Social Choice, Crypto-Initiatives and Policy Making

by Direct Democracy

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1. Introduction

The initiative process was created originally to enable citizens to enact public policy directly and in so doing to overturn the dominion of state and local party machines. In recent years, initiatives have been thought to serve as a check on legislative authority and to provide the people with a means to pressure the legislature into adopting more public regarding policies. Indeed, the general consensus emerging from the research to date is that, at their worst, initiatives are benign, while at their best, they serve to further the interests of electoral majorities (Matsusaka 1995, 2000, 2004; Matsusaka and McCarty 2001, Matsusaka and Lupia 2004 Gerber and Lupia 1995, Gerber 1996, 1998, 1999, Kiewiet and Szakaly 1996).

A few scholars, however, have found reason to pause in their celebration of the initiative, finding shortcomings in the initiative process, its outcomes, or both (Gerber et al 2001, Gerber et. al. 2004, Broder 2000, Kiewiet 1995, McCubbins 1995, Noll 1995). In this paper we argue that initiatives will only infrequently improve the public weal. We begin by offering a series of anecdotes about the rise of crypto-initiatives, which are initiatives that use direct democracy as an instrument to achieve non-policy related goals. We next survey the basic social choice and public choice critiques of the initiative process. We argue that, despite recent rigorous scholarly attention as to the effects of initiatives (for a survey see Lupia and Matsusaka 2004), we find little reason yet to reject the social and public choice criticisms of policy making via direct democracy. Finally, we conclude that the problems inherent in the initiative process are being magnified by the increase in crypto-initiatives and the rise of the crypto-political machines, the new 527 PACs, that sponsor them. Increasingly, the public welfare may be only an incidental consideration in the sponsorship, passage and implementation of initiatives. This in turns implies that we consider anew limiting or amending the initiative process.

2. The Rise of Crypto-Initiatives

During the 2004 general elections, there were 162 ballot measures in 34 states. California led the pack with 16 total ballot measures, 12 of which qualified by the initiative process. Although final figures are not yet in, estimates are that nationally more than $600 million was spent on initiative campaigns and more than $192 million was spent in California.[1] Many scholars, somewhat naively, tend to see these initiatives as attempts by citizens to change public policy. But, as the following anecdotes from 2004 illustrate, a large and increasing number of initiatives are designed by agenda setters, often from outside the state or locality in which the initiative is being run, who have other goals in mind; for them, affecting policy is often at most a secondary concern. In many cases the initiatives of 2004 had their roots in prior elections. In 2000, George W. Bush beat Al Gore in Ohio by a slim margin – less than 170,000 votes out of more than 4.5 million votes cast. As the 2004 election between President Bush and John Kerry crystallized, it was clear that Ohio would again be a very close race and it would be one of the few states to decide the presidential victor. Democrats had been campaigning extensively in Ohio to improve their odds of wining the state (Kirkpatrick 2004).[2] Republicans were involved in their own activities to secure a victory in the state. State Republican leaders coordinated with the White House on one of the so-called Defense of Marriage initiatives, which they hoped would increase Republican turnout and help Bush carry Ohio (Kirkpatrick 2004). The state's Republican governor and attorney general initially opposed the ballot measure because they feared the initiative would lead to a flood of litigation against Ohio companies and state

[1] The California figure represents all expenditures by initiative PACs between January 1, 2004 and October 26, 2004 for which spending data was available on the Secretary of State's webpage.

[2] The group America Coming Together had spent $1.1 million and deployed 700 employees in Ohio by the end of April 2004 to oppose President Bush's reelection (Willis 2004).

agencies, but that didn’t stop initiative sponsors from going ahead with the proposal (Dao 2004). Leading up to the election it seemed that this strategy had a reasonable chance of securing Bush the win, because although Kerry was likely beat Bush in urban areas, the marriage initiative was projected to have a significant effect in the electorate, amounting to a 2 to 3 percent increase in turnout with the largest number coming from conservative Christians (Green 2004). As it turned out, Bush indeed won Ohio and the presidency. After the election, Ohio “political analysts credit[ed] the ballot measure with increasing turnout in Republican bastions in the south and west, while also pushing swing voters in the Appalachian region of the southeast toward Mr. Bush. The president's extra-strong showing in those areas compensated for an extraordinarily large Democratic turnout in Cleveland and in Columbus, propelling him to a 136,000-vote victory” (Dao NYT 2004). If this is accurate, Ohio’s Defense of Marriage Initiative was a key factor in Bush’s re-election.

A Defense of Marriage Initiative also appears to have affected political outcomes in Kentucky. This time the likely beneficiary of the initiative was Republican Senator Jim Bunning who barely retained his Senate seat. Bunning had been in the midst of running what may be one of the worst political campaigns of all time.[3] His 20 point lead in the polls evaporated during the campaign, and some of his behaviors and statements led Democrats to directly question his sanity (Alessi, Massey and Ward 2004). Because Kentucky was considered a safe state for

[3] As recounted in Stolberg (10/28/2004, NYT), “Mr. Bunning's difficulties began earlier this year when he suggested that Dr. Mongiardo looked like Saddam Hussein's sons. Later he debated Dr. Mongiardo from a television studio in Washington, and admitted afterward having used a teleprompter to read his opening and closing statements. Then he told reporters he had not heard about the Army reservists in Iraq who had refused a mission because they felt it unsafe. ‘I don't watch the national news, and I don't read the paper,’ Mr. Bunning explained. ‘I haven't done that for the last six weeks. I watch Fox News to get my information.’”

President Bush, Bunning did not benefit from presidential campaigning. However, “Supporters of the measure [Defense of Marriage Initiative] used extensive church networks to persuade people to vote” and the support of conservative voters may have helped Bunning secure victory (Dao 11/4/2004, NYT). To help Bunning, Republicans tried to tie opposition to the initiative around the neck of Democratic candidate Daniel Mongiardo (Dao 2004). Bunning eventually overcame his own campaign to win reelection. Although there is not yet definitive empirical evidence about the effects of the different Defense of Marriage Initiatives, they appear to have had considerable effects beyond policy change.[4] In the November 2004 election, eleven states (Arkansas, Georgia, Kentucky, Michigan, Mississippi, Montana, North Dakota, Ohio, Oklahoma, Oregon, and Utah) considered Defense of Marriage Initiatives, and they all passed. Bush and other Republican candidates either won, or did better than previously expected, in these states.

On the other side of the political spectrum, Democrats have also been using initiatives to bolster registration and turnout. In 2004 in Florida and 1996 in California, minimum wage initiatives were aimed not just at changing policy, but also at affecting other political contests in the state. During the 1996 election season, the Living Wage Coalition sponsored Proposition 210 in California, which sought to raise the minimum wage from $4.25 to $5.75 over the course of two years. In addition to the stated policy change, the main rationale for the initiative was to increase turnout among liberal voters so that the Democrats could retake control of the statehouse (Silverstein 1996). Although polls in 1996 indicated that the initiative may not have

[4] Karol and Miguel (2004) argue that the Defense of Marriage Initiatives had no effect on the vote for Bush, but they do not take account of the strategic use of initiatives or the possibility that they have different effects in different states. First, turnout may only be an important aspect of the initiative in certain states (Ohio), whereas in other states (Mississippi) the initiative may have other goals. Second, the goal may not be to increase turnout for the national election but instead for state or local elections.

had much aggregate effect "Richard Holober, campaign manager for Proposition 210, pointed out that the extra voters brought to the polls by the initiative, however few, may have been the margin of difference that enabled Democrats to retake the California Assembly" (Silverstein 11/7/1996). The initiative also did not have the policy impact originally anticipated, as the federal government raised the minimum wage that same year (Silverstein 10/26/1996).

In 2004, the Association of Community Organization for Reform Now (ACORN)[5], through a Political Action Committee called Florida Families for All, spent millions of dollars to support an initiative to raise the state's minimum wage. The group chose the minimum wage as its instrument because, according to an internal document acquired by the *Washington Times*, their "plan concluded that initiatives increase voter turnout and that 'minimum wage initiatives can significantly increase the turnout of supporters without increasing turnout from the opposition'" (Seper 2004).[6] ACORN declared its three major goals as "driving heightened Democratic turnout, passing the initiative, and building permanent political capacity for future

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[5] In a clear, but perhaps overly humble, statement of their activity, ACORN declares "When most community organizations still believed in sitting on the sidelines on election day, ACORN was leading the way in voter registration, education, and mobilization. In the most recent election cycle, ACORN registered over 200,000 new voters, and made over 1 million non-partisan contacts to infrequent voters encouraging them to vote." One might question the "non-partisan" nature of their contacts given the information above. According to their website, www.acorn.org, in recent years, ACORN has led ballot initiative campaigns in San Francisco, Phoenix, Pine Bluff City and Kansas City. They work closely with their "sister" organization, Project Vote, to build "voter registration, education and mobilization networks" to turnout "new and infrequent voters around issues that are important to their families and communities, thus giving previous non-voters a reason to vote" (p. 24) ACORN Annual Report, 2003.

[6] It is richly ironic that in 1995 ACORN sued the state of California because having to pay their own workers a minimum wage would reduce the number of employees they could hire (AP, 8/11/2004).

gains" (Seper 2004). In addition to targeting a proposed initiative at its ideal audience, Florida Families for All registered 200,000 initiative signers as voters, which boosted their signature count and the number of registered voters who supported their petition, possibly having a significant effect on statewide elections this year and into the future. These efforts have drawn scrutiny from the Florida Department of Law Enforcement, which is investigating to determine whether or not ACORN engaged in illegal registration activity.

In Colorado during the 2004 election cycle, donors and the Democratic Party also utilized the initiative process to affect the state and national elections. Most national attention focused on the wealthy president of a Brazilian university who spent millions in a vain attempt to pass an initiative to allocate Colorado's electoral votes on a proportional basis. However, other less noticed initiatives may have been far more important in the 2004 election in Colorado. The Democratic Party, after its losses in 2002, started to plan a series of initiatives to drive turnout and change voting patterns. Using extensive databases to tie together political, demographic, consumer and other information, these political operatives sought to identify areas in the state, and the individuals living within, who "under-performed" in the 2002 election. That is, they wanted to find likely Democratic voters, who either did not turnout or who turned out but voted Republican. They found a disgruntled cohort of young baby-boomers and older Generation Xers, living in the newly developed suburbs around Denver. Through waves of phone surveys, personal interviews and shopping-mall focus groups the political strategists discovered that this age group and demographic were unhappy and highly motivated about transportation (they complain bitterly about their daily commutes to and from downtown Denver) and high electricity prices (in their brand new all electric homes). In response, these Democratic Party activists helped sponsor two initiatives in 2004: the first, FasTracks, increased mass transit funding; and

the second, Measure 37, directed the state's utility companies to increase their use of renewable energy and in particular, wind power. One of the critical aspects of this strategy was getting Republicans, such as Governor Bill Owens, to oppose the measures, which would provide a cue to the targeted voters that their interests were more similar to Democrats than Republicans. As expected, Governor Owens publicly opposed the transit initiative. When the $3.5 million campaign for the transit initiative was done and the election results were counted, it appeared the Democratic strategy had worked on multiple fronts. First, although the two key initiatives were designed to be instrumental in generating turnout, their policy proposals also passed (despite the fact that the initiatives themselves recognize that traffic will not improve for decades and that requiring the purchase of alternative energy will increase the cost of electricity). Second, while the rest of the country was electing Republicans, Coloradans elected Democrats to the U.S. Senate, U.S. House, and the Colorado Assembly. Indeed, Democrats have control of the Colorado legislature for the first time in over 40 years.

The anecdotes described above suggest that thinking about initiatives only in terms of their policy outcomes ignores other possibly significant effects on registration, turnout, and election outcomes. As a matter of fact, if initiatives determine who wins the presidency, the Senate and state houses, we are ignoring their most important effects. While the use of crypto-initiatives is not new (for example, the use of Proposition 187 in the California gubernatorial race is well documented) they are of increasing concern. Political parties, individuals and interest groups are all scouring the policy space to find niche issues for the purpose of affecting elections or rewarding or punishing candidates and parties. This trend is coupled with the rise of 527s –so called "silent partners" – which are a new class of "nonparty" political groups whose tax exempt status makes them highly attractive for donors. These new groups can spend tens, if not

hundreds, of millions of dollars in relative secrecy[7] for campaign activities (527s spent a combined $544 million in the 2003-04 election cycle), and combined with crypto-initiatives may turn an impaired method of policy making and institutional reform into the corrupt tool of twenty-first century party machines and their unprincipled operatives, where the social good is at most a remote thought.

3. Policies, Initiatives and the Legislature

3.1 Initiatives versus legislation

The first part of our argument, just given, is that crypto-initiatives are increasingly being used for partisan purposes and are unlikely to produce good policy outcomes. Our second point, which we develop in what follows, is that the initiatives which appear on the ballot are likely to be extreme, relative to the legislative median, and that voters face significant agenda manipulation and informational problems, which can lead to policies worse than the status quo. Finally, we argue that these diseases that plague all initiatives are especially virulent for crypto-initiatives, and that potentially comforting analogies between initiatives and economic markets are inappropriate.

Perhaps the bulk of initiatives are so far still policy initiatives, so we begin by considering initiatives for which policy change is the primary goal. We assume that there is someone who wants to change policy and as a starting point, we assume a simple spatial model

[7] Each state has different reporting requirements and 527s tend to share money so that resources can end up where the party needs it, but in such a way that it is impossible to determine, at least prior to the election, who is funding which initiatives and how much they are spending.

of policy choice, as is common in the literature (Downs 1957, Black 1958, Shepsle 1979).[8] We assume that each policy dimension is separable and that legislators, initiative sponsors and voters

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[8] In particular, as in Shepsle (1979) we use the following six assumptions to model agenda setting in the legislature: First, there are *K* policy dimensions or issues that can be adjusted by the legislature. Both status quo policies and policy proposals (bills) are represented as points in *K*-dimensional Euclidean space. Second, there are *M* members in the legislature, whose preferences over the policy dimensions are additively separable and who vote strategically. Specifically, on any given dimension *k*, legislator *j* has a unique ideal point on that dimension, x_k^j, which is common knowledge. The utility that legislator j derives from a given policy vector, $z = (z_1,\ldots,z_n)$, declines with the sum of the distances between x_k^j and z_k: $u_k(z) = -\sum_j | x_k^j - z_k |$. We assume that members seek to maximize the utility that they derive from the final policy choice of the legislature (i.e., to minimize the summed distances between their ideal points and the final choices on each dimension). A consequence of this assumption is that the model of policy choice is, in essence, reduced to a series of independent unidimensional choices. Third, any legislator may introduce a bill dealing with any single issue dimension. Such bills may or may not be allowed onto the floor, depending on the actions taken at the agenda-setting stage. Fourth, there exist agenda-setting agents who have the right to block bills from reaching the floor within their (fixed) jurisdictions. Fifth, the legislative sequence consists of only four stages: (1) members introduce bills; (2) some agent selects (or some agents select) the bills that the floor will consider (more specifically, the agents veto the bills they wish to veto and the remainder are thereby selected for floor consideration); (3) the floor then considers the bills presented to it, one by one, amending them as it sees fit; (4) the floor then votes on final passage of each bill (as amended if amended). Sixth, we focus on the special case in which all bills are considered under open rules, subject only to a germaneness restriction, as this is the simplest case to exposit.

Shepsle (1979, p. 350) suggests that there are three possible agenda-setting agents in the Legislature: the Committee of the Whole, legislative parties, and committees. The third possibility, wherein autonomous and independent committees set the floor agenda, is the topic of Shepsle and Weingast's (1981, 1987) classic analyses. Cox and McCubbins (2002, 2005) focus is on the agenda-setting powers of the first two agents listed: the floor as a

have preferences that are separable by dimension. Let SQ_k be the status quo policy on dimension *k*. Policy can change in one of two ways, either the legislature enacts a new policy, Z_k, which in a one-dimensional model, by Black's Theorem (Black 1958), would move policy to F_k, the floor median, or the people can pass an initiative, i_k. If policy remains unchanged then SQ_k is the final policy outcome.

We further assume that actions are costly. That is, it is costly to lobby the legislature to get them to take up issue $\kappa \in [1, \ldots K]$ and change policy on that issue to F_k.[9] The legislature can handle far fewer than K many issues per term, and thus lobbyists must pay those who control the legislative agenda to induce them to incur the opportunity costs of acting on issue κ. We will ignore the game that this creates among lobbyists, as that is the topic of another paper.[10] If a

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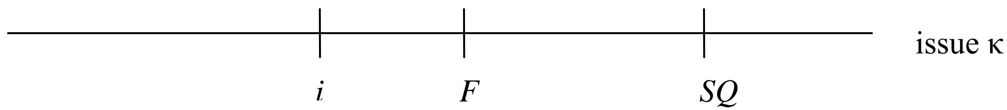
whole and the parties--in particular, the majority party. For our analysis here it doesn't matter who we think is the legislative agenda setter.

[9] *F* may differ on each issue, but for simplicity and without loss of generality, we drop the issue subscripts here. In addition to those mentioned above, our model makes the following assumptions: 1. There is no more than one group actively lobbying on one issue κ in each year, 2. Voters view the K dimensions as independent, separable issues, 3. The utility that a group gets from a change in a policy is equal to the absolute value of the distance between the status quo and a new policy such as i, given by $|SQ - i|$, 4. The costs of lobbying the legislature to take up an issue, C_L, are equal for all groups lobbying in all issue dimensions, as are the costs of financing an initiative C_I, and 5. Paying the costs of running an initiative campaign will result in the initiative passing with probability p, while paying the costs of lobbying the legislature will lead to the legislature adopting F with certainty.

[10] A more traditional model of lobbying might posit that the interest group pays a fee in order to shift the legislative floor's ideal point from a position that perfectly represents constituents to a corrupted ideal point that is closer to the interest group's goal. Indeed, this sort of corruption of legislatures by lobbyists is precisely what motivated many Progressives to push for direct democracy in the first place. However, whether the policy passed by the floor (F) reflects the floor's true ideal point or instead a revealed preference influenced by the lobbyist's efforts does not

policy advocate with an ideal point $x_k = i_k$ seeks to change policy on issue κ, as illustrated in Figure 1 (where we have dropped the subscripts k), and if they are able to pay the cost to have the legislature put it on the agenda (denoted C_L), then the legislature will adopt F_k, on issue k, even though the sponsor would prefer i_k.

Figure 1: Placement of policy if legislature acts



Notice, the legislature will not be able to guarantee the adoption of a policy other than the floor median, F_k. Once the legislature brings a proposal to the floor on issue κ, majoritarian influences will move policy to the floor median, F_k. Coherent, concerted majorities may be able to pass a policy different than F_k, using closed rules or disciplined voting, but they won't be able to routinely guarantee this outcome.

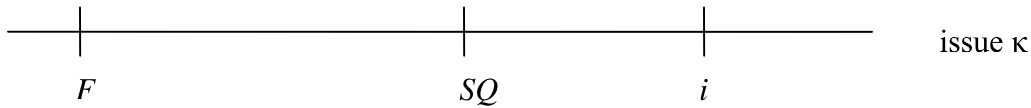
Therefore, a policy advocate has to judge whether F_k is sufficient, given the lobbying costs, or whether an initiative should be sought in an attempt to force the enactment of i_k, given the costs of qualifying and passing an initiative (denoted C_I) and the probability (denoted p) of passing an initiative located at i_k.[11] Dropping the subscripts for ease of exposition, notice that if i

change the subsequent finding of our model, which is that groups will only pursue costly initiatives when they move policy much further away from the status quo than the legislature would have.

[11] An interest group will pursue one of the three actions when the expected utility from that action (calculated by subtracting the cost of the action from the product of the group's utility from a successful policy change and the probability of success) exceeds the expected utilities from each of the other actions. Thus, the group will lobby the

is to the right of *SQ*, as in Figure 2, the policy advocate will never lobby the legislature for access as the policy will end up at *F*, making the policy advocate worse off than leaving policy where it was at *SQ*.

Figure 2: Initiative sponsor will not lobby legislature



If it is indeed more costly to qualify and pass an initiative than it is to lobby the legislature for consideration of a new policy on issue κ, then we will see only two types of initiatives.[12] First, as in Figure 1, if *i* is close to *F*, then it won't be worth the extra cost (relative to the cost of lobbying) of qualifying and passing an initiative, and the initiative sponsor will choose a lobbying strategy or will sit out the policy making process and take whatever the

legislature when it yields a higher expected utility than the status quo (when $|SQ-F| - C_L > 0$) and a higher utility than attempting an initiative (when $|SQ-F| - C_L > p(|SQ-i|) - C_I$), otherwise lobbying would not be worthwhile. The group would attempt to quality and pass an initiative, whose policy is located at *i*, if and only if $p(|SQ-i|) - C_I > |SQ-F| - C_L$ and when $p(|SQ-i|) - C_L > 0$. For simplicity, to elucidate the decision problem for individuals, groups and parties in picking their strategies we have ignored the gaming aspects between competing groups that will greatly affect, in non-obvious ways, lobbying and initiative strategies. We leave that exercise for a different venue.

[12] If we relaxed our assumption that utility smoothly declined with distance from the status quo, it would be possible that an interest group with an extremely steep utility function centered at a point in between the status quo and the floor median would find it worthwhile to sponsor an initiative located between SQ and F. However, because we cannot think of any such initiative, we do not alter our model in order to make this possible.

legislature produces. Thus, only initiatives that are extreme *relative to F*, the legislative median, will be brought to the public as proposed policy changes.[13] If the probability, *p*, of passing an initiative declines the further *i* is from *SQ*, then there will exist a tradeoff between the costs of passing an initiative, C_I, and the probability of getting it passed, which will impart a pressure on the policy advocate to move the proposed policy away from her ideal point and closer to *SQ*. This tradeoff creates a limit on how extreme policy advocates will make their initiatives.

Second, if *i* is on the other side of the *SQ* from *F*, as in Figure 2, then policy advocates will never pursue a lobbying strategy and will instead "go public" with an initiative to change policy. Such an action would seem to be discouraged by strategic calculations, since the legislature could then respond by placing a referendum on the ballot to move policy back to *F* or to the voting median, *V*, if the median voter prefers *i* to *F* and *SQ* (and if *V* is closer to *F* than is *i*).[14] The condition for an initiative of this sort to be placed on the ballot is that *V* must be on the same side of *SQ* as is *i* and on the opposite side of *F*. Presumably, by Black's Theorem, *V* wins if it is offered to the people as a referendum, so the question for the policy advocate is whether it is worth the costs of proposing an initiative on this issue in order to get *V*. If *V* is close to *SQ*,

[13] The extremity of *i*, relative to *F*, will depend on the relative costs of lobbying versus the initiative process. As the initiative process increases in cost, both in terms of qualification and passage, then we expect initiatives to be more extreme.

[14] Presumably, *V* is at or near *F*, at least in a district by district vote, ignoring problems of bicameralism and divided government. If *V* is indeed at or near *F*, then the threat of legislative referendum would be enough to deter any initiatives such as diagrammed in Figure 2.

then the answer is almost surely that it is not worth it. So, again, only extreme initiatives will be proposed.[15]

What is wrong with extreme initiatives? Our criticism is not necessarily that they result in policies located at extreme positions, but that the transactions costs associated with enforcement grow with the distance of the policy change from *SQ*. Numerous transaction costs arise from the process of enforcing a new rule: the cost of investigating violations of the rule, the costs of bringing suits alleging violations of the rule, the administrative costs of the agency enforcing the rule, the public's cost of monitoring the government agency that enforces the rule, the costs of the losses that occur due to undeterred violations of the law, the costs of policing opportunistic behavior, and the costs associated with new behaviors that arise as people seek to get out from under the rule's effects. The larger the policy change, the higher the dead weight losses associated with it (because the more you are taking, the harder people will try to avoid it and the easier it will be to avoid, the more expensive will be the enforcement and so on). It seems reasonable to assume that transactions costs increase monotonically (if not faster) with the distance of the policy change from *SQ*.[16] There is a point, then, at some distance from *SQ*, where

[15] We will ignore the costs of getting the legislature to implement initiative policies that are far from F. For a review of that thorny issue see Gerber et. al. (2001).

[16] Essentially, we are assuming that, in developed states, we are past the point of increasing returns to scale in coercion and are on the decreasing returns to scale in coercion. Wallis and North (1986) show that transactions costs grew as a percent of GDP in the United States over the 20th Century. This appears to be true for other developed countries in Europe and for Japan as well.

the transactions costs exceed the sum of utility gains for the society (if any) from a policy change, even if the policy change is otherwise favored by the voting median, *V*.[17]

The problem is exacerbated for initiatives, as the electoral environment in which voters make their decisions lack informational cues about dead weight losses.[18] In the legislative process, by comparison, lobbyists, agencies, and constituents can inform legislators about dead weight losses more effectively, and political parties have positions about both acceptable dead weight losses and who should bear them. The implication of the reasoning is that policy proposals that end up on the ballot as initiatives are likely to lead to lower social welfare than legislation pegged at the legislative median, *F*. When an initiative is brought to the ballot, any prospective welfare gains will be offset by high transactions costs.

We may also believe that extreme policies, however unlikely they are to be passed, if enacted through the initiative process are unlikely to be welfare enhancing and more likely to be merely wealth transfers or some other form of particularistic policy (as we argue next). We may assume that the further is the initiative, *i*, from *F* (and likely the further it is from *V*), the less

[17] If the SQ imposes significant costs, then bigger policy changes might mean imposing less costs, and therefore may result in lower transaction costs as more people choose to cooperate with the new policy. The increase in compliance will be at least partially offset by the likely decrease in compliance from groups that bear the costs of the new policy change. The net change in compliance and enforcement will affect the overall change in transaction costs.

[18] As evidence for this proposition consider that many initiatives start out with high voter approval that declines as the opposition campaign gets started and that heavy spending can defeat almost any initiative. Often ad campaigns sell initiatives as good for everyone or bad for everyone, obscuring their true costs. Occasionally, campaigns highlight that the policy is good only for a few beneficiaries. Rarely do initiative campaigns highlight the direct transfer of resources from one group to another. When the costs are highlighted, the opposition message may get out in enough ways to make the losses seem large.

likely it is to pass, but, the probability is not zero and the benefits may lead advocates for such a policy change to pursue a large gamble through the context of an initiative.

3.2 Who Benefits From Initiatives?

Initiative campaigns are costly. In 2002 over $173 million was spent on campaigns for 117 initiatives. The most expensive initiative campaign in 2002 was the Yes on Arizona 202, a campaign on behalf of Indian gaming that spent over $21 million. This comes nowhere close to the record $92 million spent on the 1998 initiative campaign for California Proposition 5, which was also about Indian gaming.[19] This money has to come from somewhere. What types of policies are most likely to generate sufficient returns so that the benefits exceed the costs of taking an initiative to the public? It is fairly standard to categorize public policy according to how diffuse or concentrated are its benefits and costs (e.g. see Ripley and Franklin 1974 and Wilson, 1980). Some policies have diffuse benefits, i.e. benefits that spread widely, in small amounts, over the population, while others have concentrated benefits that are more narrowly targeted to an easily identifiable set of benefactors. National defense, clean air and clean water are often used examples of policies with diffuse benefits, while farm price supports or the bail out of Chrysler or Lockheed are seen as examples of concentrated benefits. Costs can be similarly concentrated or diffuse. The most commonly used examples of concentrated costs are luxury taxes or zoning laws, while Value Added Taxes are considered diffuse. It is also well known that when benefits or costs are diffuse, collective action is difficult (Olson 1965). If benefits or costs are concentrated then there exists a private entrepreneur (a privileged person, group or party) who will bear the cost of collective action. Thus, all else constant, as has long

[19] The willingness to expend such sums of money on the campaigns suggests there are significant gains for the sponsors of Indian gaming initiatives.

been discussed in the lobbying literature, lobbying will take place only on policies where there are concentrated benefits or costs. The same logic holds for initiatives, only those with concentrated benefits will be considered.

It is also clear from the literature on initiatives that a vigorous opposition will almost always sink an initiative at the ballot (Gerber 1999). Policies and initiatives with concentrated costs will be more likely to draw organized opposition, all else constant. Thus from our typology of initiatives policies with concentrated benefits will be most likely make it to the ballot, and those with diffuse costs (and thus lacking organized opposition) will be most likely to pass, all else constant.[20]

3.3 The Initiative Information Environment

The conclusion about the types of initiatives that will make it on the ballot is important for our understanding of how voters make decisions on these issues. One of the common findings in models of voter decision-making is that in complete information settings the majority (represented by the median voter) is made better off having an initiative process. The problem is that voters typically do not have complete information or ready substitutes. Lupia (1994) shows that voters can use cues and information shortcuts to substitute for complete information.[21]

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[20] We recognize that there are exceptions to this rule. In California, policy entrepreneurs such as Howard Jarvis (1978's Proposition 13) have brought initiatives with diffuse benefits to the ballot. However, such initiatives will only qualify in the rare circumstance that a "privileged group" (Olson, 1965) solves the inherent collective action problem. This state has also provided instances of initiatives with concentrated benefits and costs, such as the battles between Indian tribes with gaming operations and Las Vegas casinos (Propositions 68 and 70 on the November, 2004 ballot). But note that both initiatives faces well-funded opposition campaigns and lost badly.

[21] On some issues, such as taxation and social issues, voters may not acquire any information during the campaign process because they already have well-formed preferences. However, other issues that appear on the ballot: nuclear

However, Gerber and Lupia (1995) show that this conclusion does not hold in an incomplete information environment in which voters 1) do not know the policy implications of an initiative and 2) cannot or chose not to seek opinions of credible endorsers. Furthermore, Lupia and McCubbins (1998) find that the credibility of an endorsement requires that one of four conditions for trust exist, the principal one being that there are two endorsers, each believed to be knowledgeable and each competing on opposition sides.[22] Moreover, these competing endorsers must be believed to be strictly adversarial, analogous to opposing attorneys in a legal setting. If this is not the case, then the statements made by the initiative competitors may not be trustworthy, and then may not be credible to voters. If none of these information conditions are met, scholars have recognized that policy outcomes from the initiative process may not improve outcomes relative to the status quo.[23] Given that the ability of voters to make informed decisions depends crucially on the type of information environment in which voters make choices, the

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power, lottery; Indian gaming, school reform, health insurance, sale of state land, etc, voters may need the campaign process to serve informational purposes. It is to these types of issues that this section is addressed.

[22] Lupia and McCubbins (1998) derive and, experimentally test, several conditions required for learning. The first of these conditions is the knowledge condition (which will only be met if the person receiving information believes that an endorser has knowledge or expertise about what he says). The second general condition is the trust condition (which will only be met if a person believes that the endorser is trustworthy). In order for this person to believe that an endorser is trustworthy, however, one of four additional conditions must also be met: 1) the person and endorser must have common interests, 2) there must be a threat of verification imposed upon the endorser, 3) the endorser must face penalties for lying, or 4) there must be observable, costly effort on the part of the endorser.

[23] Lupia and Matsusaka (2004, p. 277) recognize that "The conclusion that the majority is always better off having the initiative and referendum available is a fairly general property of complete information models but does not necessarily hold with incomplete information."

relevant question becomes how likely is it that an initiative campaign will produce the conditions for trust that allow voters to use cues from endorsers as substitutes for full information?

Although we do not, at present, have the empirical evidence to determine how often the conditions for trust are met, we can provide theoretical reasons to suspect that incomplete information is a more likely outcome. First, as just discussed initiatives are unlikely to pass if there is significant opposition. Because of this, initiative sponsors will attempt to find issues that do not generate opposition. Initiatives are most likely, then, if the proposal has diffuse costs, and those who will pay the costs are unlikely to overcome the collective action problems of organizing an opposition to the proposal. Without organized opposition, the conditions for adversarial verification fail. One ironic consequence of this result is that the proponents may then lack credibility, unless the endorsers they use to deliver their message to the public otherwise meet one of the four conditions for trust.

Second, it is unlikely that advertising campaigns will present voters with information about the tradeoffs between initiatives (either across time or across items on the same ballot), which means that they are unlikely to satisfy the condition regarding knowledge of policy implications. With numerous initiatives on the ballot, even if voters can gain knowledge about each choice individually, they may not be able to predict the consequences of their actions when the interactive effects of all initiatives are taken together. Providing information about the tradeoffs among initiatives, or providing information about policy interactions, would seem unlikely to help one's campaign, while running the very real risk of creating opponents out of otherwise indifferent campaigns.

The argument just presented provides good reason to believe that initiative campaigns will rarely approximate conditions whereby voters can gain knowledge about their initiative

choices. Indeed, Lupia's (1994) study of five 1988 California insurance initiatives, which pitted trial lawyers against insurance companies, seems more like an exception than the rule. In that year there were multiple ballot measures all addressing the same general concerns and both opponents and proponents of the initiatives had a strong incentive to campaign for their side. The generation of vigorous opposition and support campaigns suggests the stakes in this election were massive, because it made sense to run an initiative even in the face of guaranteed opposition.[24] This provided an environment that was likely to create the conditions for voters to make informed decisions, as Lupia found, but it's not clear that this empirical example translates to the typical election year and to the typical initiative environment, given the conclusions derived from the typology of initiatives above.[25] Furthermore, voters must also solve the information problem presented by having many initiatives at many different levels of government (city, county and state).[26] The combination of the slim likelihood for the conditions for verification to be met and the sheer number of initiatives facing voters in states such as California further compounds the information problem facing voters. In the end, it seems

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[24] The expectation of opposition changes the probability of qualifying and passing an initiative, but if the stakes are high enough the sponsor may still continue with the initiative process.

[25] Most of the literature, including this argument, is directed primarily at statewide campaigns. The full information conditions seem less likely to occur in the many city, county or regional initiatives that change local government charters. For instance, imagine a proposal to change from a weak to strong mayor form of government. Is it likely that both sides will be organized and run campaigns? On the other hand, local initiatives that deal with land use issues probably will tap issues with concentrated costs and benefits, and thus spur serious campaigns on both sides, but because of this are more likely to lose.

[26] Between 60 and 70% of the U.S. population lives in a city with an initiative, and between 70 and 75% of the U.S. population lives in either a city or a state with an initiative process (Matsusaka I&R in American Cities, Basic Patterns)

unlikely voters will have access to the cues needed to make informed decisions for most initiatives.

4. Who is setting the agenda?

We have just argued that initiatives are likely to be extreme particularistic policies, with concentrated benefits and diffuse costs, and that there is a significant chance that voters will lack the information necessary to make informed decisions. So, the odds that initiatives will improve social welfare seem small. In this section we further question the beneficial effects of initiatives by considering a variety of social choice critiques that seem particularly pernicious with respect to the initiative process, critiques that have largely escaped comment in the literature on initiatives.

4.1 The unidimensional initiative

One of the key problems with initiatives, and one that leads to a host of subsequent problems, is that they are likely to be one-dimensional policy moves with multi-dimensional repercussions.[27] First, in 12 of the 23 states that allow initiative petitions there are single-subject rules with regards to proposed initiatives. These rules almost guarantee that initiatives will only address a single issue, such as increasing school funding, without presenting voters with the other (obvious) dimensions of the policy change – increased taxes or decreased spending in another area. Second, even in the absence of a single subject rule or where it is loosely enforced,

[27] It is important to note that in legislative bodies where voting is largely one-dimensional (Poole and Rosenthal 1997) there is reason to believe the existence of a single dimension is the result of the legislative process collapsing many dimensions into a single dimension. Given that the initiative process lacks the institutions that generate this outcome it is unreasonable to expect a similar outcome from initiatives.

initiative sponsors will prefer to propose one-dimensional policies. The addition of a second, third or fourth dimension is political suicide because it increases the possibility of generating opposition. Because opponents of initiatives are more likely to be successful in their campaign than proponents, there is a strong reason not to incite opponents. Because of this tactical concern, voters are likely to see one dimensional policy moves and be asked to make yes or no decisions about a multitude of single dimension ballot measures, which has important consequences for the results of the initiative process.

4.1.1 Inability to make tradeoffs

One of the key features of the legislative process, particularly during the appropriations stage, is that legislators make trade-offs between priorities both within a given year's budget and across time (McCubbins and Rodriguez 2004). However, in the models of voter decision making during initiative campaigns (Lupia 1994, Gerber and Lupia 1995, Gerber 1996 and Matsusaka and McCarty 2001) voters are presumed to be choosing between a "yes" and "no" vote on a single initiative, along a single dimension. In such a situation these models typically find that initiatives either make the legislature more responsive to the median voter or that only those policies favored by the median voter will be approved.[28] One limit to these models is that they do not address how voters make tradeoffs between different initiatives. Consider that in many elections there are multiple issues to be voted upon, and voters must not only be able to consider the tradeoffs for a particular initiative, but they must also weigh initiatives against each other.

[28] It is worth considering the assumptions contained within these models, because it suggests how rarely all the conditions will be met. For example, Gerber (1996) assumes 1) simple binary agenda; 2) no substitute initiatives; 3) both "yes" and "no" campaigns for verification purposes or voter knowledge of the policy implications of the initiative; 4) single stage game that ends; 5)one dimension of policy; and 6) 100% voter turnout.

For voters to calculate these tradeoffs (what do they think they'll have to give up in order to get the policy proposed by the initiative?) they must:

1) have a good idea about how each policy proposal will be financed (what do they give up to get it) or how it will otherwise affect the status quo;
2) know the externalities associated with each proposition (doing one thing may preclude doing other things or may enable or disable the successful implementation of other policies);
3) have knowledge about all of the ballot proposals;
4) Be able to determine the probability that each of the other proposals will pass, (so they can calculate an expected combined effect for their actions on each ballot initiative) and these probabilities must be common knowledge so that all voters act on similar expectations.

Only with all of these conditions satisfied can a voter make decisions that aid in moving policy towards her most preferred position. At the same time, the fact that the conditions for successful policy choice are so stringent (if any one of these conditions fails the voter will be unable to form an expectation about the consequences of her actions) does not, however, imply that they will never be able to do so. Of course, the greater the number of initiatives and the worse the knowledge environment is for each, the worse off voters will be.

For voters to actually weigh prisons versus schools, for example, they must know not only the costs of each policy, but also how the two policies affect each other. We know that in the absence of a tradeoff between services or tax levels voters will prefer more of almost all government services or the same level and lower taxes (see Brubaker 1998). So, the relevant question about the information environment is will voters be provided, and use, the information,

or substitute cues, to choose between initiatives focused on schools, jails, lottery, insurance and nuclear power? Will cues be sufficient to help voters weigh these perhaps conflicting policies against each other and to account for the costs of each proposed policy change? It is difficult to imagine that initiative supporters will provide this type of universal tradeoff information. The proponents of a hypothetical measure A are unlikely to argue against measure B (if they are about different issues), because doing so will likely lead to a response from the proponents of measure B. Because the opposition has the upper hand in initiative campaigns it would appear to be a poor strategy to take action that increases the likelihood of generating opponents.

Moreover, when there is no opposition to an initiative, as is the case for a great many initiatives, and is to be expected for the concentrated benefits, diffuse cost proposals we expect to see on the ballot. Furthermore, our observation living in California is that information about how the goals of one initiative interact with the goals of another is unlikely to be widely available. If voters lack information about how the passage of two initiatives will affect each other or the general policy environment, it is easy to have outcomes that lead to non-Pareto improving, and therefore non-welfare enhancing, results.

4.1.2 Initiatives are Sequential Elimination Agendas

Yet another problem with initiatives relates to what social choice theorists dub "sequential elimination agendas" (Ordeshook and Schwartz 1987). Sequential elimination agendas occur when votes are held one after another, defeated options are removed from consideration, and the winning issue moves onto the next round of voting. The core problem with sequential elimination agendas, then, is that they do not allow citizens to compare directly all of the alternatives and, therefore, do not allow them to make tradeoffs among their options. It is this inability to make tradeoffs that often leads to suboptimal outcomes, and as Ordeshook and

Schwartz (1987, p. 192) emphasize, "as soon as the feasible agendas are allowed to include…sequential elimination agendas…sincere voting can lead practically anywhere [in the policy space]."

For example, consider the following preference rankings for three individuals, 1, 2 and 3, over four different policies, A, B, C and Q:

	1	**2**	**3**
First	Q	A	B
Second	C	Q	A
Third	B	C	Q
Fourth	A	B	C

The game proceeds as follows.[29] First, there is a vote between policy A and the status quo, Q. Next the new status quo (either A or Q) is pitted against B. Then, the new SQ (either A, B or Q) goes against C. If this voting game were to be actually played out the winner is C, *despite the fact that Q is unanimously preferred to C* (thus C is Pareto inferior to Q). The movement to C is clearly non welfare-enhancing as no possible majority would choose Q over C, and no one would have wanted to end up with C, having started at Q.

Although scholars have considered sequential elimination agendas when analyzing various voting procedures (Fishburn 1974; Ordeshook and Schwartz 1987), they have not yet applied this concept to the initiative process—a process that we argue is particularly plagued by the pathologies of sequential elimination agendas. Not only does the initiative process satisfy the conditions just listed above (i.e. multiple initiatives are voted on over time and initiatives are not

[29] Adapted from Ordeshook 1986, p. 68.

pitted against all other initiatives), but this process also makes it particularly difficult for citizens to make tradeoffs over time. As the example illustrates, when proposals are pitted against each other in a sequential (or serial) process and the losing proposal is removed from consideration, it can generate outcomes that no one would prefer.

To see how sequential elimination agendas and the inability to make inter-temporal tradeoffs play out in real world initiative processes, consider the following examples from Oregon and Massachusetts: In 1990, the citizens of Oregon passed an initiative that sought to reduce property taxes, and then, in 1996, they passed another measure that limited the revenue available for schools and other services that had been funded by property taxes. Just four years later in 2000, citizens passed an initiative that established a "sufficiency standard" for funding based on the Oregon Quality Education Model that required a significant increase in state spending on education. It's easy to see that following multiple ballot measures to reduce taxes with one that instructs the legislature to increase education spending may be mutually inconsistent.

Similar contradictory initiatives occurred in Massachusetts. For example, in 1982, citizens voted to restrict radioactive waste disposal, but then in 1988, they failed to ban the electric power plants that produced such nuclear waste. Needless to say, citizens in these two time periods passed measures that were largely at odds with each other—with the 1988 result perpetuating the problem that the 1982 initiative sought to solve.

The above anecdotes suggest that the theoretical problems of sequential elimination agendas have an empirical basis in the initiative process. Indeed, these anecdotes demonstrate that when citizens must choose alternatives over time without being able to compare them

directly, they are unlikely to consider tradeoffs and are, therefore, almost certain to pass contradictory measures that have deleterious economic, social, and/or political consequences.[30]

4.2 Who is Setting the Agenda?

Another problem with the initiative process is that it does not allow for careful selection of those who set the agenda. Social choice theorists and game theorists have long noted that agenda setters can be, for all intents and purposes, "dictators" when it comes to determining political outcomes (McKelvey 1979; Schwartz 1986; Romer and Rosenthal 1978, 1979), and they have also emphasized that under certain conditions, there is a risk that agenda setters, through strategically setting the agenda, can induce outcomes that diverge from the preferences of the median voter (Romer and Rosenthal 1978, 1979) and, in fact, are Pareto inferior (McKelvey 1979). This possibility seems particularly acute in the initiative setting, given that we previously established that initiatives will generally be extreme relative to the floor median of the legislature. Given the existence of such a risk, scholars have analyzed real world instances of agenda setting and have discussed the ways that agenda setters can be constrained to be faithful agents of those they represent (see Rohde 1991; Kiewiet and McCubbins 1991; Cox and McCubbins 1993; Cox and McCubbins 2004; Muller and Strom 1999). Although there are, of course, many ways to constrain agenda setters, most relevant to this paper are screening and selection mechanisms.

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[30] As an example of a deleterious political consequence, consider a legislature charged with implementing contradictory initiatives. When faced with such contradictions, the legislature will be unable to satisfy the conflicting demands of citizens, and will therefore partially implement the initiatives, perhaps generating frustration with government and spawning more initiatives that also cannot be implemented.

Screening and selection mechanisms are important because they help to ensure that faithful agenda setters are chosen in the first place. As many scholars note, ex ante screening and selection are particularly important, for it can be very costly to sort good agenda setters from bad ones and remove the bad ones after they have been selected (Spence 1974; Kiewiet and McCubbins 1991). For this very reason, legislators worldwide consider the past performance of potential agenda setters when selecting them and promote only those who have demonstrated their competence and responsiveness (Cox and McCubbins 1993; Muller and Strom 1999).

With the initiative process, however, it is impossible to screen and select faithful agenda setters because any individual or group with sufficient resources can place an initiative on the ballot. This aspect of the initiative process allows virtually anyone to become an agenda setter, and it is this "direct democracy" aspect of the initiative process that is frequently lauded as one of its greatest strengths (Gerber 1999; Matsusaka 2004…others). The one mechanism designed to screen out initiative agenda setters – the requirement that they collect a specified number of signatures in order to qualify for the ballot – does not in any way guarantee that sponsors have the public interest in mind. The industry of paid signature gathering, nearly as old as direct democracy itself, now guarantees that whoever has the requisite amount of money (now more than a million dollars in California) can qualify virtually any initiative for the ballot. As the above discussion of screening and selection makes clear, however, allowing anyone with sufficient resources to become an agenda setter is problematic, for there is then no mechanism to select agenda setters who will pursue policies that benefit a majority of citizens. Furthermore, with the rise of crypto-initiatives there will be an increasing number of agenda setters that use the initiative process to manipulate outcomes to serve their ends.

4.3 Consequences

As a result of these flaws in the initiative process we believe that initiatives are likely to lead to deleterious outcomes. One such outcome is that they bust a state's budget, or require lawmakers to balance the budget by cutting services or raising fees or moving programs and their costs off-budget or moving them as unfunded mandates to lower levels of government or to the private sector, which, if included explicitly in the initiative, probably would have made it fail at the polls.[31] This outcome is easy to predict given the previous pathologies: low information, inability to make tradeoffs, sequential elimination of agenda items, and no selection process for agenda setters. The budget busting effect may be limited by the legislature's ability to avoid implementation (Gerber et. al. 2001). However, this may provoke further initiatives by policy advocates who want their policy implemented. One can see this degenerating into a spiral of initiative, poor implementation, initiative, poor implementation, and so on. Given that initiatives are going to hand the legislature extreme and conflicting policies to implement, the legislature will do its best to ignore its instructions. For example, even though California voters passed Proposition 63, the English Only Initiative, in 1986 the legislature never actually implemented it (Gerber et. al. 2001). In fact, Attorney General John Van de Kamp argued that by his reading the

[31] Matsusaka (1995, 2000, 2004) and Matsusaka and McCarty (2001) Gerber (1996 and 1999) argue that states with the initiative process have different outcomes on a variety of policy variables than states without initiatives, and that this difference is due to the presence of the initiative process. Masusaka's (2004) comprehensive analysis finds that initiative states spend less, controlling for other factors. We agree that this important question deserves further empirical study. In addition to spending less, initiative states also have much less flexibility in their spending. California's Proposition 98 and Colorado's Taxpayers' Bill of Right, for example, severely restrict the abilities of state governments to react to fiscal shocks by locking in spending on education (Prop. 98) and restricting total spending (T.A.B.O.R.).

initiative only required that official publications were available in English, not that they were to be limited to English (Gerber et. al. 2001). When voters pass laws that ties the legislature's hands it further complicates policy making. It seems unlikely that further disguising the effects of policy is likely to improve its quality.

Even if legislatures are able to get around initiatives, each time they do so they lose degrees of freedom. California responded to the legislative staffing cuts mandated by Proposition 140 but cutting their expert staff in half (Cain and Kousser, 2004) and by moving the state library out of the legislature and to the Department of Education. These one-time moves had serious consequences for the operation and staffing of the legislature and the library which limit future policy tradeoffs. This may have been of small import previously, but with the rise of crypto-initiatives we may see an accelerated use of initiatives and thus further constraints placed on legislative activity. Indeed, as direct democracy ties up the legislature we may begin to lose our representative form of government and run afoul of Article 4, Section 4 of the Constitution, which guarantees every state a republican form of government.[32] Central to this question will be what we believe are the conditions for republican government. Is it just elections? Or, must the elected representatives have the ability to also change policy? This is not a question for us to answer, but it is one that will be important as state legislatures increasingly have their hands tied by initiatives.

5. The Rise of Crypto-Initiatives

5.1 Initiatives are known to affect turnout

We have been using the term crypto-initiatives to refer to cases where the proponent's primary goal is to affect political outcomes rather than policy. Such initiatives – also discussed

[32] For a discussion of court cases related to this issue see Natelson 1999.

in Garrett (2004) and Garrett and Smith (2003) – often achieve their goals by reshaping the electorate. For an initiative to influence elections by shifting the composition of the electorate in a way that favors a party's candidates, it must boost turnout and also bring out a different type voter. This would not be the case if initiatives like FasTracks or Defense of Marriage turned out new voters who represented a random draw from those who do not typically participate in American elections. Smart political actors do not spend millions to turn out a random selection of nonvoters. Their efforts are targeted in two ways: they want to get voters who support their candidates to the polls, and they aim their message at those who are likely to be most receptive. The first tactical consideration is part of the explanation of why, even though nonvoters have demographic characteristics that might link them to the Democratic Party, elections with higher turnout do not consistently benefit Democratic candidates. A long scholarly literature (see Highton and Wolfinger, 2001 and Citrin, Schickler, and Sides, 2003 for the most recent contributions) rebuts the conventional wisdom that higher turnout will shift the electorate leftwards. If Republican groups run a strong mobilization effort, then a boost in turnout could bring more of their party's adherents to the polls. Studies of election outcomes (DeNardo, 1980; Nagel and McNulty, 1996) show that there is no consistent partisan bias when turnout ticks upward.

The second tactical consideration for mobilizing turnout is to choose issues that are likely to resonate with nonvoters, which may lead to turnout different than a simple random sample of nonvoters. As a whole, nonvoters are less politically interested and less partisan than voters. However, the nonvoters who are most receptive to a campaign's get out the vote drive – especially one based on an initiative's policy effects – are likely to be the most politically engaged, educated, and partisan members of that group. Campaigns conducting "strategic

mobilization" (Rosenstone and Hansen, 1993) target these voters, whose sense of the stakes of politics and psychological attachment to one of the "teams" allow them to see the benefits of turning out. Turnout initiatives that seek to tempt voters to the polls by offering a policy that they strongly favor could attract a subset of nonvoters that is unrepresentative of the mass of nonvoters.

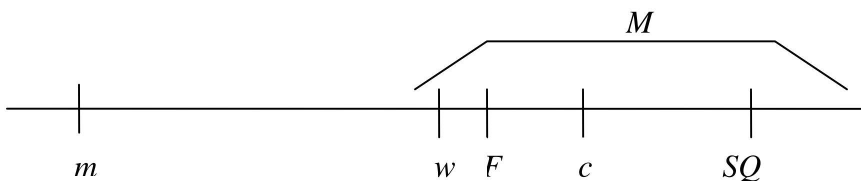
Recent works on initiatives and turnout suggest that this is, in fact, often the case. First, Tolbert, Grummel, and Smith (2001) show that the number of initiatives on the ballot boosts turnout in both presidential and mid-term elections, controlling for a host of other factors. But what types of voters are brought to the polls by propositions? Donovan and Smith (2004) examine the results of exit polls in three states to see how the voters who said that initiatives motivated them to turn out differed from other voters. The differences vary across states, but are generally consistent with the notion that these mobilized voters look very different from the overall set of those who do not regularly vote. "Partisan identifiers (Democrats in Arizona and Colorado; strong partisans of both parties in Colorado), those with self-identified ideological predispositions (in Colorado), older (in Oregon and Colorado), and better educated (in Colorado) respondents were most likely to say that initiatives figured heavily in their decisions to participate in an election," conclude Donovan and Smith (2004, p. 18).

The anecdotes presented at the beginning of this paper suggest that political operatives have discovered the immense partisan possibilities of initiatives and are increasing their usage of the process. Setting of the initiative agenda by party operatives would not seem to be a happy occurrence, because strategic political actors will pick strategies, which we call either wedges or jacks, to serve their partisan goals even if they lead to the passage of bad policies. Increasing usage of these types of initiatives will exacerbate their negative consequences of initiatives.

5.2 Wedge Initiatives

We use the term wedge initiatives to describe those that are designed to split the opposition party and help one's party by drawing support from the opposition. The following two conditions are necessary for a wedge issue. First, the status quo must be favored by the other party, and particularly the status quo must help extreme members of the other party. Second, a change in status quo must benefit the party looking to use the initiative. Figure 3 presents this situation spatially. *M* represents the dispersion of ideal points within the majority party, which is protecting the *SQ* even though it is far from the floor median, *F*. The minority party, *m*, can use a wedge, *w*, to induce a portion of the majority party to support a change in policy on this dimension (everyone to the left of *c* will prefer *w* to *SQ*, and thus *w* drives a wedge, at *c*, into the majority party). To insure the support of *F*, the minority will offer a new policy that is at or near *F*'s ideal point. The possible shifts in alliances generated by this dynamic create a situation akin to Riker's (1962) coalition model of politics.

Figure 3: Model of wedge issues



One such example of a wedge issue is Proposition 187, which California Republicans actively supported in 1994. This initiative helped convince some Democrats, whose party opposed the

initiative, to abandon their party in the gubernatorial race and support the Republican candidate Pete Wilson, who sponsored the initiative.

While these wedge issues, when effective, will divide the electorate and change party allegiance, at least for one election, their long-term effects may not be salutary. If wedge initiatives succeed, we can see that, over time, as each party slams a wedge between the other party and its leaders, that the electorate may become increasingly distrustful of parties and government. Consequently, the parties may be unable to set the agenda in such a way that maintains their coalitions (by keeping wedge issues off the agenda), as all of their compromises will be exploited by the opposition in initiatives. Parties may either fractionalize or they may coalesce around issues that clearly divide them from the opposition, thus increasing partisan polarization.

One effect of wedge issues is that representatives are elected based on their stance on a single-issue initiative. In such a case, voters truly become single-issue electors, picking candidates for office they may not ordinarily choose were a full range of issues considered. This is a standard problem in political campaigns, but it is magnified when initiatives focus the electorate on a single policy dimension. The Defense of Marriage Initiatives in 2004 represent a rather clear example of this phenomenon, as the anecdotes from Kentucky and Ohio suggest.

In addition, wedge issues present a particularly difficult aspect for voter information models. Because the initiative is not about policy, but about turnout, the sponsor of the wedge would actually like opposition, as doing so makes it easier to tie it around the other party's neck. The wedge serves as bait, and if the other party takes it, then it will become clear that the party is protecting some of its extreme members. Therefore, if the opposition understands it is a wedge issue they should vacillate on the issue and try to keep it off the agenda. The mere fact that there

are extreme policies that have not moved to the floor median suggests that the majority party has already been quite effective in keeping it off the agenda until the initiative was raised. If the opposition follows its political incentives and stays silent on the initiative, then we are left with an environment that does not meet the conditions for voters to make informed decisions.

5.3 Jack Initiatives

A jack initiative is designed to help a party's candidates by jacking up turnout in one targeted portion of the electorate.[33] The growth of jack initiatives, which are about increasing turnout among a targeted sample of the population, is particularly troubling. These policies are likely to have highly concentrated benefits and diffuse costs, which helps increase turnout only among beneficiaries. Geographically targeted projects, such as new roads, rail lines, schools, etc, seem to be ideal policies to have this effect at the local level. The passage of FasTracks and minimum wage initiatives are prototypical examples of this type of statewide policy. The ACORN document that discussed the Florida minimum wage strategy makes the targeted benefits clear, "Giving our constituency an opportunity to vote themselves a raise is probably the most compelling reason to go to the ballot box" (Seper 2004). It is hard to think of a more direct, targeted benefit than the ability to vote yourself a raise, paid for by a highly diffuse set of consumers and businesses. The minimum wage issue was also important because it had a differential effect on turnout. It did not generate unified business opposition (many businesses already pay wages well above the minimum wage and so had little incentive to oppose it) and therefore the opposition campaign did not motivate its likely supporters. Considered in this light,

[33] Jacks and wedges may not be mutually exclusive categories for any given policy. That is, a Defense of Marriage Initiative may be a wedge in one state and a jack in another. It will depend on the configuration of political interests in each environment.

jack initiatives look a lot like a new form of distributive politics, which has been well and thoroughly discussed in the congressional and policy literature (Goss 1972, Browning 1973, Fiorina 1974, Murphy 1974, Kalt and Zupan 1990, Levitt and Snyder 1995, Weingast 1995, Roberts 1990, Alvarez and Saving 1997, Helland 1999).

A good jack issue will only cause a targeted group of potential supporters to turn out to the polls, likely because a proposal has concentrated benefits and diffuse costs. In this environment there is unlikely to be organized opposition to the initiative. Without an opposition the campaign environment does not meet the conditions for full information (Gerber and Lupia 1996) or trust (Lupia and McCubbins 1998) so there is no reason to believe outcomes will improve upon the status quo. These jack issues are not designed to be public regarding. Indeed, extensive polling was done (in Colorado) to find issues that had concentrated benefits and diffuse costs, and that drive turnout up for one party but not the other. Policy is not the point. Good public policy would only be a fortunate, if unlikely, accident.

Certainly pork barrel policy has been extensively used by legislatures to serve political purposes, and we should believe that pork barrel initiatives will also become increasingly popular as the results in Colorado have demonstrated. No one believes that such distributive pork barrel politics make for good public policy.

6. The Efficient Initiative Market?

Although scholars are ambiguous about why positive outcomes will occur via the initiative process, they appear to have something in mind like an "efficient initiative hypothesis" (EIH), which they consider to be an analogy to the efficient market hypothesis (EMH). Although there is no well-developed analogy between markets and initiatives, Matsusaka (2004) most

clearly compares the initiative process to the market by briefly considering how two hallmarks of markets – dispersed information and competitive forces – can be applied to the initiative process. As he makes clear, neither of these approaches have been sufficiently elaborated upon to be very useful in understanding the initiative process. Nonetheless, it seems from the literature on initiatives that scholars have in mind an implicit version of the EIH, in which outcomes are positive as long as voters support them (notice all of the results in the literature referring to surveys that find that the median voter favors enacted initiatives). Because the comparison is not well developed, we present what we think is the most likely way scholars are thinking of the initiative process, and then we consider why such the analogy between initiatives and markets is inappropriate.

It seems to us that the most likely model implicit in the literature is one in which "policy entrepreneurs" propose different products, and then voters acting as policy consumers choose which ones to purchase by casting their scarce votes. In the EMH, price conveys all publicly available information about an asset, given the decisions of well-informed and rational market traders (see, for example, Cochrane 1991; Fama 1971; Fama 1991; Jensen 1979; Jordan 1983; MacKinlay 1997). Consumers purchase only the products that serve their goals, and guided by the invisible hand, the aggregate outcome is welfare enhancing (i.e., it is efficient). If this is the analogy being used, then we presume the collective decisions of market participants are represented by the median voter, and policy entrepreneurs are equivalent to marketers who introduce new products. If this is the appropriate analogy, then we conclude that policies supported by the median voter must improve welfare.

The basic analogy, however, between efficient markets and initiatives is not reasonable. First, what in the EIH plays the role of price in the EMH? One can't simply gloss over the

absence of something equivalent to price, because prices, and the information they convey, are the heart of the EMH.[34] So, unless there's a suitable analogy in the initiative process then the analogy between the EMH and the EIH simply makes no sense. Second, there is no clear theory about how selecting the median voter's ideal point on a series of one-dimensional issues is likely to improve net welfare. Is there something equivalent to the invisible hand of the median voter? Third, for reasons already discussed, voters will often lack the information necessary to make decisions equivalent to the decisions of consumers in a market (who base their choices on price, which is absent in the EIH). In situations that do not qualify as complete information, such as when there aren't credible endorsers on both sides of a policy or there are multiple initiatives with multiple endorsers, then we don't know whether voters will act to become informed or not and we suspect they will not. We are betting our democracy and perhaps our very lives on a hunch, an undeveloped analogy, that politicians won't lie to us. Fourth, when making consumption decisions people are able to make decisions simultaneously on multiple dimensions and can thus make tradeoffs among their various choices. But such decisions are difficult, if not impossible, in choosing among initiatives.[35] Fifth, we have spent many pages demonstrating

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[34] Alternatively, while we are not sure of all the conditions required for competitive markets to arise and to function well (to be efficient or nearly so), we know that one of the basic requirements is accurate and timely information, uniformly available to all market participants. Information generation and learning are costly. Consequently, the value of information or knowledge may exceed its costs for all but a few participants. This situation in itself is a form of market failure, and asymmetry of information may be a source of market power, and is often thought to be a source of political power.

[35] Think of each initiative battle as a market share competition in which consumers chose between the status quo and a new product, much as they do between Coke and Pepsi or Ford and Toyota. The alternative preferred by most consumers gets the highest market share and thus wins. The trouble with this analogy is that voters are left with no way to consider trade-offs across different types of goods. A consumer with a finite budget constraint recognizes

how, in the end, policy can be Pareto-inefficient, even when the median favors each policy choice dimension by dimension. Sixth, the initiative process can be manipulated by agenda setting, which determines what options voters see and the order in which they are considered. Neither of these last two problems with the initiative process have an analog in markets. For these reasons it seems unreasonable to use the EMH to understand initiatives.

This discussion leads us to believe that there is not an "efficient market" for initiatives. The previously discussed pathologies of initiatives are not overcome simply by comparing voters to consumers and initiatives to products. Given the problems with the initiative process it is unclear why aggregating policy preferences via a series of uncoordinated, low-information elections will lead to improved outcomes.

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that her choice of a higher priced product for one type of good constrains her choices in another area. Legislators dealing with multiple issues as once also face such a budget constraint. For consumers who spend only their votes, though, no such disciplining constraint is in place, allowing them to always pick the more costly option without forcing them to consider the costs of their choices.

7. Conclusion

Lupia and Matsusaka (2004, p. 463) faithfully report that "recent breakthroughs in theory and empirical analysis paint a comparatively positive picture of the initiative and referendum." We have attempted to provide more troubling empirical examples along with theoretical reasons to be less sanguine. Throughout this paper we have presented a variety of reasons why the initiative process in general and crypto-initiatives in particular, are unlikely to improve policy outcomes. In fact, all of the institutional solutions to social choice problems that scholars have studied (Shepsle 1979, Shepsle and Weingast 1981, Tullock 1981, Tsebelis 1995) are lacking in the initiative context. This should be a strong indication that outcomes are unlikely to be positive, as we demonstrated in our discussion of social choice problems for initiatives. Furthermore, it is clear that information problems will plague the initiative process, particularly when initiatives are chosen so as not to arouse opposition. Despite the possibility of negative social effects, political activists have picked up on the success of crypto-initiatives in 2004 and are encouraging political activists to use initiatives to set their own agenda in 2005 and beyond. The deleterious consequences of partisan manipulation of the initiative agenda is further affected by the rise of 527 crypto-PACs. These organizations can raise money for initiatives and not report on their donors until after elections in many states, and can fundraise more easily than PACs because contributions can be tax-deductible. Crypto-initiatives will tend to be particularistic and will typically not foster the creation of a voter-friendly information environment or a social-welfare enhancing choice environment. The combined effect of crypto-initiatives and crypto-PACs seems very unlikely to improve social welfare.

Since initiatives, campaign finance reform, and other bad ideas from the Twentieth Century seem here to stay, we offer two proposals that we believe would improve the outcomes

from the initiative process. First, require initiatives to meet the “pay as you go” standard, in which new policy proposals must either contain a funding source or explain what is to be cut in the budget to fund the new program. The adoption of this proposal makes the tradeoffs more explicit and also increases the probability of generating opposition, which is more likely to meet the conditions necessary for voters to become informed. Second, initiatives should be subject to amendment or rejection by the legislature. Every other type of policy making in the U.S. is subject to checks and balances. In California and in many localities, no such checks and balances exist for initiatives. This condition will force initiative sponsors to recognize the implementation difficulties faced by the legislature and may also constrain extreme initiatives because they can be more easily overturned. These two additions to the initiative process will force their sponsors to anticipate the reactions of voters and legislatures to the trade-offs inherent in their proposals. This would make it more likely that initiatives would be welfare enhancing, even if it makes them less common.

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