in various forms, on the U.S. Census Bureau's website, <http://factfinder.census.gov>.

39. San Juan, Cheyenne, Kiowa, Jackson, and Baca counties lost population during the 1990s. See U.S. CENSUS BUREAU, CENSUS 2000 PHC-T-4, RANKING TABLES FOR COUNTIES: 1990 AND 2000 (2001), available at www.colorado.edu/libraries/govpubs/Counties1990-2000.htm.

40. Colorado currently has sixty-four counties. Broomfield County was created in November 2001. Colorado General Assembly, Legislative Council, *Analysis of 1998 Ballot Proposals* (1998), available at www.state.co.us/gov_dir/lcsstaff/ballot/analy-c.htm. For the purposes of this analysis, newly created Broomfield County is included with the Front Range counties in the 2002, 2004, and 2006 analyses.

experienced population declines. As I have documented elsewhere,⁴¹ the eleven (sub)urban counties that comprise the state's Front Range—Denver, Jefferson, El Paso, Arapahoe, Adams, Boulder, Larimer, Weld, Douglas, Pueblo, and Broomfield—account for over 80% of Colorado's population.⁴² In 2005 (as was the case in 1990), 80% of Colorado's 4.66 million residents resided in these eleven contiguous counties.⁴³

Colorado's (sub)urban/rural divide appears to have become increasingly divisive in the making of public policy. On issues such as growth and wildlife management, gun control, agriculture, and water rights, (sub)urban and rural legislators (and their respective constituents) often have conflicting attitudes as to what types of public policies should be enacted. Furthermore, since the 1960s, legislators representing rural areas of the state have seen their legislative clout diminish, as the voting power of rural constituencies has declined relative to that of (sub)urban constituencies.⁴⁴ The erosion of rural voting power appears to be especially true when policy matters are taken directly to the citizenry via the initiative process.

B. Do (Sub)Urban and Rural Voters Vote Differently on Ballot Initiatives?

Is the initiative process, as used in Colorado, inherently biased against rural Coloradans? At its core, direct democracy is a majoritarian system of governance. Due to demographics alone, it is possible that the voting strength of citizens living in (sub)urban Front Range counties may completely preclude the voices of citizens residing in rural counties from being heard. The question remains, however: Do rural voters end up on the losing side of ballot measures because they are being trumped by the preferences of (sub)urban voters?

Expanding an original data set that combines 1990 and 2000 U.S. census data with aggregate county-level electoral data,⁴⁵ I examine the spatial voting patterns on the fifty-six

41. See Smith, *supra* note 27.

42. See U.S. CENSUS BUREAU, STATE & COUNTY QUICK FACTS: COLORADO (2007), <http://quickfacts.census.gov/qfd/states/08000.html> (tabulating population totals for the state and then for each county separately).

43. *Id.*

44. See THOMAS E. CRONIN & ROBERT D. LOEVY, COLORADO POLITICS AND GOVERNMENT 154–55 (1993).

45. See Smith, *Ballot Initiatives in Colorado*, *supra* note 27.

statewide initiatives that Colorado citizens considered in the eight general elections held between 1992 and 2006. The analysis of the voting patterns of an array of public policy questions on statewide ballot initiatives highlights the voting schism that exists between Colorado's Front Range (sub)urban counties and the state's fifty-three predominantly rural counties. In the eight general elections held in Colorado between 1992 and 2006, a majority of voters approved twenty-two of the fifty-six initiatives placed on the ballot (39%). The initiatives dealt with an array of issues: tax cuts, increased funding for education, the creation of open space, growth control and gun control, animal protection, renewable energy, restrictions on abortion, gay and parental rights, same-sex marriage, gambling, and raising the minimum wage.

It is clear by looking at the election results of the fifty-six initiatives that rural and (sub)urban citizens often vote quite differently on ballot measures. In thirty-two of the fifty-six ballot measures (57%), there was a significant difference in the way a majority of citizens living in the (sub)urban Front Range counties voted when compared with the majority of citizens living in the state's fifty-three rural counties.

Table 1:
(Sub)Urban/Rural Votes on Colorado Ballot Initiatives, 1992-2006

Year	#	Subject	Initiative Pass/Fail	Mean Vote Front Range Counties	Mean Vote Rural Counties	Mean Difference	Biased Outcome
1992	1	Voter Approval for Tax and Spending Increases (TABOR)	Pass	54.3%	51.6%	-2.7%	No
1992	2	Prohibit Anti- Discrimination Laws for Sexual Orientation	Pass	54.1%	58.2%	4.1%	No
1992	3	Limited Gaming	Fail	30.4%	33.3%	2.9%	No
1992	4	Limited Gaming	Fail	28.6%	29.5%	0.9%	No
1992	5	Limited Gaming	Fail	27.7%	24.3%	-3.4%	No
1992	6	Sales Tax for Education Reform	Fail	46.7%	40.8%	5.9%	No
1992	7	Vouchers for Education	Fail	34.0%	28.9%	5.1%	No
1992	8	Lottery Revenues for Parks, Recreation Wild- life	Pass	58.3%	50.8%	-7.5%	No

Table 1 (continued)

Year	#	Subject	Initiative Pass/Fail	Mean Vote Front Range Counties	Mean Vote Rural Counties	Mean Difference	Biased Outcome
1992	9	Limited Gaming	Fail	20.2%	18.2%	2.0%	No
1992	10	Restrictions on Black Bear Hunting	Pass	71.3%	54.8%	-16.5%	No
1994	11	Tax on Tobacco	Fail	39.9%	29.4%	-10.5%	No
1994	12	Worker's Choice of Care	Fail	34.0%	31.0%	-3.0%	No
1994	13	Election Reform	Fail	23.0%	18.8%	-4.2%	No
1994	14	Limited Gaming	Fail	8.7%	7.9%	-0.8%	No
1994	15	Campaign and Political Finance Reform	Fail	46.4%	41.4%	-5.0%	No
1994	16	Regulate Obscenity	Fail	37.0%	33.8%	-3.2%	No
1994	17	Term Limits	Pass	51.7%	44.8%	- 7.0%	Yes

Table 1 (continued)

Year	#	Subject	Initiative Pass/Fail	Mean Vote Front Range Counties	Mean Vote Rural Counties	Mean Difference	Biased Outcome
1994	18	State Medical Assis- tance	Fail	32.6%	26.3%	-6.4%	No
1996	11	Property Tax Exemp- tions	Fail	16.4%	16.3%	-0.1%	No
1996	12	Term Limits	Pass	54.9%	47.5%	-7.4%	Yes
1996	13	Initiative and Referen- dum Reform	Fail	31.1%	27.5%	-3.6%	No
1996	14	Prohibited Methods of Taking Wildlife	Pass	53.9%	34.3%	-19.6%	Yes
1996	15	Campaign Finance Re- form	Pass	66.0%	57.2%	-8.8%	No
1996	16	State Trust Lands	Pass	52.9%	38.2%	-14.7%	Yes
1996	17	Parental Rights	Fail	42.7%	44.7%	2.0%	No
1996	18	Limited Gaming	Fail	32.2%	30.4%	-1.8%	No
1998	11	Partial-Birth Abortion	Fail	49.9%	47.7%	-2.2%	No

Table 1 (continued)

Year	#	Subject	Initiative Pass/Fail	Mean Vote Front Range Counties	Mean Vote Rural Counties	Mean Difference	Biased Outcome
1998	12	Parental Notification for Abortion	Pass	56.0%	55.3%	-0.7%	No
1998	13	Uniform Regulation of Livestock Operations	Fail	39.6%	32.4%	-7.2%	No
1998	14	Reg. of Commercial Hog Facilities	Pass	65.3%	54.6%	-10.7%	No
1998	15	Water Meters in the San Luis Valley	Fail	25.3%	14.0%	-11.3%	No
1998	16	Payments for Water by Rio Grande Water Con- servation Dist.	Fail	25.7%	15.0%	-10.7%	No
1998	17	Income Tax Credit for Education	Fail	40.6%	34.4%	-6.2%	No
1998	18	Vol. Congressional Term Limits	Pass	51.5%	41.2%	-10.3%	Yes
2000	20	Medical Marijuana	Pass	51.7%	44.2%	-7.4%	Yes
2000	21	State, Local, and Special Dist. Tax Cuts	Fail	32.8%	25.5%	-7.3%	No

Table 1 (continued)

Year	#	Subject	Initiative Pass/Fail	Mean Vote Front Range Counties	Mean Vote Rural Counties	Mean Difference	Biased Outcome
2000	22	Background Checks at Gun Shows	Pass	70.4%	49.2%	-21.2%	Yes
2000	23	Increased School Fund- ing Pre-School-12	Pass	50.8%	43.7%	-7.1%	Yes
2000	24	Citizen Management of Growth	Pass	28.7%	22.2%	-6.5%	No
2000	25	Women's Informed Con- sent	Fail	38.4%	35.1%	-3.3%	No
2002	27	Campaign Finance Re- form	Pass	67.1%	62.1%	-5.0%	No
2002	28	Mail Ballot Elections	Fail	42.7%	38.0%	-4.7%	No
2002	29	Selecting Candidates for Primary Elections	Fail	40.0%	37.1%	-2.9%	No
2002	30	Election Day Voter Reg- istration	Fail	39.4%	36.8%	-2.6%	No
2002	31	English Language Edu- cation	Fail	43.9%	42.0%	-1.9%	No

Table 1 (continued)

Year	#	Subject	Initiative Pass/Fail	Mean Vote Front Range Counties	Mean Vote Rural Counties	Mean Difference	Biased Outcome
2002	31	English Language Edu- cation	Fail	43.9%	42.0%	-1.9%	No
2004	34	Construction Liability	Fail	23.5%	20.5%	-2.9%	No
2004	35	Tobacco Tax Increase for Health-Related Pur- poses	Pass	60.2%	51.5%	-8.7%	No
2004	36	Selection of Presidential Electors	Fail	34.2%	32.9%	-1.4%	No
2004	37	Renewable Energy Re- quirement	Pass	53.1%	44.4%	-8.7%	Yes
2006	38	Initiative Petitions	Fail	31.0%	28.3%	-2.7%	No
2006	39	School District Expendi- tures for Education	Fail	37.6%	34.3%	-3.3%	No
2006	40	Term Limits for Appel- late and Supreme Court Judges	Fail	43.7%	41.8%	-1.9%	No

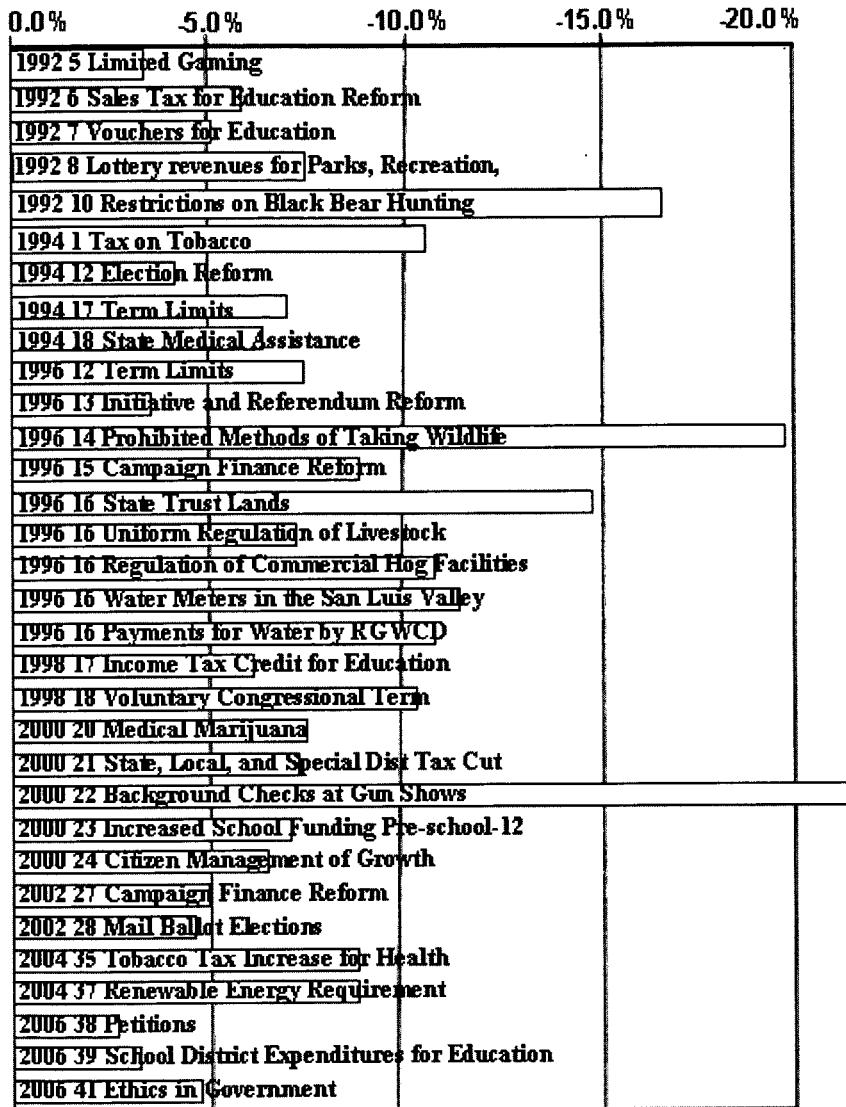
Table 1 (continued)

Year	#	Subject	Initiative Pass/Fail	Mean Vote Front Range Counties	Mean Vote Rural Counties	Mean Difference	Biased Outcome
2005	41	Ethics in Government	Pass	62.4.4%	57.6%	-4.8%	No
2006	42	Increase in Minimum Wage	Pass	54.0%	54.1%	0.1%	No
2006	43	Same-Sex Marriage	Pass	56.5%	61.3%	4.8%	No
2006	44	Marijuana Possession	Fail	40.0%	37.4%	-2.6%	No

Suburban voters were generally more likely than voters living in rural counties to support the fifty-six ballot initiatives. For fifty of the fifty-six ballot measures, the mean vote in Front Range counties was greater than the mean vote of rural counties, and the difference in the mean level of support between rural and (sub)urban counties was statistically significant in more than half the cases. Only six ballot initiatives (Amendments 2, 3, and 4 in 1992; Amendment 17 in 1998; and Amendments 42 and 43 in 2006) received greater support on average from voters in the state's fifty-three rural counties than from voters in Front Range counties, though the difference between the means is not statistically significant (see Table 1).

Figure 1 shows the differences in the average level of support between the Front Range (sub)urban and the other predominantly rural counties for the fifty-six initiatives. On nine initiatives, there was more than a 10% gulf in the level of support of (sub)urban counties when compared with the support of rural counties. The greatest chasm between Front Range and rural voters was on the successful 2002 ballot initiative, Amendment 22, which mandated background checks on the purchase of weapons at gun shows. The initiative easily passed with 70% of the statewide vote. However, the mean level of support for Amendment 22 was less than 50% in the 53 rural counties, which was some 21% lower than the mean support of the (sub)urban counties. As Figure 1 reveals, there were also wide gaps between voters living in the (sub)urban Front Range counties and those in rural counties on two animal protection measures (Amendment 10 in 1992 and Amendment 14 in 1996) placed on the ballot by the United States Humane Society, as well as on a 1996 measure to expand state trust lands.

Figure 1: Mean Difference in Support for Initiatives between Front Range and Other Counties 1992-2006



It is perhaps not surprising that significant differences on ballot measure votes exist between rural and (sub)urban counties on matters directly affecting those living in rural areas. Rural voters, after all, are likely to be quite opposed to ballot initiatives that want to divert their water to (sub)urban areas, modify livestock and agricultural practices, or ban certain types of hunting. But Figure 1 reveals that the rural/(sub)urban divide exists across a range of issues. Rural Coloradoans, unlike their more densely populated Front Range brethren, are less likely to approve of several "governance" measures,⁴⁶ including term limits, campaign finance reform, and reforming the initiative process. (Sub)urban county voters were more likely to support tax cuts, tax credits and vouchers for education, and even tax increases for education programs. In addition to not supporting renewable energy measures as much as (sub)urban residents, rural voters, on average, gave less support for ballot measures trying to control sprawl, expand the state park system, or legalize marijuana for medical purposes. In sum, it is evident that there are major differences in the preferences of voters living in (sub)urban counties as compared to those living in predominantly rural counties. As might be expected, voting preferences are quite pronounced with respect to land use and animal-protection measures. But the chasm between rural and (sub)urban voters extends to a range of other issues that have nothing to do with rurality.

C. Do Rural Coloradans Systematically Lose on Ballot Initiatives?

As evidenced by the clear voting patterns on Colorado's fifty-six initiatives on the ballot between 1992 and 2006, there is a considerable gap in the preferences of rural and (sub)urban voters. Just as there are concerns about how the rights of racial and ethnic minorities are affected by the initiative,⁴⁷ it is important to consider whether voters living in rural counties systematically end up on the losing side of statewide ballot initiatives. Rural citizens tend to vote against ballot measures more frequently than (sub)urban voters. But the question re-

46. See Caroline J. Tolbert, *Changing Rules for State Legislatures: Direct Democracy and Governance Policies*, in CITIZENS AS LEGISLATORS 171 (Shawn Bowler et al. eds., 1998).

47. See Hajnal et al., *supra* note 16.

mains, are the majority preferences of voters living in rural counties being trumped by the majority preferences of voters living in (sub)urban counties?

The final column of Table 1 reveals that on nine of the fifty-six initiatives (16%), the mean majority preferences of (sub)urban voters essentially trumped the majority preferences of voters living in rural counties. In all nine cases, the measures were approved by statewide majorities, despite the fact that the average vote of the citizens residing in the state's fifty-three rural counties was less than 50%. All but one of the nine ballot measures (Amendment 37 in 2004, which requires utilities to invest in renewable energy) occurred prior to the 2002 election.

As I have reported elsewhere,⁴⁸ three of the nine initiatives where the mean preferences of rural voters placed them on the losing side of the statewide vote dealt with term limits. On average, voters in rural counties supported the 1994 term limits initiative, Amendment 17, with only 45% of the vote; yet the measure passed with 51% of the vote. The spatial voting patterns on the other two successful ballot initiatives limiting legislative terms—Amendment 12 in 1996 and Amendment 18 in 1998—are quite similar. The mean preferences of rural voters were also bettered by their (sub)urban counterparts on two other successful 1996 ballot initiatives—Amendment 14, an anti-hunting measure that banned leghold traps, and Amendment 16, which expanded public lands of the state held in trust. Both of these measures that targeted the lifestyle of rural Coloradoans received less than 40% of the vote in the rural counties. Both of these constitutional amendments, however, received roughly 51% of the statewide vote, with support from voters residing in the Front Range counties tipping the balance. In 2000, the mean preference of voters in rural counties was again topped by (sub)urban majorities on three progressive initiatives. On average, fewer than half of the citizens in rural counties supported legalizing marijuana for medical purposes, requiring background checks at gun shows for those purchasing weapons, and increasing the funding for K-12 education.

The bias against the preferences of rural voters in ballot initiative voting appears greater in presidential election years than in midterm elections. Of the nine measures in which the

48. See Smith, *Ballot Initiatives in Colorado*, *supra* note 27.

mean preference of voters in rural counties was bested by (sub)urban voters, seven occurred during presidential election years (three in 1996, three in 2000, and one in 2004). In Colorado, as in most states, voter turnout in general tends to be higher in rural areas than in urban areas. However, when voter turnout is higher across the state in presidential election years, the preferences of rural voters becomes dampened.

IV. REPRESENTATIVE VERSUS DIRECT DEMOCRACY

A. Initiatives and Counter-Majoritarian Legislation

Over the past two decades, as the volume of direct legislation has increased in the American states,⁴⁹ a growing number of state legislatures have attempted not only to rein in the initiative process and the effects of some successful measures⁵⁰ but also to overturn successful ballot measures.⁵¹ Legislature-sponsored “counter-majoritarian bills”⁵² directly challenge the popular vote on ballot initiatives. Two types of statewide ballot initiatives in particular—legislative term limits and animal protection measures—have received harsh treatment by state legislatures. In February 2002, for example, the Idaho legislature did the unthinkable by striking down a 1994 term limits initiative, overriding the governor’s veto in the process.⁵³ While perhaps not as brazen, the Colorado legislature in April

49. INITIATIVE AND REFERENDUM INSTITUTE, INITIATIVE USE: 1904–2006 (Nov. 2006), available at [http://www.iandrinstitute.org/IRI%20Initiative%20Use%20\(2006-11\).pdf](http://www.iandrinstitute.org/IRI%20Initiative%20Use%20(2006-11).pdf).

50. See, e.g., Jessica Coomes, *Legislators Seeking More Control over Initiatives*, ARIZ. REPUBLIC, Feb. 13, 2007, at A12; Angela Dire, *The Clock Strikes 12 in Colorado*, ST. LEGISLATURES, July–Aug. 1998, at 32 (observing that state senator forced to leave his seat due to term limitations ballot initiative decided to seek a seat in the state house of representatives); Daniel A. Smith, *Initiating Reform? The Effects of Direct Democracy on Adoption of Election and Ethics Laws*, in DEMOCRACY IN THE STATES: EXPERIMENTS IN ELECTIONS REFORM (Bruce Cain, Todd Donovan, and Caroline Tolbert, eds., 2008). For a comprehensive database of anti-initiative legislation, see NATIONAL CONFERENCE OF STATE LEGISLATURES, INITIATIVE AND REFERENDUM LEGISLATION, <http://ncsl.org/programs/legismgt/elect/initiative.cfm>.

51. ELIZABETH GERBER ET AL., STEALING THE INITIATIVE: HOW STATE GOVERNMENT RESPONDS TO DIRECT DEMOCRACY (2001); Smith, *Homeward Bound*, supra note 15.

52. See Smith, *Homeward Bound*, supra note 15.

53. Daniel A. Smith, *Overturning Term Limits: The Legislature’s Own Private Idaho?*, 36 PS: POL. SCI. & POL. 215, 215 (2003) [hereinafter Smith, *Overturning Term Limits*].

2002 passed a law that reversed a large portion of a 1992 statutory initiative that limited the hunting of black bears.⁵⁴ And in February 2002, Washington's Senate approved a bill to overturn an initiative passed in 2000 that outlawed certain types of animal traps.⁵⁵

The legislative practice of overturning ballot initiatives remains rare,⁵⁶ but it does occur.⁵⁷ In 2002, state legislators in a dozen states introduced more than twenty counter-majoritarian bills challenging successful term limits and animal protection ballot measures.⁵⁸ More recently, the Florida state legislature (prompted by former Governor Jeb Bush) was successful in 2006 in derailing a 2000 initiative calling for the construction of a Bullet Train that would have connected the state's metropolitan areas.⁵⁹ Florida lawmakers also have made a concerted (though still unsuccessful) effort to gut a successful 2002 K-12 class-size reduction initiative.⁶⁰ Recently, other state legislatures have targeted a range of successful ini-

54. Black Bear Hunting Management Act of 2002, ch. 203, § 1, 2002 Colo. Laws 695, COLO. REV. STAT. § 33-4-101.3(4) (2002).

55. S.B. 5831-2001-02, 2001 Leg., Reg. Sess. (Wash. 2001) (repealing portions of Initiative Measure 713), available at <http://apps.leg.wa.gov/billinfo/summary.aspx?year=2001&bill=5831>.

56. See Smith, *Homeward Bound*, supra note 15.

57. See Todd Donovan, *Direct Democracy as "Super-Precedent?" Political Constraints of Citizen-Initiated Laws*, 43 WILLAMETTE L. REV. 191 (2007).

58. See NATIONAL CONFERENCE OF STATE LEGISLATURES, COPING WITH TERM LIMITS: A PRACTICAL GUIDE (2007), <http://www.ncsl.org/programs/legismgt/ABOUT/Termlimit.htm>; HUMANE SOC'Y OF THE U.S., POST-1990 INITIATIVE AND REFERENDUM SUMMARY—ANIMAL ISSUES (2007), <http://www.hsus.org/web-files/PDF/Initiativechart.pdf>. In fact, the actual occurrence and passage of counter-majoritarian legislation is not known, as it is not being tracked by the National Conference of State Legislatures or any other legislative watchdog organizations. Interview with Jennie Drage Bowser, National Conference of State Legislatures (Sept. 17, 2002) (on file with author). While the passage of counter-majoritarian bills is likely to be rare, the practice has existed since the Progressive Era. See Joseph Lubinski, *Countering Majoritarian Politics: Challenging Statewide Initiatives at the Local Level*, 13 KAN. J. L. & PUB. POL'Y 85 (2003/2004); Daniel A. Smith & Joseph Lubinski, *Direct Democracy During the Progressive Era: A Crack in the Populist Veneer?*, 14 J. POL. HIST. 349 (2002).

59. *Florida Voters Pass Anti-Amendment Amendment*, MIAMI HERALD, Nov. 8 2006, available at <http://www.heraldtribune.com/apps/pbcs.dll/article?AID=/20061108/BREAKING20/61108039>.

60. Steve Bousquet, *Bush Calls for New Vote on Class Sizes*, ST. PETERSBURG TIMES, Mar. 5, 2003, at 1A, available at http://www.sptimes.com/2003/03/05/State/Bush_calls_for_new_vo.shtml.

tatives, most notably those dealing with campaign finance restrictions⁶¹ and the legalization of medical marijuana.⁶²

Why do state legislatures occasionally advance counter-majoritarian bills in an effort to contravene “a government of the people,”⁶³ as advocates of direct democracy have referred to initiatives? The phenomenon of counter-majoritarian legislation is surely more subtle than legislators collectively “thumb[ing] their noses at the popular vote,” as the *Idaho State Journal* editorial opined following the Idaho legislature’s reversal of the term limits initiative.⁶⁴ If we are to understand counter-majoritarian bills simply as the product of self-interested lawmakers arrogating power unto themselves, one might ask why there are not *more* legislative efforts to overturn undesirable ballot initiatives. After all, there is widespread opposition towards the initiative process among state legislators.⁶⁵

For sure, counter-majoritarian legislation confounds the conventional wisdom that elected state officials—with the possible exception of state judges⁶⁶—are “politically unlikely” to tamper with highly visible and popular ballot measures.⁶⁷ Legislators, after all, have an obvious self-interest to remain in office.⁶⁸ “While government actors may have opportunities to thwart initiative proponents’ intentions,” notes a group of scholars writing about initiative compliance in California, “they do so at some peril,” especially on issues such as term limits, where “the threat of sanctions” should force legislators to com-

61. In 2000, Colorado’s state legislature overturned a 1996 initiative, Amendment 15, that placed strict limits on campaign contributions. See Jennifer Drage, *Do Campaign Finance Laws Make a Difference?*, ST. LEGISLATURES, Sept. 2000, at 22.

62. In 1996, Arizona voters approved Proposition 200, legalizing marijuana for medical purposes, only to have the state legislature overturn the measure the following year. See RUDOLPH GERBER, *LEGALIZING MARIJUANA: DRUG POLICY REFORM AND PROHIBITION POLITICS* 106 (2004).

63. See THOMAS GOEBEL, *A GOVERNMENT BY THE PEOPLE: DIRECT DEMOCRACY IN AMERICA, 1890–1940* 1 (2002).

64. Smith, *Overturning Term Limits*, *supra* note 53.

65. See Shaun Bowler et al., *Institutional Threat and Partisan Outcomes: Legislative Candidates’ Attitudes Toward Direct Democracy*, 1 ST. POL. & POL’Y Q. 364 (2001).

66. See Kenneth P. Miller, *Constraining Populism: The Real Challenge of Initiative Reform*, 41 SANTA CLARA L. REV. 1037 (2001).

67. MAGLEBY, *supra* note 15.

68. See DAVID MAYHEW, *CONGRESS: THE ELECTORAL CONNECTION* (1974).

ply.⁶⁹ Given the persistent and strong popular support for animal protection and term limits in the American states, the logic of legislative compliance would seem to be especially applicable.

B. Spatial Representation in Representative Versus Direct Democracy

Instead of dismissing it as the product of self-interested behavior, I suggest that counter-majoritarian legislation in the American states epitomizes two systems of representation, each with its own logic, at times clashing with one another. Direct democracy is a majoritarian system of representation, a raw form of plebiscitary participation that efficiently aggregates the preferences of citizens who are eligible and registered to vote and who do so on election day.⁷⁰ The spatial concentration of majoritarian preferences is especially privileged in a system of direct democracy,⁷¹ as the “decisional context” in ballot elections becomes “discontinuous” as the electorate is “faced with separate, *discrete issues*.”⁷²

Representative democracy, in contrast, is perhaps better suited to protect the preferences of diffuse populations, as elected officials filter and deliberate public policies iteratively, allowing for the protection of minority interests.⁷³ During legislative debates, members are able to represent a wide spectrum of interests, not only the preferences of those citizens who vote in their districts.⁷⁴ Unlike an authoritative statewide vote on a ballot question, the legislative process permits a legislator subjectively to decide what interests to represent when faced with a policy question. Constituencies, of course, are complex entities, comprised not only of the total population residing in a district (including citizens and non-citizens, those eligible to vote and those not eligible, and voters and non-voters), but also

69. GERBER ET AL., *supra* note 51, at 20–21.

70. See BENJAMIN BARBER, *STRONG DEMOCRACY* (1984); Simone Chambers, *Constitutional Referendums and Democratic Deliberation*, in REFERENDUM DEMOCRACY (Matthew Mendelsohn & Andrew Parkin eds., 2001); Donovan et al., *supra* note 1.

71. See Donovan & Bowler, *supra* note 16.

72. GIOVANNI SARTORI, *THE THEORY OF DEMOCRACY REVISITED* 224–25 (1987).

73. See THE FEDERALIST, *supra* note 2; Bell, *supra* note 6.

74. See HANNA PITKIN, *THE CONCEPT OF REPRESENTATION* 219 (1967).

of external actors.⁷⁵ As a result, there may be strong micro-level deterrents influencing legislative behavior when it comes to overturning ballot initiatives. Occasionally it may be rational for legislators in initiative states to support a counter-majoritarian bill if it is consistent with the preferences of their own constituents, rather than the statewide popular vote.⁷⁶ Because the two systems of representation aggregate the preferences of dissimilar populations by different means, holding other factors constant, the legislative and initiative processes may lead to divergent, even contradictory, policy outcomes.

The potential tension between the two systems of representation seems to be particularly exposed when policy issues have a clear spatial (e.g., (sub)urban/rural) dimension.⁷⁷ Because of the asymmetric (sub)urban/rural population distribution in many of the states that permit direct democracy, it is possible that the inherent urban bias of direct democracy may provoke an institutional response by some state legislators to protect rural populations.⁷⁸

C. *Term Limits and Animal Protection Ballot Initiatives*

While little public opinion research has explicitly examined this spatial divide within states, there is good reason to expect divergent political preferences among urban and rural populations concerning certain public policies.⁷⁹ While substantively different, term limit and animal protection ballot measures have similar characteristics when viewed through a spatial lens.⁸⁰

75. See RICHARD FENNO, *HOME STYLE: HOUSE MEMBERS IN THEIR DISTRICTS* 8 (1978).

76. See Smith, *Homeward Bound*, *supra* note 15.

77. Logically, the majoritarian bias of direct democracy can be extended to other minority groups, be they racial, ethnic, religious, language, or gender. However, because these populations are not spatially distinct, as are rural populations, it may be more difficult for legislators to represent these minority groups than one with a distinct sense of place. See Gamble, *supra* note 9. But see Donovan & Bowler, *supra* note 16; Hajnal et al., *supra* note 16.

78. See Smith, *Overturning Term Limits*, *supra* note 53.

79. Unfortunately, public opinion polls generally do not disaggregate responses along a rural/(sub)urban dimension when reporting survey findings on these issues.

80. Furthermore, the two issues were among the most prominent ballot measures during the 1990s, as citizens in more than a dozen states voted on no fewer than seventeen animal protection initiatives, with voters in nearly twenty states adopting more than two dozen term limitation initiatives. Perhaps more

Rural residents—as compared with their (sub)urban counterparts—are likely to hold negative views regarding animal protection initiatives. Opponents of animal protection ballot measures claim that the measures stem from “out-of-state animal rights fanatics whose real mission is an agenda of extremism.”⁸¹ As with the forces behind the Sagebrush Rebellion and the debate over the use of public lands,⁸² opponents of animal protection measures contend that they curtail the rights, cultural lifestyles, and economic livelihoods of rural citizens. For example, following the lopsided victory in 1996 of Amendment 14 in Colorado—which banned recreational and commercial leg-hold and snare trapping in the state—a rancher on his way to go pheasant hunting told a reporter, “You know, people out here on the plains don’t think like [you] do back in the city.”⁸³

Similarly, rural populations are likely to be suspicious of term limitations, as those populations lost considerable legislative clout following the series of successful legal challenges on legislative apportionment in the 1960s. The imposition of term limits in the 1990s only further eroded the power of senior legislators representing rural districts,⁸⁴ as the tenure bans “prevent rural communities from building the seniority of their representatives.”⁸⁵ As one Nevada state senator put it, “rural voters need to understand what [the adoption of term limits] does to them. It cuts their head off—they’re out of the process.

important, neither type of ballot measure was home grown. Rather, national organizations—specifically U.S. Term Limits, Inc. (and its predecessors) and the Humane Society of the United States—were the principle instigators behind the efforts to place term limit and animal protection initiatives on statewide ballots during the 1990s. See *LIMITING LEGISLATIVE TERMS* (Gerald Benjamin & Michael Malbin eds., 1992); Wayne Pacelle, *The Animal Protection Movement: A Modern-Day Model Use of the Initiative Process*, in *THE BATTLE OVER CITIZEN LAWMAKING: A COLLECTION OF ESSAYS* 109 (M. Dane Waters ed., 2001).

81. Gregg Clapper, *Argument in Favor of Measure 34*, in *STATE OF OREGON, ONLINE VOTERS’ GUIDE* (1996), <http://www.sos.state.or.us/elections/nov596/voters.guide/MEASURES/MEAS34/M34ARF>.

82. See John Tierney & William Frasure, *Culture Wars on the Frontier: Interests, Values, and Policy Narratives in Public Lands Politics*, in *INTEREST GROUP POLITICS* 303 (Allan Cigler & Burdett Loomis eds., 1998).

83. Daniel Saile, *Ballot Boxes May Become Traps*, *DENV. POST*, Nov. 10, 1996, at C10.

84. See ALAN ROSENTHAL, *THE DECLINE OF REPRESENTATIVE DEMOCRACY* (1998); Brian Weberg, *Whom Do You Trust?*, *ST. LEGISLATURES*, July–Aug. 1999, at 34.

85. Dire, *supra* note 50.

You can no longer achieve power by longevity, knowledge, and expertise.”⁸⁶

1. Modeling Rural Opposition to Animal Protection Ballot Initiatives

During the 1990s, the Humane Society placed seventeen animal protection initiatives on the ballots of ten states. Although voters approved twelve and rejected five of the measures (an impressive 71% success rate), there was a clear (sub)urban/rural divide in terms of the electoral support for the measures.⁸⁷ As reported in Table 1, in Colorado in 1992, 70% of the electorate approved Amendment 10, a statutory initiative that banned the use of dogs and bait when hunting black bears and prohibited bear hunting from March 1 to September 1. The measure had broad appeal, winning majorities in forty-four of the state's sixty-three counties. Nevertheless, the gulf between urban and rural counties was quite pronounced. A majority of voters in all nine of Colorado's principally urban counties (those with less than 25% rural population in 1990) supported the measure. In contrast, thirteen of the twenty-nine largely rural counties (those with 75% or more rural population) opposed Amendment 10.

Similarly, in Washington nearly 55% of those who went to the polls in November 2000 supported Initiative 713, a statutory measure outlawing the use of most traps and poisons to capture any mammal for recreational or commercial purposes.⁸⁸ The measure tallied majority support in just fourteen

86. Karen Hansen, *Term Limits for Better and Worse*, ST. LEGISLATURES, July–Aug. 1997, at 50.

87. The bivariate correlation between the county percent vote in favor of fifteen animal protection initiatives sponsored by the Humane Society during the 1990s and the percentage of the rural population in each county in 1990 is negatively related ($r = -.443$) and significant ($p < .01$, 2-tailed, $n = 763$). In the states with animal protection measures on the ballot, a majority of voters in 85% of the most rural counties (those with 75% or more rural population), cast ballots against the animal protection measures; in contrast, a majority of voters in 68% of the most (sub)urban counties (those with less than 25% rural population) supported the fifteen measures backed by the Humane Society. Multivariate models controlling for a variety of economic, cultural, and demographic factors also reveal that a majority of citizens residing in largely rural counties vote differently on these measures than those living in predominantly (sub)urban counties.

88. See Washington Secretary of State, Election Results Search, www.secstate.wa.gov/elections/results_search.aspx (search “Jurisdiction Type” for “Ballot Measures” and “Election Year” for “2000”) (last visited Oct. 8, 2007).

of the state's thirty-nine counties. As was the case in Colorado, an array of wildlife, hunting, and agricultural interests rallied to oppose the Humane Society's measure.⁸⁹ On Election Day, citizens in the state's predominantly rural counties voted strongly against the ban. A majority of voters in only one of the state's thirteen largely rural counties supported the measure, whereas a majority of voters in six of the state's eight largely urban counties (those with less than 25% rural population in 2000) voted for the initiative. For example, 57% of the roughly 30,000 citizens who cast votes in Washington's eight completely rural counties voted against the initiative. In contrast, nearly 63% of the approximately 482,000 voters in King County (which includes Seattle) approved the measure.

To assess the direct impact of rurality on county voting patterns in the two animal protection ballot measures, I estimated a series of models using ordinary least squares (OLS) regressions. Aggregate level (county) data are used to estimate the rural support for the hunting bans, controlling for partisanship (measured by the percent GOP vote for president in the previous election). The dependent (or outcome) variable equals the percent vote in favor of each ballot measure by county.

As reported in Table 2, counties with higher levels of rurality (measured by the percentage of residents in a county living on farms in 1990)⁹⁰ were significantly less likely to support the Washington anti-trapping initiative and the ban on bear hunting in Colorado. In other words, a county's rurality had a negative impact on the county-wide vote for the animal protection measures in both states. In Colorado, for every percent increase in farm population, taking partisanship into account (the percent GOP vote for president in 1992), support for the initiative correspondently decreased by nearly one percent. In Washington, for every percent increase in the farm population in a county, again controlling for partisanship (the percent

89. See SECRETARY OF STATE OF WASHINGTON, 2000 ELECTION: STATE BALLOT MEASURES—ARGUEMENTS [sic] FOR AND AGAINST INITIATIVE 713 (2000), http://www.secstate.wa.gov/elections/2000/i713_arguements.aspx (last visited Oct. 8, 2007); INITIATIVE AND REFERENDUM INSTITUTE, *supra* note 49.

90. In separate models (not shown), alternative measures of rurality (e.g., the percentage of rural residents in 1990 and the percentage of workers in a county employed in agriculture in 1990) are significant and in the predicted direction. The percent farm population in a county is used because it is a more precise indicator of the spatial, occupational, and sectoral aspects of rurality.

GOP vote for president in 2000), the support for I-713 declined by 0.8 percentage points.

Table 2:
Urban/Rural Split in Popular Support for Animal Protection and Term Limit Ballot Initiatives

Variables	Idaho, 1994	Colorado, 1992	Washington, 2000
	β (se)	β (se)	β (se)
Percent Farm Population, 1990 [*]	-.41 (.22)	-.97 (.25)	-.81 (.35)
Percent Vote GOP President [^]	-.12 (.15)	-.42 (.18)	-.49 (.13)
Constant	.63 (.06)	.79 (.06)	.75 (.06)
Adjusted R-Square	.06	.383	.62
F Statistic	2.47	20.28	31.51
Number of Cases	44	63	39

Note: Coefficients are unstandardized with standard errors in parentheses. **Bold** coefficients and standard errors indicate observed statistical reliability: 95% confidence intervals bounded away from zero, p -values < .10. The dependent variable for each model equals the percent "yes" vote for each ballot measure by county.

Descriptions of Dependent and Independent Variables (with Data Sources): The dependent variable for each model equals the percent "yes" vote for each ballot measure by county.

* Percent population in a county living on a farm (Data source: U.S. Census Bureau 1990 (for Colorado and Idaho); U.S. Census Bureau 2000 (for Washington)).

[^] Percent vote for the GOP candidate for President in the current or immediately previous general election (Data Source: Colorado Secretary of State 1992; Idaho Secretary of State 1992; Washington Secretary of State 2000).

The disparity in support for both measures among voters residing in urban and rural counties indicates there is a broad spatial divide concerning animal protection policies. It also suggests that the spatial structure of rural counties (as measured by the percentage of farm population in a county) has some coherence. When controlling for partisanship, voters residing in rural counties in Washington and Colorado were considerably less likely to support animal protection ballot measures than were their urban counterparts.

2. Modeling Rural Opposition to Term Limit Ballot Initiatives

During the 1990s, twenty-one states adopted term limits for state legislators.⁹¹ Direct legislation played a major role in the passage of this “governance policy,”⁹² as voters in nineteen states approved their legislative sanctions via ballot initiatives.⁹³ Voters in California, Colorado, and Oklahoma became the first to approve term limits for state legislators via the initiative process in 1990, with other states allowing the initiative following closely on their heels. The continued adoption of term limit initiatives during the 1990s was quite high—each of the nineteen initiatives received, on average, roughly two-thirds of the popular vote.⁹⁴ While scholars have examined many determinants of the popular support for statewide term limit initiatives,⁹⁵ they have not explored whether a spatial divide existed in states adopting the ballot measures.

For example, in 1994 Idahoans adopted term limitations for state legislators and other state and local officials. Voters approved the statutory initiative (Measure 2) with nearly 60% of the vote. The initiative had broad appeal, passing in thirty-five of Idaho’s forty-four counties.⁹⁶ There was evidence, however, of a spatial divide among the state’s rural and more urban counties in the support of the measure. According to the 1990 census, twelve of Idaho’s forty-four counties were at least 50% urban. A majority of voters in all twelve of Idaho’s relatively (sub)urban counties supported the 1994 term limits

91. See JOHN M. CAREY ET AL., *TERM LIMITS IN THE STATE LEGISLATURES* (2000).

92. See Tolbert, *supra* note 46.

93. The Utah legislature adopted legislative term limits in 1994, while Louisiana voters approved a 1995 legislative referendum calling for term limits. NATIONAL CONFERENCE OF STATE LEGISLATURES, *supra* note 58.

94. In February 2002, the Idaho legislature became the first in the country to overturn the term limitations that were placed on it by a citizen initiative. See U.S. TERM LIMITS, STATE LEGISLATIVE TERM LIMITS, http://www.ustl.org/Cur-rent_Info/current_info.html (last visited Dec. 1, 2007). Courts in Massachusetts, Oregon, and Washington have also struck down term limitation ballot initiatives. *Id.*

95. See Shaun Bowler & Todd Donovan, *Popular Responsiveness to Taxation*, 48 POL. RES. Q. 79 (1995); Todd Donovan & Joseph Snipp, *Support for Legislative Term Limitations in California: Group Representation, Partisanship, and Campaign Information*, 56 J. POL. 494 (1994); Jeffrey Karp, *Explaining Public Support for Legislative Term Limits*, 59 PUB. OPINION Q. 373 (1995).

96. Smith, *Overturning Term Limits*, *supra* note 53.

measure, with an average of 58% of voters in those twelve counties voting for the measure. Support for the measure was slightly lower in Idaho's fourteen completely rural counties, which averaged 54.4% approval of the initiative. Sliced differently, the (sub)urban/rural divide becomes even sharper. In the nine counties where a majority of voters rejected the 1994 initiative, the average rural population was 13% higher (78%) than the average rural population in the thirty-five counties that supported the measure (65%).

As with the aforementioned animal protection measures, aggregate level data are used to estimate the urban and rural support for Idaho's 1994 term limits initiative. When partisanship (the percent GOP vote for president in 1992) is controlled, a pattern emerges of the (sub)urban/rural divide on Measure 2.

As shown in Table 2, voters residing in rural counties (as measured by the percentage of a county's farm population in 1990) were significantly less likely than residents of urban counties to support the term limits measure. For every percent increase in farm population, support for the term limits measure drops by 0.4 of a percentage point. As with animal protection measures, spatial context seems to matter, as opposition towards term limits was especially strong in counties with high levels of people residing on farms.

D. Legislative Counter-Majoritarian Responses to Ballot Measures

Does the (sub)urban/rural spatial divide in the American states help explain efforts by state legislatures to overturn these successful ballot initiatives? In order to explain why some legislators voted to overturn initiatives that received a majority of statewide votes, I modeled legislator support for the four counter-majoritarian bills, controlling for several factors.

First, I expected legislators representing districts with low popular support for successful initiatives would vote in favor of the subsequent counter-majoritarian legislation. Since state policy preferences are geographically heterogeneous,⁹⁷ it may be rational for some legislators to vote in favor of a counter-majoritarian bill if their districts voted contrary to the state-

97. See ROBERT ERIKSON ET AL., STATEHOUSE DEMOCRACY (1993).

wide electorate.⁹⁸ After all, an initiative may win a statewide majority, but lose in a member's legislative district. Therefore, it is unlikely that a legislator would rely on the statewide election return to inform his or her vote on pending legislation.⁹⁹

Second, animal protection and term limit policies are likely to affect (sub)urban and rural populations differently. I expected that legislators representing predominantly rural districts to be more likely to vote to overturn animal protection initiatives than those representing urban and suburban districts, since both measures had a direct impact on rural populations and were opposed by various interest groups with a rural clientele (including the state affiliates of the American Farm Bureaus and the National Rifle Association).¹⁰⁰ Regarding term limits in Idaho, I also expected rural legislators to support the counter-majoritarian legislation, as most local officials were subject to term limitations, and such limits could have deprived "communities of experienced politicians, especially in sparsely populated rural areas that struggle to fill local offices."¹⁰¹

The models control for other micro-level determinants of the legislative vote on counter-majoritarian bills. Legislators from safe districts are expected to support the counter-majoritarian bills more than legislators who won competitive elections, as a vote against the statewide majority might become campaign fodder in a future election. Regarding partisanship, I expected Republican legislators to be more likely

98. See Smith, *Homeward Bound*, *supra* note 15.

99. See GERBER ET AL., *supra* note 51 (explaining that there is a growing body of evidence that shows that public policies adhere more closely to citizen preferences in initiative states than in non-initiative states); John Matsusaka, *Problems with a Methodology Used to Evaluate the Voter Initiative*, 63 J. POL. 1250, (2001); see also Smith, *Homeward Bound*, *supra* note 15 (explaining that there is also good reason to expect that individual state legislators will not always abide by the electorate's statewide vote on a ballot measure). But see John Camobreco, *Preferences, Fiscal Policies, and the Initiative Process*, 60 J. POL. 819 (1998); Michael G. Hagen et al., *Response to Matsusaka: Estimating the Effect of Ballot Initiatives on Policy Responsiveness*, 63 J. POL. 1257 (2001); Edward L. Lascher, Jr., et al., *Gun Behind the Door? Ballot Initiatives, State Policies and Public Opinion*, 58 J. POL. 760 (1996).

100. While a member's district type is analytically distinct from the percent vote against an initiative in a member's district, in the case of the two animal protection and one-term limit ballot initiatives, the two variables are highly correlated. For all three states, the bivariate correlation between district type and percent vote against the initiative in the district is positively related (Colorado $r = .781$; Washington $r = .647$; Idaho $r = .212$) and significant ($p < .01$, 2-tailed).

101. Bob Fick, *Idaho Repeals Term Limits*, U.S. Term Limits Research Center, Feb. 1, 2002, <http://www.ustl.org/Research/articles/020201b-associatedpress.html>.

than Democrats to support overturning both "liberal" animal protection measures. I also expected Republicans in Idaho to be more likely than Democrats to vote to overturn term limits, as the GOP had the most to lose if the bans were imposed since it had solid control of the legislature. I also expected in the case of term limits that long-serving legislators would be more inclined than junior members to support the counter-majoritarian bill, as they would be the first to lose their seats if the measure was implemented. In sum, controlling for a legislator's political party affiliation and the competitiveness of his or her previous election (and seniority in the case of term limits), I expected rural legislators as well as those representing districts with low levels of popular support for the previous ballot initiatives to be supportive of the counter-majoritarian bills.

I used a series of logistic regressions to estimate the impact of these factors on the probability of an individual legislator voting for a counter-majoritarian bill. The dichotomous dependent (or outcome) variable is coded zero if the member voted "no" on the counter-majoritarian bill, one if he or she voted "yes." Table 3 displays the logistic coefficients and robust standard errors of the four estimations. In the case of term limits, Republican legislators and those representing rural districts were significantly more likely to support the counter-majoritarian legislation than were Democrats and those representing urban and suburban districts. Somewhat unexpectedly, members with lengthier tenures in office and those with safe seats were no more likely to support the bill than members with less seniority or those winning competitive elections, and members representing districts with low popular support for the 1994 term limit initiative were statistically no more likely to vote to end term limits than those representing districts with high popular support.

Table 3:
Legislator Support for Counter-Majoritarian Bills

Independent Variables	Idaho, Overturning Term Limits	Colorado, Overturning Animal Protection	Washington, Overturning Animal Protection
	β (se)	β (se)	β (se)
Percent Vote Against Initiative in District*	-.23 (4.82)	-12.07 (8.519)	22.39 (12.50)
District Type [^]	1.37 (.61)	4.87 (2.06)	10.31 (92.80)
Competitiveness of Last Election**	.45 (1.03)	-2.11 (.779)	-1.75 (1.33)
Political Party ^{^^}	2.9 (.85)	3.97 (.885)	12.13 (75.20)
Number of Terms***	.09 (.12)	----	----
Constant	-3.20 (2.27)	2.57 (2.28)	-8.42 (5.43)
Log Likelihood	96.13	71.53	19.80
Overall Model X ²	25.03	60.62	32.39
Correctly Predicted "Yes" Votes	97.4%	85.7%	94.7%
Number of Cases	104	97	49

Note: Coefficients are unstandardized with the asymptotic standard errors of the maximum likelihood estimates (MLE) in parentheses. **Bold** coefficients and standard errors indicate observed statistical reliability: 95 percent confidence intervals bounded away from zero, p -values < .10.

Descriptions of Dependent and Independent Variables (with Data Sources): The dependent variable for each model is dichotomous, scored 1 if the legislator voted "yes" on the counter-majoritarian bill (voting to overturn the ballot initiative), and scored 0 if the legislator voted "no."

*Percent Vote Against Initiative in District: Percent "no" vote in the member's district for the relevant ballot initiative. The percent vote against the ballot measures in a member's district is estimated. If a member's district lies completely within a county, the county vote on the ballot measure is used to approximate the vote within his or her legislative district. If a member's district includes more than one county, the average of the county votes on the ballot measure is used to approximate the vote within his or her legislative district. (Data source: Colorado Secretary of State 1992; Idaho Secretary of State 1994; Washington Secretary of State 2000 (all data on file with the author)).

[^]District Type: Dummy variable scored 1 if the member's district is rural (or "mixed") and scored 0 if the member's district is urban or suburban. (Data source: MICHAEL BARONE ET AL., STATE LEGISLATIVE ELECTIONS (1997)).

**Competitiveness of Last Election: Dummy variable scored 1 if the member ran unopposed or won previous general election with more than 55 percent of the vote, and scored 0 if the member won 55 percent or less of the vote in the previous general

election. Members who were appointed at the time of the counter-majoritarian vote are scored as running unopposed (score=1). (Data source: BARONE ET AL., *supra*; Washington Secretary of State 1998, 2000; Colorado Secretary of State 1998, 2000; Idaho Secretary of State 2000 (all data on file with the author)).

^^Political Party: Dummy variable scored 1 if the member is a registered Republican, and scored 0 if he or she is a registered Democrat. (Data source: BARONE ET AL. *supra*; Washington Secretary of State 2000; Colorado Secretary of State 2000; Idaho Secretary of State 2000 (all data on file with the author)).

***Number of Terms: Number of terms served by the member. (Data source: Idaho Secretary of State 2002 (on file with the author)).

With the animal protection counter-majoritarian bills, legislators representing rural districts in Colorado were more likely than their urban and suburban counterparts to overturn portions of the 1992 popular initiative banning black bear hunting. Although district type was not statistically significant in Washington, the percent vote against the ballot measure in the district was significant. Legislators representing districts whose voters largely opposed the initiatives were more likely to vote for the counter-majoritarian bills than those who represented districts whose voters generally supported the measures. Interestingly, political party was not a significant predictor in the legislative support for the counter-majoritarian bills in Washington.

To aid in the interpretation of these findings, I have converted the logistic regression coefficients as reported in Table 3 into expected values (predicted probabilities) of legislative support for the four counter-majoritarian bills. In Table 4, I simulated the likelihood of Republican and Democratic legislators representing the mean, suburban/urban, and rural districts to vote for the counter-majoritarian bills, controlling for the other independent effects.

Table 4:
Expected Probability of a Legislator's Vote for
Counter-Majoritarian Bills

State, Issue	Type of District	Party	
		Republican	Democratic
Idaho, Term Limits	Mean	81%	19%
	Urban or Suburban	59%	8%
	Rural	85%	24%
Colorado, Animal Protection	Mean	93%	20%
	Urban or Suburban	81%	7%
	Rural	100%	91%
Washington, Animal Protection	Mean	100%	97%
	Urban or Suburban	100%	64%
	Rural	100%	100%

Note: Estimates computed by setting the independent variables Number of Terms, Percent District Vote Against Initiative, and Competitiveness of General Election to their mean values while adjusting the independent variables Political Party and District Type to scores of either 0 or 1, accordingly. Colorado N=97 (54 Republicans and 43 Democrats); Washington N=49 (24 Republicans and 25 Democrats); Idaho N=104 (92 Republicans and 12 Democrats).

These alternative specifications show a clear pattern: irrespective of political party, members representing rural districts were much more likely to vote to overturn the term limit and animal protection ballot initiatives. For example, in Idaho, Republican and Democratic legislators representing rural districts were much more likely (85% and 24%, respectively) to support overturning the term limits ban than Republican members representing urban districts (59% and 8%, respectively). With respect to the legislative efforts to overturn the animal protection measures, Democrats representing rural constituencies in both states, as well as rural Republicans in Colorado, were more likely to support the counter-majoritarian bills than those representing urban and suburban districts. In both states, the magnitude of rurality was stronger among Democratic legislators. In Colorado, the predicted probability of Democratic legislators from rural districts supporting the counter-majoritarian legislation was 91%, compared to just 7% for those Democrats representing urban/suburban districts. In Washington, the predicted probability of Democratic Senators from rural districts supporting the counter-majoritarian bill

was 100%, compared to just 64% for those representing urban and suburban districts.

CONCLUSION

To date, scholars have not fully examined the possibility of a (sub)urban/rural divide in direct democracy ballot contests.¹⁰² Unlike a republican form of government, whereby elected representatives are able to deliberate on and modify policies prior to their adoption and members of minority parties are able to manipulate the proceedings, in procedural terms, direct democracy is a purely majoritarian institution.¹⁰³ While it is certainly the case that minority interests lose their share of battles in republican settings, there is at least the possibility that they may alter the substance of the legislation during the "normal" legislative process.

As I have noted elsewhere, the implications for rural constituencies of the empirical findings presented in Part III and IV, of course, "may be interpreted as the glass being either half-empty or half-full."¹⁰⁴ In Colorado between 1992 and 2006, the average preferences on the fifty-six ballot initiatives of voters living in rural counties were trumped by those of (sub)urban voters 16% of the time. On forty-seven of the fifty-six initiatives, voters in rural and (sub)urban majorities jointly supported or opposed the initiatives in like fashion. But in the remaining nine cases, a majority of voters in the fifty-three rural counties had significantly different preferences on ballot issues than did their Front Range counterparts, so different that the majority preferences of rural voters were drowned out by those of (sub)urban voters at the polls.

Of particular note is that the spatial divide between (sub)urban and rural counties occurred on issues of greatest substantive import to rural citizens, such as term limits, the taking of wildlife, and the regulation of firearms. Rural communities of interest are more likely to be directly affected by animal protection and land-use issues than are the (sub)urban majorities that backed the measures. The negative impact of

102. For a rare exception, see Joseph Lubinski, Comment, *The Cow Says Moo, the Duck Says Quack, and the Dog Says Vote! The Use of the Initiative to Promote Animal Protection*, 74 U. COLO. L. REV. 1109 (2003).

103. See MATSUSAKA, *supra* note 19.

104. See Smith, *Ballot Initiatives in Colorado*, *supra* note 27, at 22.

legislative term limits on rural populations may also be considerably greater than on urban populations. Term limits have eroded the seniority of rural lawmakers. As a result, rural populations have less powerful members of the state legislature defending their interests. Furthermore, term limits imposed on local offices may be limiting the pool of qualified candidates for public office in some rural areas.¹⁰⁵

Direct democracy's bias against rural interests may also be exacerbated during presidential elections. As mentioned earlier, of the nine Colorado ballot initiatives where the mean preference of voters in rural counties was bested by those living in Front Range (sub)urban counties, seven passed in presidential election years. The bias against rural voters, then, may be more pronounced in higher turnout elections, especially if the turnout is concentrated in (sub)urban areas. Although rural turnout in midterm elections is generally higher than turnout in (sub)urban counties, this advantage appears to largely disappear in general elections.

My analysis of county voting patterns on Colorado ballot initiatives does not control for other factors (such as partisanship and socioeconomic factors) that could possibly affect a county's support or opposition of an initiative. Yet, this study of fifty-six statewide initiatives on the ballot between 1990 and 2006 reveals that citizens residing in (sub)urban counties not only are more supportive of most ballot measures, they also on average vote differently than voters living in rural counties. Because of the asymmetric population distribution in Colorado along spatial lines, the possibility of a systematic direct democracy bias against rural citizens is real, and it is likely to continue to shape public policy in the state for generations to come.

With regard to counter-majoritarian legislative efforts in Colorado, Idaho, and Washington, it is clear that some legislators do not think of themselves as being bound by the decision of the statewide electorate, despite the populist sentiment that legislatures should not tamper with successful ballot measures. Counter-majoritarian efforts, then, should not be unexpected. Individual legislators, after all, represent constituencies that may have vastly different preferences on public policies than those expressed by the statewide electorate. It may be ra-

105. See generally Smith, *Overturing Term Limits*, *supra* note 53.

tional, then, for some legislators to try to overturn successful ballot measures. On certain issues, such as term limits and animal protection, the schism between (sub)urban and rural populations in the American states seems to be particularly wide. It should not be surprising that legislators who represent rural populations might seek to reverse ballot initiatives via counter-majoritarian legislation. While this discrepancy may be understood as legislators blatantly disregarding the will of the people, the counter-majoritarian action may have more to do with the underlying spatial division existing in the American states and the different ways competing systems of representation aggregate voter preferences.¹⁰⁶

As the empirical findings suggest, the gulf in voter preferences among rural and (sub)urban voters in Colorado and other states, across a variety of policy issues, is at times wide. While direct democracy by definition reflects the will of the majority of citizens who are registered to vote and who turn out to vote, citizen lawmaking can exacerbate policy differences in the metropolitan-outstate cleavage that exists in many states. As is revealed by the voting patterns on ballot initiatives (and the counter-majoritarian efforts of some legislators), a collective understanding of social space can forge and politicize a population's identity when that population faces a perceived threat to its shared "lifestyle." It is important, then, for elected officials and other policy makers to appreciate these spatial divisions when responding to the substantive outcomes of ballot initiatives as well as when trying to alter the actual procedural mechanisms of direct democracy.

106. See Thomas Romer & Howard Rosenthal, *Bureaucrats Versus Voters: On the Political Economy of Resource Allocation by Direct Democracy*, 93 Q. J. ECON. 563 (1993).