

Preface

Californians are famous for their use of direct initiatives, enterprises in which they rather than elected representatives write laws. In recent years, Californians have received national attention by passing initiatives to slash property taxes, legalize marijuana, gut affirmative action, strip illegal immigrants of social services, and dismantle bilingual education. However, the policy impact of these and other winning initiatives has been limited by several factors. The most famous of such factors is the state and federal courts, who have found many winning initiatives to be unconstitutional. We argue that the courts are neither the only, nor necessarily the most important, barriers to the implementation of initiatives. An often-overlooked fact about the initiative process is that even if an initiative passes judicial scrutiny, government actors must choose to comply with the winning initiative if it is to affect policy. Every winning initiative gives government actors opportunities to make implementation and enforcement decisions. When making these decisions, government actors regularly reinterpret, and sometimes reverse, electoral outcomes. Understanding this fact is essential for anyone who wants to explain how the initiative process affects public policy. In this study, we use the fact that state policy actors often have substantial discretion over implementation and enforcement decisions, the technology of formal modeling, and several case studies to clarify the conditions under which government complies with winning initiatives.

We show that full implementation and enforcement of initiatives is the exception, rather than the rule. The conditions that must exist for full compliance with an initiative are very difficult to satisfy. If, for example, a legislative majority and the governor are united in their opposition to an initiative, then full compliance with the initiative is extraordinarily unlikely -- even if voter support for the initiative was high. Indeed, we prove that under normal conditions, government actors' policy preferences displace the wording of the initiative as the ultimate determinant of a winning initiative's policy impact. Our case studies reinforce these findings by showing multiple instances where elected representatives who were against popular initiatives prevented their implementation. These actors quite literally "take" the initiatives.

Our research has important implications for state politics. It provides a framework for anticipating how the actions of future initiative proponents -- the provisions they include in their initiative legislation, the language they employ, the coalitions they build, and the resources they mobilize -- will affect policy. It also reveals that some observers' claims that initiatives have created gridlock in the state capitol are misplaced. Rather, we show that such political impasses are the result of choices made by elected and appointed political actors, rather than choices made by voters.

We believe that whether you love or hate the initiative process, it is important to be informed about the extent to which winning initiatives affect public policy. This study sheds new light on the topic.

Chapter 1: Introduction

Many Californians describe their state government as unresponsive, acrimonious and inadequate (Noll 1995, California Citizens Budget Commission 1995). A recent Field Poll, for example, found that for every person in the state expressing “a lot” of confidence in the state’s government, three others had “not much” confidence (Field Institute 1997). Even in a time of historic economic expansion and budget surpluses, less than a majority of Californians approve of the job being done by the state legislature (Field Institute 1999).

Were polls the only way for Californians voice their displeasure with government, the world would not find California politics as interesting a spectacle as they do today. But the state’s initiative process provides such a spectacle. Since 1911, Californians have vented their frustrations with government by drafting and passing *direct initiatives*. This initiative process is an enterprise in which citizens rather than elected representatives write laws. In recent years, voters have used this process to pass laws on issues ranging from affirmative action to taxation to term limits.

While polls and initiatives provide outlets for voter frustration, their usage seems to have very different consequences for California politics. When voters voice their frustrations in opinion polls, for example, the effects on policy are indirect, if at all. If polls do have an effect, it is because they provide information about voter desires that are consistent with what government actors already want to do. When voters voice their frustration through the initiative process, the impact on policy is supposed to be direct and is presumed to be different. *But how different is the effect of initiatives?* We will argue that in most situations, the difference is not as great as it appears.

A common presumption about the initiative process is that when the voters speak, government listens. Many people conclude that the path from electoral victory to policy change is a simple one -- if a winning initiative survives constitutional challenges, then it prevails as a policy directive. Because this belief is so prevalent, elected representatives and political pundits are able to blame the initiative process for a wide range of problems. In years of budgetary stalemate, for example, observers blame the initiative process for tying legislators’ hands and delaying budget negotiations. In years of budgetary surplus, initiatives are blamed for reducing the state’s ability to fund new programs. Unlike many political critiques,

this one is non-partisan; critics from the left, right, and center join political insiders and political outsiders in blaming the initiative process for outcomes they dislike.

The initiative process is an easy scapegoat for critics of California politics. But is the path from electoral victory to policy impact really so simple? To what extent are initiatives actually reflected in state policy? Do initiatives create constraints on state policy makers? Do they prevent elected representatives from doing their jobs? In what follows, we review evidence supporting the idea that winning initiatives have substantial policy impacts. Then, we present a very different perspective.

Reasons to believe that winning initiatives impact policy.

Two factors support the notion that initiatives impact policy: their sheer numbers and the style of most modern initiative campaigns. As for sheer numbers, California is among the most active users of the initiative process. During the twentieth century, only Oregon has adopted more initiatives (Dubois and Feeney 1992, p. 16).¹ In recent years, the frequency with which California makes law by initiative surpasses that of all other states.² The relatively large number of California initiatives gives the impression that, by summing the effects of these many initiatives, the process has a large overall impact on policy.

Reinforcing this perception is the style of modern initiative campaigns. Today's campaigns often come down to a battle of soundbites, endorsements, and direct mail. Most California initiative campaigns are expensive, high profile, media-intensive events designed to appeal to large numbers of voters. Campaigners choose simple themes in attempts to convince the public that if their initiative prevails on Election Day, a new and better policy outcome will result. People invest their votes and dollars into initiative campaigns in the belief that electoral victory will bring policy change. And unlike political debates that occur in the state capitol, debates over initiatives take place in the public eye -- in the newspapers, on television, literally in the public's living rooms. Citizens are therefore likely to be much

¹ From state adoption of the initiative process through 1988, only five states had more than 100 initiatives: Oregon (246), California (179), North Dakota (152), Arizona (123), and Colorado (123).

² In the period from 1978-1996, Californians voted on 98 initiatives. For comparisons to other states, see Public Affairs Research Institute of New Jersey 1992, Free Congress Foundation 1992, 1994, 1996.

more aware of initiatives than of regular legislation, and the campaigns leave voters with the impression that electoral victory implies policy change.

A number of studies that document the effects of some well-known initiatives supply further support for the idea that initiatives impact policy and reduce the power of elected representatives. For example, Proposition 98, passed by voters in 1988, requires that at least 40% of the state's general fund be spent on K-14 education. Many observers believe that with the help of the courts, Proposition 98 has proven to be a binding constraint; it has forced the hand of the governor and the state legislature at key moments in budget negotiations (see, for example, Cain and Noll 1995, Ellwood and Sprague 1995, Kiewiet 1999). A study by the state's Legislative Analyst's Office (LAO) gives a similar impression. In 1990, it estimated that only 8-10% of the state's budget was subject to legislative discretion. The rest of the budget was externally directed by a combination of initiatives, federal mandates, and previous legislation (LAO 1990, California Citizens Budget Commission 1995).

The sheer number of initiatives, the style of initiative campaigns, and examples of their effectiveness all combine to give the impression that the post-electoral fate of winning initiatives is very simple -- if they survive court challenges, they become law and change policy. But does such evidence really indicate the extent to which winning initiatives impact policy? We argue that they do not. To be certain, some initiatives have had an important impact on state policy. Many winning initiatives, however, are never implemented or enforced. We now turn our attention to why this is so.

Reasons for doubt.

From the time the first signatures are collected to the time the final votes are counted, initiatives are represented to voters as specific changes to the law. The post-electoral history of initiatives, however, paints a different picture. Many initiatives that win at the ballot box lose in the courts. State and federal courts strike down as unconstitutional all or part of many winning initiatives. Court rulings of this nature tend to be very public and are perceived as the primary obstacle preventing the implementation of winning initiatives.

Less recognized, but just as critical to the post-election fate of winning initiatives, is that many

initiatives encounter significant obstacles in the guise of government actors. There is a great variance in what government actors do to winning initiatives after they leave the voters' hands. While a few take full effect, many others are never enforced. The cause of this variance is the fact that every winning initiative gives government actors an opportunity to make implementation and enforcement decisions. When making these decisions, government actors regularly reinterpret, and sometimes reverse, electoral outcomes.

For example, if complying with an initiative entails raising new funds, spending new funds, or reallocating existing funds or human resources -- as many initiatives do -- then the legislature, and not the initiative's authors, must write the legislation needed to make these new transactions occur (e.g., at a minimum, the legislature must revise previous budget agreements to incorporate the initiative's budgetary requirements). If the legislature refuses to draft such legislation, then no funds are available for implementation and enforcement, and the initiative dies. Alternatively, if state bureaucrats need instructions about how to implement a winning initiative, some government actor must write the instructions and the legislature or a high-level bureaucrat must approve them. If the actors responsible for writing instructions choose not to comply with the initiative, then the decision of the voters can be quietly reversed.

Once new legislation or instructions are written, other government actors must choose to enforce what was passed or written. In some cases, the actor in question is the governor. In many other cases, state bureaucrats are charged with enforcement. If these actors refuse to enforce the initiative, then the initiative cannot affect policy.

Thus, we argue that most important thing to recognize about the post-election fate of winning initiatives is this: *winning initiatives neither implement nor enforce themselves*. Instead, if an initiative is to affect policy, government actors must take an active role in converting winning initiatives into policy changes. If they fail to comply, initiatives die.

In this study, we examine the implementation and enforcement decisions of government actors, including the governor and the legislature, with winning initiatives. We use the term "compliance" to refer generically to actors' decisions to implement and enforce initiatives. We consider compliance to be full when an actor implements or enforces the law as it is written. We consider compliance to be partial when some part of the initiative is reinterpreted by government actors. Note that when an actor chooses partial

compliance, the reinterpretation may or may not be detrimental to the initiative's proponents. The important point is simply that the actions of governmental actors, and not the initiative proponent, are captured in the final outcome. We consider compliance to be absent when the initiative is ignored entirely.

In what follows, we show that the conditions that must exist for full compliance with an initiative are very difficult to satisfy. If, for example, a legislative majority and a governor are united in their opposition to the initiative, then full compliance is extraordinarily unlikely -- even if voter support for the initiative was high. Indeed, we prove that in most situations, it is the policy preferences of government actors, and not the preferences of those who supported the initiative, that ultimately determines a winning initiative's effect on policy. These actors "take" the initiatives.

Every winning initiative gives government actors an opportunity to make implementation and enforcement decisions. When making these decisions, government actors often have the ability to reinterpret or reverse electoral outcomes. Understanding this fact about the post-electoral fate of winning initiatives is essential for anyone who wants to explain how direct democracy affects public policy.

When, then, do winning initiatives affect policy?

To answer this question, it is not sufficient to count the number of winning initiatives or to rely on the oversimplified claims made by initiative proponents during initiative campaigns. Nor is it sufficient to rely on the many complaints about initiatives made by political actors who need a scapegoat for the painful trade-offs that modern governance requires. Instead, we need to be able to explain why government actors comply with some initiatives but not others. In what follows, we clarify the conditions under which government actors choose to implement and enforce winning initiatives from the conditions under which government actors only partially or never comply.

Our research on initiative implementation and enforcement has two components. The first is a formal model of initiative compliance. The purpose of the model is to clarify the how government's actors policy desires interact with their political circumstances to affect their implementation and enforcement decisions. Our goal is to extract from the chaos of modern governance the systematic and generally applicable factors that affect how winning initiatives are implemented and enforced. Indeed, our efforts

reveal the basic underlying structural factors that produce predictable patterns of government behavior from the many and varied situations that winning initiatives produce.

Armed with our model's conclusions about when initiatives will -- and will not -- force the hand of government, we turn to in-depth empirical analyses of several recent initiatives' post-electoral fates. For each policy, we analyze spending and performance data to get an initial estimate of the extent of initiative compliance. We find that compliance behavior varies dramatically. While some initiatives are implemented fully, many others are implemented partially or not at all. In each of the case studies, we use the logic of the model to uncover important clues about why these winning initiatives differ so much in their post-electoral fates.

Our approach clarifies the distinct, but interconnected, roles of several important features of the political environment. These features include voter and interest group policy preferences and these actors' abilities and willingness to sanction state government for failing to implement and enforce their mandate. Our approach also reveals how features of the initiatives themselves, such as the ease of observing compliance, the existence of enforcement provisions, and the stringency of punishments for non-compliance affects who prevails in battles to constrain state government. By so doing, it reinforces, refines, and extends the important work of scholars such as Pressman and Wildavsky 1984, who examined in great detail all of the problems inherent in the city of Oakland's effort to implement a federal economic stimulus program, and of Lee 1978, who documented the state's failure to implement a number of pre-Proposition 13 initiatives.

Note that the purpose of our research is neither to condemn policy makers when they choose not to fully comply with winning initiatives nor to condemn the initiative process when it produces laws that bind government actors. Given the broad range of political perspectives among California's citizens, politicians, policymakers, and political observers, it is not possible to give a broadly satisfying answer as to whether initiative compliance is "good" or "bad." Even we, the authors of this manuscript, are of mixed opinions on the matter. But regardless of whether you love the initiative process or despise it, it is important to be informed about the extent to which winning initiatives affect public policy. This study sheds new light on the topic.

The manuscript continues as follows. In Chapter 2, we provide a brief description of California's unique initiative process. We use this description to answer questions about the likely content of winning initiatives and the likely relations between initiative proponents and government actors. In Chapter 3, we present our model of initiative compliance. We use the model to generate predictions about the conditions under which government actors will implement and enforce an initiative fully, partially, and not at all. In Chapter 4, we offer a set of empirical case studies to assess government responses to such initiatives. The case studies put the spotlight on a wide range of government actors who are faced with implementation and enforcement decisions on dozens of winning initiatives. In Chapter 5, we provide an in-depth analysis of some aspects of one of the most important initiatives in California's history, Proposition 13. We show that even when initiatives are implemented fully, to the letter of the law, their ultimate policy consequences may be quite at odds with the proponents' intentions. Rather, state policy makers retain substantial discretion even when they "comply" with initiatives. Chapter 6 offers a brief concluding statement.

Together, these theoretical and empirical analyses of initiative compliance provide an important, but currently unconventional, understanding of how initiatives affect public policy in California. Two appendices contain technical information and data relevant to our research.