

# SHORTCUTS TO DELIBERATION? HOW CUES RESHAPE THE ROLE OF INFORMATION IN DIRECT DEMOCRACY VOTING

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## I. INTRODUCTION

The complex concept of “deliberation” has been defined differently by legal scholars, political theorists, and analysts of political behavior. Each field highlights a different aspect of deliberation, making a positive or normative argument about how it does or should occur. However, one thing that these diverse definitions have in common is none seem to describe what occurs when American voters enter the ballot box to play their leading role in direct democracy.

Disconnects between the deliberative democracy ideal and practice of voting on initiatives are numerous and varied. Legal scholar Bruce Ackerman and political scientist James S. Fishkin describe their model of a deliberative democracy as one in which “Americans will not be encountering each other as consumers or coreligionists or even as friends—but as citizens searching for common ground . . . in a common enterprise.”<sup>1</sup> Polling evidence of religious block voting on same-sex marriage initiatives such as California’s 2008 Proposition 8,<sup>2</sup> as well as evidence of racial and

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1. Bruce Ackerman & James S. Fishkin, *Deliberation Day*, in *DEBATING DELIBERATIVE DEMOCRACY* 7, 22 (James S. Fishkin & Peter Laslett eds., 2003).

2. See PATRICK J. EGAN & KENNETH SHERRILL, NAT’L GAY & LESBIAN TASK FORCE POLICY INST., CALIFORNIA’S PROPOSITION 8: WHAT HAPPENED, AND WHAT

ethnic polarization on Proposition 187<sup>3</sup> and Proposition 209,<sup>4</sup> clearly shows voters do not always see direct democracy as a common enterprise.

Political theorist Joshua Cohen notes deliberation must occur in settings in which participants "regard one another as formally and substantively *equal*. . . . [T]hey aim to defend and criticize institutions and programs in terms of considerations that others, as free and equal, have *reason to accept*"<sup>5</sup> and participants "are prepared to cooperate in accordance with the results of such discussion."<sup>6</sup> While initiative voters certainly may regard each other as equals, they have few chances to make arguments in forms that would be generally accepted by their peers. At the elite level, a salient feature of direct democracy campaigns is that they nearly always lack the public debates between supporters and opponents that characterize most races between candidates. Instead of being forced to make broadly appealing arguments and to refute the other side, initiative campaigns engage in the one-way communication of television advertisements and the individually-targeted medium of direct mail. When an initiative campaign is over, opponents frequently (and often successfully) file suit to have propositions overturned rather than cooperating with the outcome.<sup>7</sup>

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DOES THE FUTURE HOLD? 3 (2009), *available at* [http://www.thetaskforce.org/downloads/reports/reports/pi\\_prop8\\_1\\_6\\_09.pdf](http://www.thetaskforce.org/downloads/reports/reports/pi_prop8_1_6_09.pdf).

3. See THE FIELD INST., A SUMMARY ANALYSIS OF VOTING IN THE 1994 GENERAL ELECTION 5 (1995), *available at* <http://field.com/fieldpollonline/subscribers/COI-94-95-Jan-Election.pdf> (analysis of voter preferences on a 1994 measure regulating illegal immigration).

4. See generally Bruce Cain & Karin MacDonald, *Race and Party Politics in the 1996 U.S. Presidential Election*, in 2 RACIAL AND ETHNIC POLITICS IN CALIFORNIA 199 (Michael Preston et al. eds., 1998) (analyzing race and party effects on Proposition 209, a 1996 ban on affirmative action).

5. Joshua Cohen, *Democracy and Liberty*, in DELIBERATIVE DEMOCRACY 185, 194 (Jon Elster ed., 1998).

6. JOSHUA COHEN, *Procedure and Substance in Deliberative Democracy*, in PHILOSOPHY, POLITICS, DEMOCRACY: SELECTED ESSAYS 154, 181 (2009).

7. See KENNETH P. MILLER, DIRECT DEMOCRACY AND THE COURTS 106-07 (2009).

Deliberative democracy places "a large set of arguments . . . on the table," according to comparative political scientist Jurg Steiner.<sup>8</sup> "The individual arguments are justified in a rational, logical and elaborate manner. All participants are truthful in presenting their arguments and the supporting information."<sup>9</sup> By contrast, students of direct democracy have long worried that voters lack access to enough arguments and sufficient information to vote competently.<sup>10</sup> Analysis of California's insurance proposition battles,<sup>11</sup> and simply a glance at journalistic "adwatch" coverage of the veracity (or lack thereof) of recent proposition ads, shows that direct democracy campaigns are not always truthful.

Of course, scholarship on deliberative democracy often points out the disconnect between the deliberation model and political decision-making common practice. For example, Steiner notes "the ideal type of deliberation . . . virtually never appears in pure form in real politics."<sup>12</sup> Jürgen Habermas, the most influential deliberative democracy scholar, also notes deliberative situations "have an improbable character and are like islands in the ocean of everyday praxis."<sup>13</sup>

Our aim in this Article is to provide a map to the terrain of direct democracy voting, to look for islands of deliberation, and finally to ask whether "cues"—the informational shortcuts provided by the statements of recognized individuals or organizations—serve as bridges to these islands. To do so, we review two literatures in political science: observational works that use surveys or the analysis of election results to study how voters react to the cues issued in real

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8. Jurg Steiner, Potential for Deliberation Among EU Citizens 5 (May 2010) (unpublished manuscript) (on file with the University of North Carolina).

9. *Id.* at 5-6.

10. See Arthur Lupia & John G. Matsusaka, *Direct Democracy: New Approaches to Old Questions*, 7 ANN. REV. POL. SCI. 463, 467-70 (2004), for a summary of this literature.

11. Insurance companies attempted to hide their support for ballot measures, a ruse that was influential upon and detrimental to interests of misled voters. Arthur Lupia, *Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88 AM. POL. SCI. REV. 63, 63-76 (1994).

12. Steiner, *supra* note 8, at 6.

13. JÜRGEN HABERMAS, DIE EINBEZIEHUNG DES ANDEREN: STUDIEN ZUR POLITISCHEN THEORIE 323 (1996).

direct democracy elections, and experimental works that simulate cues and gauge their effects in controlled environments.

In both literatures, we look for answers to a single set of questions: What sorts of informational shortcuts do voters regularly rely upon? Whom do they believe and trust? Which cues are most powerful? How does the behavior of voters who rely upon cues compare to the behavior of voters who lack them?

We then apply these findings to a brief analysis of direct democracy reforms that have been proposed or recently enacted in California and other western states. Would these reforms change the nature of the cues that voters receive? If so, how might they change voter behavior?

Finally, we conclude by raising the question of whether cues move the practice of voting in initiative elections closer to or farther from the ideal of deliberative democracy. After evaluating the often-discouraging role of cues in deliberation, we highlight the broader question of whether deliberation necessarily improves the quality of democracy. Mathew D. McCubbins and Daniel B. Rodriguez note

[d]eliberation is proposed as a major palliative and, for some, even a panacea for nearly all that is wrong in society - a procedural 'cure-all' for self-interested decisionmaking, for an unformed citizenry, for the oppression of minorities, for social fragmentation, and for low levels of confidence in our government, among other ills.<sup>14</sup>

Yet these and other authors are skeptical that deliberation fulfills all of those goals, and some empirical evidence points to potential negative effects of deliberation. Rather than resolving this major debate, our more limited goal here is to chart the shortcuts voters take in direct democracy elections and evaluate whether this brings them closer to or farther from the complicated, contested ideal of deliberation.

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14. Mathew D. McCubbins & Daniel B. Rodriguez, *When Does Deliberating Improve Decisionmaking?*, 15 J. CONTEMP. LEGAL ISSUES 9, 10-11 (2006) (citations omitted).

## II. FINDINGS FROM THE SURVEY AND ELECTION RETURN LITERATURES

In searching for the bridges to the islands of deliberation, empirical assessments of the role of cues have focused on recognizable organizations, political leaders, and parties as signals that voters use to navigate the murky waters of direct democracy. Using a broad national perspective, Bowler and Donovan examine a variety of states, elections, and sources of cues to conclude that while voters writ large do not often maintain "full information" about propositions, they "appear able to figure out what they are for and against in ways that make sense in terms of their underlying values and interests."<sup>15</sup> This general conclusion seems to hold across a myriad of empirical studies, both at the individual and aggregate levels of analysis.

At the individual level, political scientist Arthur Lupia tested voters' use of shortcuts using five California insurance reform propositions in 1988.<sup>16</sup> Lupia focused on the role of the insurance industry and the "cues" the industry presented to voters, assuming that as consumers of insurance, voters viewed the industry's position as contrary to their own.<sup>17</sup> He classified voters into three categories, the first of which included those voters who were fully informed about the propositions, thereby possessing "encyclopedic knowledge."<sup>18</sup> This "encyclopedic knowledge" required voters to have an awareness of the specific details of the proposition. For example, knowing which of the five propositions established a "no fault" system of automobile insurance.<sup>19</sup> The second group of voters was uninformed about detailed clauses within each of the propositions.<sup>20</sup> The third group of voters did not have detailed "encyclopedic knowledge," but was aware of the key cue in that election (for example, the position of the state's insurance company industry on those propositions).<sup>21</sup> Lupia's results show voters in the high information group voted differently than

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15. SHAUN BOWLER & TODD DONOVAN, DEMANDING CHOICES: OPINION, VOTING, AND DIRECT DEMOCRACY 168 (2000).

16. See Lupia, *supra* note 11, at 67.

17. *Id.*

18. *Id.* at 69.

19. *Id.* at 73.

20. *Id.* at 71.

21. *Id.*

voters in the low information group.<sup>22</sup> Most importantly, those who were aware of the cues voted similarly to those who possessed "encyclopedic knowledge" about the propositions,<sup>23</sup> suggesting these organizational cues can assist voters in a positive manner and get them across the bridge to the islands of deliberation.

In candidate elections, the most relied-upon cue for a voter is the partisanship of the politician. Initiative and referendum elections lack the immediately identifiable mark of a partisan endorsement. However, parties can and do play a significant role in the process. A national study by Regina Branton using the Voter News Service exit polls from 1992 through 1996 shows individual level partisan affiliation is "strongly and consistently related to voting behavior across each of the various types of ballot propositions."<sup>24</sup> David Berman and Mike Yawn come to a similar conclusion after analyzing 316 propositions in Arizona from 1912 to 1996.<sup>25</sup> Their work suggests that parties play a big role in cueing the electorate and ultimately providing a valuable piece of information for voters to use on election day.

Christin, Hug, and Sciarini used referendum votes in Switzerland to extend Lupia's work and investigate the varying effects of partisan endorsement awareness on low and high information voters.<sup>26</sup> Their results show that low information voters who are aware of the partisan cue vote more similarly to those who are highly informed than their uninformed cue-less brethren.<sup>27</sup> This work provides yet another piece of evidence that cues can assist voters in aligning their votes with their preferences when they lack information.<sup>28</sup>

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22. *Id.*

23. *Id.* at 72.

24. Regina Branton, *Examining Individual-Level Voting Behavior on State Ballot Propositions*, 56 POL. RES. Q. 367, 369 (2003).

25. David Berman & Mike Yawn, *Partisanship and Support for Propositions on the Ballot: A State-Level Longitudinal Study*, 82 SOC. SCI. Q. 408, 408 (2001).

26. See generally Thomas Christin et al., *Interests and Information in Referendum Voting: An Analysis of Swiss Voters*, 41 EUR. J. POL. RES. 759 (2002); Arthur Lupia, *Busy Voters, Agenda Control, and the Power of Information*, 86 AM. POL. SCI. REV. 390 (1992); Lupia, *supra* note 11.

27. Christin et al., *supra* note 26, at 773.

28. *Id.* at 769.

In addition to organizational and partisan cues, high profile political leaders can have an influence on voters' choices as well. During the 2008 presidential primary and general elections in California, Michael Binder conducted exit poll surveys testing the effects of elite endorsements on voters' abilities to cast votes on propositions in line with their stated issue preferences.<sup>29</sup> The February primary had seven propositions on the ballot, four of which were referenda on alterations to Indian gaming compacts with the state.<sup>30</sup> In exchange for allowing an increased number of slot machines on tribal land, the tribes agreed to increase the amount of revenue given to the state.<sup>31</sup> The four referenda were marketed as a single-vote package, and supporters of the agreement spent upwards of \$108 million to bolster support for them.<sup>32</sup> Opposition groups, anchored by tribes not involved in the deal and gambling organizations like racetracks that would like to add slot machines to their offerings, spent over \$64 million to defeat the gaming pacts.<sup>33</sup> Ultimately all four agreements were passed by the voters with nearly identical passage rates around 55.6%.<sup>34</sup> Binder showed voters who were aware that Schwarzenegger supported those referenda and believed the Governor represented people like them were ten percentage points more likely to vote

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29. Michael Binder, *Getting it Right or Playing it Safe? Correct Voting, Confusion and the Status Quo Bias in Direct Democracy 1* (Sept. 1, 2009) (unpublished manuscript), available at <http://ssrn.com/abstract=1465780> (paper presented at the annual meeting of the American Political Science Association in Toronto, Ontario, Canada, Sept. 3-9, 2009).

30. *Official Voter Information Guide: February 5, 2008, Presidential Primary Election*, CAL. SEC'Y OF STATE (Nov. 13, 2007), <http://primary2008.sos.ca.gov/voterguide/> (referencing Propositions 94, 95, 96, and 97).

31. CAL. SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE SUPPLEMENT: FEBRUARY 5, 2008, PRESIDENTIAL PRIMARY ELECTION 12-19 (2007), available at [http://primary2008.sos.ca.gov/voterguide/lang/english\\_sup.pdf](http://primary2008.sos.ca.gov/voterguide/lang/english_sup.pdf).

32. Supporters were mostly the Indian tribes named in the pacts and Governor Schwarzenegger. *Proposition 94: Amend Indian Gaming Compact Between the State and Pechanga Band of Luiseno Mission Indians*, NAT'L INST. ON MONEY IN STATE POLITICS, [www.followthemoney.org/database/StateGlance/ballot.phtml?m=493](http://www.followthemoney.org/database/StateGlance/ballot.phtml?m=493) (last visited Nov. 2, 2011); see also Binder, *supra* note 29, at 15.

33. Binder, *supra* note 29, at 15; see also NAT'L INST. ON MONEY IN STATE POLITICS, *supra* note 32.

34. CAL. SEC'Y OF STATE, STATEMENT OF VOTE: FEBRUARY 5, 2008, PRESIDENTIAL PRIMARY ELECTION 13 (2008), available at [http://www.sos.ca.gov/elections/sov/2008\\_primary/13\\_votes\\_for\\_against.pdf](http://www.sos.ca.gov/elections/sov/2008_primary/13_votes_for_against.pdf).

“correctly.”<sup>35</sup> This effect is magnified for the least politically informed, as they were fourteen percentage points more likely to vote “correctly” if they were aware of the cue than those voters who did not know Schwarzenegger supported the propositions.<sup>36</sup>

The November 2008 elections had two controversial social issues on the ballot: abortion and same-sex marriage.<sup>37</sup> Proposition 4 aimed to prohibit abortions for “unemancipated minor[s] until 48 hours after [a] physician notifies [the] minor’s parent or legal guardian.”<sup>38</sup> This was the third effort to pass this type of initiative in the last several years and again the opposition, led by Planned Parenthood, outspent supporters, this time by more than four to one.<sup>39</sup> This proposition failed as only forty-eight percent voted “yes” to prohibit such abortions.<sup>40</sup> Proposition 8, the extremely controversial measure designed to constitutionally ban same-sex marriage, saw over \$100 million pour into this campaign from all 50 states.<sup>41</sup> The “No on 8” campaign, favoring same-sex marriage, spent over \$64 million, while

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35. Voting “correctly” refers to casting a ballot in line with the voter’s preferences. *See* Binder, *supra* note 29, at 3.

36. *See id.* at 19-20.

37. CAL. SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: NOVEMBER 4, 2008, GENERAL ELECTION 24, 54 (2008), *available at* <http://voterguide.sos.ca.gov/past/2008/general/pdf-guide/vig-nov-2008-principal.pdf>.

38. *Id.* at 24, 84; *see Campaign Finance: Prop 4*, CAL. SEC’Y OF STATE, <http://cal-access.ss.ca.gov/Campaign/Measures/Detail.aspx?id=1302575&session=2007> (last visited Nov. 2, 2011) (referencing various committees formed to support or oppose the ballot measure).

39. *See Campaign for Teen Safety – Planned Parenthood Affiliates of California*, CAL. SEC’Y OF STATE, <http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1276142&session=2007&view=expenditures> (last visited Nov. 2, 2011) (referencing expenditures by Planned Parenthood); *cf. Friends of Sarah, Yes on Prop 4*, CAL. SEC’Y OF STATE, <http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1298466&session=2007&view=expenditures> (last visited Nov. 2, 2011) (referencing expenditures by Friends of Sarah).

40. CAL. SEC’Y OF STATE, STATEMENT OF VOTE: NOVEMBER 4, 2008, GENERAL ELECTION 7 (2008), *available at* [http://www.sos.ca.gov/elections/sov/2008\\_general/sov\\_complete.pdf](http://www.sos.ca.gov/elections/sov/2008_general/sov_complete.pdf).

41. *See Campaign Finance: Proposition 8*, CAL. SEC’Y OF STATE, <http://cal-access.ss.ca.gov/Campaign/Measures/Detail.aspx?id=1302602&session=2007> (last visited Nov. 2, 2011) (referencing committees formed to support or oppose the ballot measure).



the "Yes on 8" campaign tallied over \$42 million in expenditures.<sup>42</sup> Both political parties staked out positions on this issue: the Republican Party came out in support of the ban, while the Democratic Party opposed it.<sup>43</sup> Awareness that Planned Parenthood opposed Proposition 4 and the Democrats opposed Proposition 8 while the Republicans supported Proposition 8, led to an increase in "correct" voting of five percentage points.<sup>44</sup> For the least politically aware, that number jumped more than seven percentage points.<sup>45</sup> These two initiatives show that even for issues voters are quite familiar with, cues are not only a useful tool, but disproportionately aid the least politically astute members of the electorate. These elections thus provide solid evidence that not only can cues enable uninformed voters to cast more informed votes, but as Binder's results show, awareness of these particular cues is the most influential predictor of voters' ability to cast votes in line with their preferences, i.e., to vote "correctly."<sup>46</sup>

California is far from the only place where direct democracy theories have been tested. Swiss political scientist, Hanspeter Kriesi, analyzed Swiss direct democracy votes in 210 separate races from 1981 to 2004.<sup>47</sup> Kriesi showed coalitions formed by political elites across parties are much more successful at influencing the public than divided coalitions are.<sup>48</sup> Kriesi concluded "coalition formation and mobilization among the elites is likely to be decisive for the outcome of direct-democratic votes."<sup>49</sup> In an additional study, Kriesi argued that citizens often adopt simplifying strategies and that elites' cues

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42. *See id.*

43. *California Ballot Endorsements: November 4, 2008, General Election*, INST. OF GOVERNMENTAL STUDIES, <http://igs.berkeley.edu/library/research/quickhelp/elections/2008general/endorseNOV2008.html> (last updated Nov. 5, 2008).

44. Binder, *supra* note 29, at 19-20.

45. *Id.* at 20.

46. See RICHARD R. LAU & DAVID P. REDLAWSK, *HOW VOTERS DECIDE: INFORMATION PROCESSING DURING ELECTION CAMPAIGNS* (Dennis Chong & James H. Kuklinski eds., 2006) for a detailed discussion of the concept of "correct" voting. For this book's research, "correct" voting is operationalized as a voter casting a ballot in line with their stated preferences.

47. *See generally* Hanspeter Kriesi, *Role of The Political Elite in Swiss Direct-Democratic Votes*, 2 PARTY POL. 599 (2006).

48. *Id.* at 618.

49. *Id.* at 619.

play an important role in that process.<sup>50</sup> In addition to his work on elite cues, Kriesi analyzed another cue voters use when voting on propositions: "trust."<sup>51</sup> Kriesi defined "trust" as the voter having faith in government.<sup>52</sup> The idea behind "trust" as a political cue is voters who trust the government to act in accordance with the voters' collective interests are more likely to support government projects.<sup>53</sup> Conversely, skeptical voters are more inclined to oppose expanding the government's role.<sup>54</sup>

Though many empirical studies show cues are very useful tools for voters, particularly those who are least politically aware,<sup>55</sup> they are not a perfect solution for an under-informed and ill-attentive electorate. Sara Binzer Hobolt begins to show the limitations of cues in her study of a 1994 Norwegian referendum on European Union (EU) membership.<sup>56</sup> Her evidence suggests "voters can act competently without detailed knowledge of the EU by relying on party endorsements, if they have a basic knowledge of party positions on the EU."<sup>57</sup> This line of reasoning makes perfect sense. Indeed, how useful can a cue be if voters are unable to connect it to a position held by the endorser? Another potential hindrance to the successful use of cues is when parties or other political organizations lack a clear position on an issue. John Higley and Ian McAllister discuss how the political elite's inability to uniformly endorse a 1999 referendum in Australia led to its defeat, despite a clear majority of the population supporting the concept.<sup>58</sup>

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50. Hanspeter Kriesi, *How Citizens Decide in Direct-Democratic Votes: Experiences from Switzerland*, 3 PORT. J. SOC. SCI. 1, 3 (2004).

51. *Id.* at 5.

52. *Id.* at 9.

53. *See id.* at 5.

54. *Id.* at 7.

55. *See* Christin et al., *supra* note 26; Arthur Lupia, *Busy Voters, Agenda Control, and the Power of Information*, 86 AM. POL. SCI. REV. 390, 391 (1992); Lupia, *supra* note 11; Binder, *supra* note 29.

56. *See* Sara Binzer Hobolt, *Taking Cues on Europe? Voter Competence and Party Endorsements in Referendums on European Integration*, 42 EUR. J. POL. RES. 151 (2007).

57. *Id.* at 175.

58. *See* John Higley & Ian McAllister, *Elite Division and Voter Confusion: Australia's Republic Referendum in 1999*, 41 EUR. J. POL. RES. 845 (2002).

Though citizens can and do successfully employ cues to match their preferences to their votes, there are occasions when voters may be led astray by the endorsements of popular political figures. Bowler and Donovan, as well as political scientist Jeffrey Karp, detail the story of how term limits moved through the direct democracy process in Washington State.<sup>59</sup> During the 1991 Washington elections, a limit on legislators' terms in office was put on the ballot.<sup>60</sup> Tom Foley, Speaker of the House and very popular political figure, campaigned heavily against the initiative, which initially showed support among voters.<sup>61</sup> Foley's efforts were widely credited with helping to narrowly defeat the initiative.<sup>62</sup> The following year, in the 1992 presidential election, a supporter of term limits was able to get another proposal on the ballot.<sup>63</sup> With Foley locked in a battle for reelection and opponents of the initiative engaged in the other races on the ballot, the initiative passed easily.<sup>64</sup>

Voters rely on the information available to them, be it a signal from a political organization, politician, political party, or simply their general view of the government, as a way of aiding themselves in making difficult decisions about often complex policies in direct democracy. Though the evidence put forth in many of these empirical studies is quite suggestive, experimental work both in the lab and the field on this subject has bolstered these claims and attempted to flesh out the true causal mechanism behind the role of cues in the world of direct democracy.

### III. FINDINGS FROM LABORATORY AND SURVEY EXPERIMENTS

In addition to examining natural variation across states, time, and voters to understand decision-making in direct democracy elections, political scientists also directly manipulate the information voters

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59. See BOWLER & DONOVAN, *supra* note 15; Jeffrey Karp, *Explaining Public Support for Legislative Term Limits*, 59 PUB. OPINION Q. 373 (1995).

60. David J. Olson, *Term Limits Fail in Washington: The 1991 Battleground*, in LIMITING LEGISLATIVE TERMS 65, 65 (Gerald Benjamin & Michael Malbin eds., 1992).

61. See Karp, *supra* note 59, at 377.

62. See *id.*

63. See *id.* at 381.

64. See *id.* at 373.

receive in laboratory and survey experiments.<sup>65</sup> In contrast to the aforementioned studies, political scientists using experiments to study direct democracy randomly assign individuals to treatment and control groups. They then systematically manipulate the groups' exposure to information, while holding all other aspects of the decision-making environment constant. In a typical experiment on decision-making in direct democracy elections, individuals assigned to the control group do not receive any information, while individuals assigned to the treatment groups each receive different information types.<sup>66</sup> With such experiments, political scientists are able to directly observe particular outcomes of interest in debates about direct democracy under different conditions.<sup>67</sup> They can then evaluate whether certain information types induce changes in these outcomes, relative to when no

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65. Political scientists often manipulate whether subjects in an experiment receive party cues, endorsements from interest groups, detailed policy information, and/or other types of information. For examples of these types of manipulations, see ARTHUR LUPA & MATHEW D. MCCUBBINS, *THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW?* (James E. Alt & Douglass C. North eds., 1998); Kevin Arceneaux, *Can Partisan Cues Diminish Democratic Accountability?*, 30 *POL. BEHAV.* 139 (2008); Cheryl Boudreau, *Closing the Gap: When Do Cues Eliminate Differences Between Sophisticated and Unsophisticated Citizens?*, 71 *J. POL.* 964 (2009); John Bullock, *Elite Influence on Public Opinion in an Informed Electorate*, 105 *AM. POL. SCI. REV.* 496 (2011); Geoffrey L. Cohen, *Party over Policy: The Dominating Impact of Group Influence on Political Beliefs*, 85 *J. PERSONALITY & SOC. PSYCHOL.* 808 (2003); Martin Gilens, *Political Ignorance and Collective Policy Preferences*, 95 *AM. POL. SCI. REV.* 379 (2001); Shanto Iyengar et al., *The Stealth Campaign: Experimental Studies of Slate Mail in California*, 17 *J.L. & POL.* 295 (2001); Wendy M. Rahn, *The Role of Partisan Stereotypes in Information Processing About Political Candidates*, 37 *AM. J. POL. SCI.* 472 (1993); Ellen D. Riggle et al., *Bases of Political Judgments: The Role of Stereotypic and Nonstereotypic Information*, 14 *POL. BEHAV.* 67 (1992); Cheryl Boudreau & Scott A. MacKenzie, *Informing the Electorate? How Party Cues and Policy Information Affect Public Opinion About Initiatives* (Aug. 27, 2011) (unpublished manuscript), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1901608](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1901608) (paper presented at the annual meeting of the American Political Science Association, Seattle, WA).

66. For example, individuals in a treatment group may receive an endorsement or detailed policy information. See generally LUPA & MCCUBBINS, *supra* note 65; Boudreau, *supra* note 65; Gilens, *supra* note 65.

67. That is, they can observe the opinions individuals express or the decisions they make. For examples, see generally LUPA & MCCUBBINS, *supra* note 65; Boudreau, *supra* note 65; Gilens, *supra* note 65; Boudreau & MacKenzie, *supra* note 65.

information is provided or when other information types are provided.<sup>68</sup>

These experiments allow political scientists to make precise causal claims about the conditions under which different types of information affect voters' opinions and decisions in direct democracy elections.<sup>69</sup> Although experiments necessarily lack real world direct democracy elections' complexities, they provide a controlled setting to observe information's effects without the confounding events that occur in the real world. These advantages are precisely why political scientists have used experiments to study the effects of several commonplace information types—namely, endorsements, policy information, and the frames (for example, arguments or interpretations) political elites use when describing ballot propositions.<sup>70</sup>

In this section, we discuss several prominent experiment examples that manipulate one or more of these information types. These experiments reveal conditions under which such information helps voters who lack detailed information about ballot propositions to make more informed decisions in direct democracy elections. Taken together, the results suggest important lessons for political elites who seek to influence voters and for reformers who seek to improve citizens' decisions in direct democracy elections.

#### *A. The Effects of Endorsements*

Several political scientists use experiments to study the effects of endorsements on voters' decisions. These scholars recognize: (1) that

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68. For a related discussion of the causal leverage experiments provide, see Cheryl Boudreau & Arthur Lupia, *Political Knowledge*, in CAMBRIDGE HANDBOOK OF EXPERIMENTAL POLITICAL SCIENCE 171 (James N. Druckman et al. eds., 2011); WILLIAM R. SHADISH ET AL., EXPERIMENTAL AND QUASI-EXPERIMENTAL DESIGNS (Wadsworth Publ'g 2001); WILLIAM M. K. TROCHIM & JAMES P. DONNELLY, THE RESEARCH METHODS KNOWLEDGE BASE (3d ed. 2006).

69. Boudreau & Lupia, *supra* note 68.

70. See generally LUPIA & MCCUBBINS, *supra* note 65; Boudreau, *supra* note 65; Gilens, *supra* note 65; Iyengar et al., *supra* note 65; Boudreau & MacKenzie, *supra* note 65; Craig M. Burnett & Vladimir Kogan, The Case of the Stolen Initiative: Were the Voters Framed? (Apr. 15, 2011) (unpublished manuscript), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1643448##](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1643448##) (American Political Science Association 2010 annual meeting paper).

voters typically lack detailed information about politics, and (2) that such information deficits may be particularly pronounced in direct democracy elections where voters must make decisions about complex policy issues without the aid of party labels provided on the ballot.<sup>71</sup> Rather than deem voters incompetent to make such decisions, these scholars identify conditions under which uninformed voters can use endorsements as substitutes for more detailed political information.<sup>72</sup>

For example, Lupia and McCubbins use laboratory experiments to assess the conditions under which uninformed voters trust the statements of an endorser,<sup>73</sup> and ultimately improve their decisions.<sup>74</sup> In the experiments, subjects predict the outcomes of coin tosses and earn money each time they make a correct prediction.<sup>75</sup> However, subjects do not observe the coin toss outcomes before making their predictions.<sup>76</sup> In this way, subjects lack relevant information to the task at hand. However, before making their predictions, another subject (acting as "the speaker") observes each coin toss outcome, and then states whether the coin landed on heads or tails.<sup>77</sup> As in real world direct democracy campaigns, subjects know the speaker has no obligation be truthful.<sup>78</sup> After receiving the speaker's statement, subjects predict each coin toss outcome.<sup>79</sup>

In various treatment conditions, Lupia and McCubbins manipulate the perceived credibility of the speaker.<sup>80</sup> For example, in one treatment condition, subjects receive statements from a speaker who

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71. See generally LUPIA & MCCUBBINS, *supra* note 65; Boudreau, *supra* note 65; Cheryl Boudreau, *Making Citizens Smart: When Do Institutions Improve Unsophisticated Citizens' Decisions?*, 31 POL. BEHAV. 287 (2009); Boudreau & MacKenzie, *supra* note 65.

72. See generally LUPIA & MCCUBBINS, *supra* note 65; Boudreau, *supra* note 65; Boudreau, *supra* note 71.

73. The endorser is dubbed "the speaker" in their experiments.

74. LUPIA & MCCUBBINS, *supra* note 65.

75. *Id.* at 101.

76. *See id.*

77. *Id.* at 101-02.

78. *See id.* at 108.

79. *See id.* at 111.

80. That is, they manipulate the extent to which the speaker is known to be knowledgeable and trustworthy. *Id.* at 109.

shares common interests with them.<sup>81</sup> In another treatment condition, subjects receive statements from a speaker whose interests conflict with their own, but who is subject to an institution (namely, a penalty for lying or threat of verification) that gives the speaker an incentive to make truthful statements.<sup>82</sup> Lupia and McCubbins vary the presence of common versus conflicting interests, as well as the size of the penalty for lying, by manipulating the financial incentives of subjects and the speaker.<sup>83</sup>

The results of Lupia and McCubbins' experiments reveal conditions under which subjects trust the speaker's statements and make correct decisions.<sup>84</sup> Specifically, their results show when the speaker shares common interests with subjects, subjects trust the speaker's statements and make correct predictions at a rate that is substantially greater than chance.<sup>85</sup> Similarly, when a sufficiently large penalty for lying or threat of verification is imposed upon the speaker, subjects trust the speaker's statements at a rate closer to that at which they trust the speaker's statements when the speaker shares common interests with the voters.<sup>86</sup> In this way, Lupia and McCubbins' results indicate that when an endorser is perceived as credible, uninformed voters trust his or her statements and make better decisions than they would have made on their own.<sup>87</sup>

Building on Lupia and McCubbins' experiments, Boudreau further investigates the conditions under which endorsements help voters with their decisions.<sup>88</sup> Indeed, one question Lupia and McCubbins' experiments leave open is whether a credible endorser's statements help both more and less knowledgeable voters to make informed decisions. To address this question, Boudreau replicates Lupia and McCubbins' experiments using math problems instead of

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81. *Id.* at 119.

82. *Id.* at 133-39.

83. *Id.* at 101-35.

84. *Id.* at 101-48.

85. The speaker, by and large, makes truthful statements when he or she shares common interests with subjects, which helps them to make better decisions. The same is true when the speaker is subject to a sufficiently large penalty for lying or probability of verification. *Id.* at 145-46.

86. *Id.*

87. That is, by guessing randomly.

88. Boudreau, *supra* note 65.

coin tosses.<sup>89</sup> One advantage of using math problems is subjects vary in their levels of preexisting knowledge; that is, some subjects are quite knowledgeable about solving math problems, while others are not. A second advantage is that there exists a valid, reliable, and agreed upon measure of subjects' levels of preexisting knowledge about this type of decision—namely, SAT math scores. Boudreau, therefore, collects subjects' SAT math scores prior to the experiments.<sup>90</sup> This enables her to analyze whether and when an endorser's statements help less knowledgeable subjects to behave as though they are more knowledgeable.<sup>91</sup>

The results of Boudreau's experiments demonstrate that a credible endorser's statements close the gap between more and less knowledgeable subjects' decisions.<sup>92</sup> That is, when an endorser shares common interests with subjects, is subject to a sufficiently large penalty for lying, or faces a sufficiently high probability of verification, both more and less knowledgeable subjects achieve large improvements in their decisions (relative to more and less knowledgeable subjects in the control group, who answer the problems on their own).<sup>93</sup> Further, the endorser's statements help less knowledgeable subjects improve their decision-making so much that the gap between their decisions and those of more knowledgeable subjects closes.<sup>94</sup> In this way, Boudreau's results suggest that an endorser's statements may be more helpful to voters who have little preexisting knowledge about their decisions.<sup>95</sup> They also indicate that these less knowledgeable voters can use an endorser's statements to help them behave as though they possess more knowledge.<sup>96</sup> This result is encouraging for direct democracy elections, where many voters lack preexisting knowledge about the choices they must make.

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89. *Id.* at 966.

90. *Id.* at 968.

91. *Id.* at 966.

92. *Id.* at 973-74.

93. *Id.* at 973.

94. *Id.* Indeed, there is no significant difference between the decisions of more and less knowledgeable subjects under these conditions.

95. *Id.* at 974-75.

96. *Id.*



An advantage of Boudreau's and Lupia and McCubbins' experiments is the use of tasks that have objectively correct or incorrect choices. This enables the precise measurement of whether and when an endorser's statements help subjects make better decisions than they would have made on their own.<sup>97</sup> But what does it mean to make "better" decisions in real world direct democracy elections? What effects do endorsements have on citizens' decisions about actual ballot propositions? Iyengar, Lowenstein, and Masket address these questions by conducting experiments in which subjects receive either partisan or nonpartisan endorsements before reporting how they intend to vote on current ballot propositions.<sup>98</sup> In doing so, Iyengar et al. retain the precise causal leverage that experiments provide, while simultaneously using an experimental task that, on its face, is more similar to real world political contexts.<sup>99</sup>

Specifically, Iyengar et al. conducted experiments just before the 1998 general election in California.<sup>100</sup> They recruited Democratic and Independent voters at a farmers market in Santa Monica and asked them to report how they intended to vote on the candidates and ballot propositions at issue in that election.<sup>101</sup> Subjects assigned to the control group did not receive any additional information before reporting how they intended to vote.<sup>102</sup> Subjects assigned to the treatment groups received a piece of slate mail (based on an actual slate mailer used in that election) that endorsed Democratic candidates and positions on ballot propositions.<sup>103</sup> In different treatment groups, Iyengar et al. manipulated the slate mail to appear either partisan or nonpartisan.<sup>104</sup> That is, in one treatment group, the slate mail was headed "Attention Democrats" and closed with the statement, "END THE WASHINGTON WITCH HUNT. VOTE DEMOCRAT. TELL

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97. For a related discussion of these studies, see Boudreau & Lupia, *supra* note 68.

98. Iyengar et al., *supra* note 65.

99. *Id.* Stated differently, their experiments are higher in mundane realism. *Id.* See generally Eliot Aronson et al., *Experimentation in Social Psychology*, in THE HANDBOOK OF SOCIAL PSYCHOLOGY 99 (Daniel T. Gilbert et al. eds., 5th ed. 2010).

100. Iyengar et al., *supra* note 65, at 316.

101. *Id.* at 320-21.

102. *Id.* at 320.

103. *Id.* at 316-20.

104. *Id.* at 317-19.

THE REPUBLICANS TO GET BACK TO THE BUSINESS OF RUNNING THE COUNTRY."<sup>105</sup> In another treatment group, the slate mail was headed "Attention Independent Voters" and closed with the statement, "USE THIS GUIDE WHEN YOU VOTE FOR GOVERNOR AND OTHER IMPORTANT OFFICES AND ISSUES."<sup>106</sup> Importantly, both types of slate mail contained endorsements of the exact same candidates and ballot propositions; the only differences were the headings and closing statements.<sup>107</sup>

The results of Iyengar and his colleagues' experiments show that endorsements listed on slate mail influence Democratic and Independent subjects' intended votes for ballot propositions.<sup>108</sup> Specifically, the percentage of Independents who voted in accordance with the endorsements listed on the slate mail increased by twenty points.<sup>109</sup> The percentage of Democrats who voted in accordance with the endorsements increased by five points.<sup>110</sup> Not surprisingly, Democrats in the control group were more likely to vote in the endorsed, Democratic direction than Independents in the control group.<sup>111</sup> Further, Independents and Democrats who received the slate mail were equally likely to adopt the positions endorsed on it,<sup>112</sup> which indicates that the influence of slate mail is not contingent on subjects' partisanship. Interestingly, the results also suggest that Democratic and Independent subjects were more likely to follow the endorsements listed on the slate mail when the content was ostensibly nonpartisan, as opposed to partisan. Taken together, Iyengar et al.'s results indicate that endorsements listed on slate mail can have powerful effects on partisan and nonpartisan voters' decisions about ballot propositions.<sup>113</sup> For Democratic voters, these endorsements

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105. *Id.* at 318-19.

106. *Id.* at 319.

107. *Id.* at 316-19.

108. *Id.* at 324. Iyengar et al. find that slate mail did little to alter voter intentions in partisan elections. *Id.* at 325-26.

109. *Id.* at 324.

110. *Id.*

111. *Id.*

112. *Id.*

113. Of course, whether this is a normatively good or bad outcome depends upon a variety of factors. *Id.* at 331-32.

helped them to make decisions that were consistent with their own party's positions—and presumably, their own partisan interests.

*B. The Effects of Policy Information*

Political scientists also use experiments to assess the effects of detailed policy information—another type of information that is frequently disseminated during direct democracy elections. Indeed, scholars, “good government” groups, and others have developed websites and mailers that aim to provide voters with substantive information about the consequences that passing certain ballot propositions will likely have on public policy.<sup>114</sup> But does this information actually influence voters’ ability to express informed opinions about public policy issues? Or, do voters simply ignore such information, choosing instead to rely on simpler, easier-to-use cues, such as endorsements?

To address the first question, Gilens conducts survey experiments in which he randomly determines whether respondents receive detailed policy information about crime and foreign aid.<sup>115</sup> Respondents in the treatment group receive information about two news stories: one story indicates that the crime rate in the United States has decreased, and the other shows that the amount of money the United States spends on foreign aid has decreased.<sup>116</sup> Respondents in the control group are only told that news stories about the crime rate and foreign aid have been released.<sup>117</sup> Gilens then asks respondents in the treatment and control groups to state their level of support for spending on prison construction and foreign aid.<sup>118</sup>

Gilens’ results show that policy information influences respondents’ opinions.<sup>119</sup> That is, respondents in the treatment group (who are told that crime and foreign aid have decreased) are less likely to support increasing spending on prison construction and decreasing

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114. A prominent example of a website designed to inform voters is CaliforniaChoices.org. This website provides detailed information about ballot propositions and prospects for reform in California.

115. Gilens, *supra* note 65, at 381.

116. *Id.*

117. *See id.*

118. *Id.* at 382.

119. *Id.* at 384-85.

spending on foreign aid, relative to respondents in the control group.<sup>120</sup> In this way, Gilens suggests that voters' ignorance of policy information may prevent them from expressing informed opinions.<sup>121</sup>

Although Gilens' experiments indicate that policy information influences voter opinions, his experiments only expose respondents to policy information alone.<sup>122</sup> Thus, his experiments leave open the question of whether policy information influences voters' opinions even when easier-to-use cues are also available. This question is an important one to address, given that voters in direct democracy elections have many different sources of information available to them, some of which are easier to use or interpret than others.

To disentangle the relative effects of policy information and cues in direct democracy elections, Boudreau and MacKenzie conducted survey experiments during the 2010 general election in California.<sup>123</sup> In the experiments, all respondents read short descriptions of the nine ballot propositions at issue in the election.<sup>124</sup> Respondents in the control group expressed their opinions without any additional information.<sup>125</sup> Respondents in the treatment groups received either cues,<sup>126</sup> detailed policy information about the likely consequences of passing each initiative, or both cues and policy information.<sup>127</sup>

Consistent with Gilens' results, Boudreau and MacKenzie found that policy information, by itself, influences respondents' opinions about ballot propositions in the expected direction.<sup>128</sup> Policy information also continues to influence respondents' opinions when easier-to-use party endorsements are also provided.<sup>129</sup> However, the presence of party endorsements changes the way certain types of respondents react to the policy information.<sup>130</sup> Specifically,

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120. *Id.* at 385.

121. For a related discussion of this study, see Boudreau & Lupia, *supra* note 68.

122. Gilens, *supra* note 65, at 391.

123. See generally Boudreau & MacKenzie, *supra* note 65.

124. *Id.* at 7-8.

125. *Id.* at 8-9.

126. In this case, the political parties' endorsements of each initiative. *Id.* at 9.

127. Boudreau & MacKenzie, *supra* note 65, at 9-12.

128. *Id.* at 20-21.

129. *Id.*

130. *Id.* at 22-26.

respondents who are strong partisans or knowledgeable about politics respond to policy information in a biased, partisan way when party endorsements are also present.<sup>131</sup> For example, policy information that undermines the positions of a strong partisan's party on various propositions has a much smaller affect on the partisan's opinions when the party's positions are also made known.<sup>132</sup> Thus, although voters clearly respond to policy information, their responses may change when their party's endorsements are also provided.<sup>133</sup>

### *C. Framing Effects*

Political scientists also use experiments to study whether the frames political elites use to describe ballot propositions affect voters' opinions. In states with direct democracy, political and legal battles often erupt over the titles of ballot propositions, as well as the wording of summaries that appear on the ballot.<sup>134</sup> Such battles reflect a belief that how ballot propositions are framed affects voters' opinions and decisions about the propositions. Is this really the case?

For decades, political science experiments have indicated that battles over the wording of ballot propositions are rationally fought. Indeed, countless experiments show that the manner in which a policy issue is framed affects subjects' opinions about it.<sup>135</sup> A canonical

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131. *Id.*

132. *Id.* at 23-24.

133. See *id.*; Arceneaux, *supra* note 65; Cohen, *supra* note 65; Rahn, *supra* note 65; Riggle et al., *supra* note 65. See Bullock, *supra* note 65, for other interesting experiments on the relative effects of party endorsements and policy information.

134. A prominent example is the controversy surrounding the wording of the ballot title and summary of Proposition 8 in California. See Burnett & Kogan, *supra* note 70, at 3-5, for a discussion of this controversy.

135. See generally SHANTO IYENGAR, IS ANYONE RESPONSIBLE? HOW TELEVISION FRAMES POLITICAL ISSUES (Benjamin I. Page ed., 1991); JOHN R. ZALLER, THE NATURE AND ORIGINS OF MASS OPINION (Benjamin I. Page ed., 1992); Shanto Iyengar, *Framing Responsibility for Political Issues: The Case of Poverty*, 12 POL. BEHAV. 19 (1990); Shanto Iyengar, *Television News and Citizens' Explanations of National Affairs*, 81 AM. POL. SCI. REV. 815 (1987); Jennifer Jerit, *How Predictive Appeals Affect Policy Opinions*, 53 AM. J. POL. SCI. 411 (2009); Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 ECONOMETRICA 263 (1979); Richard R. Lau et al., *Political Beliefs, Policy Interpretations, and Political Persuasion*, 53 J. POL. 644 (1991); Thomas E.

example of such an experiment is Nelson, Clawson, and Oxley's study.<sup>136</sup> In their experiments, subjects express their opinions about whether a hate group should be permitted to hold a rally on their campus.<sup>137</sup> Subjects in one treatment group read a newspaper article that framed the issue as one concerning free speech.<sup>138</sup> Subjects in another treatment group read a newspaper article that framed the issue as one concerning public safety.<sup>139</sup> A framing effect occurs in these experiments because subjects were more supportive of the hate group rally when free speech concerns were raised than when public safety concerns were raised.<sup>140</sup> Results like these prompted serious concerns about the ability of political elites to manipulate voters' preferences and choices, particularly in direct democracy elections where the policy issues are often complex and party labels are not on the ballot to guide voters' decisions.

More recently, however, political scientists have used experiments to identify conditions under which framing effects are likely to occur in real-world political contexts. Most notably, James Druckman and his colleagues conduct experiments in laboratory and survey environments that are more similar to real world political contexts.<sup>141</sup>

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Nelson et al., *Media Framing of a Civil Liberties Conflict and its Effect on Tolerance*, 91 AM. POL. SCI. REV. 567 (1997).

136. Nelson et al., *supra* note 135.

137. *Id.* at 575.

138. *Id.*

139. *Id.*

140. *Id.*

141. See generally Dennis Chong & James N. Druckman, *Dynamic Public Opinion: Communication Effects over Time*, 104 AM. POL. SCI. REV. 663 (2010) [hereinafter Chong & Druckman, *Dynamic Public Opinion*]; Dennis Chong & James N. Druckman, *Framing Public Opinion in Competitive Democracies*, 101 AM. POL. SCI. REV. 637 (2007) [hereinafter Chong & Druckman, *Competitive Democracies*]; James N. Druckman et al., *Competing Rhetoric over Time: Frames Versus Cues*, 72 J. POL. 136 (2007) [hereinafter Druckman et al., *Competing Rhetoric over Time*]; James N. Druckman, *On the Limits of Framing Effects: Who Can Frame?*, 63 J. POL. 1041 (2001) [hereinafter Druckman, *On the Limits of Framing Effects*]; James N. Druckman, *Political Preference Formation: Competition, Deliberation, and the (Ir)relevance of Framing Effects*, 98 AM. POL. SCI. REV. 671 (2004) [hereinafter Druckman, *Political Preference Formation*]; James N. Druckman, *Using Credible Advice to Overcome Framing Effects*, 17 J.L. ECON. & ORG. 62 (2001) [hereinafter Druckman, *Using Credible Advice*]; James N. Druckman & Kjersten R. Nelson, *Framing and Deliberation: How Citizens' Conversations Limit Elite Influence* 47

They suggest that previous experiments on framing omit important features of real world elections that may mitigate framing effects.<sup>142</sup> Chief among these features are credible endorsements,<sup>143</sup> competing frames or arguments from other sources,<sup>144</sup> and group discussions with other voters.<sup>145</sup> By randomly assigning subjects in experiments to receive different frames with or without credible endorsements, with or without competing frames, and with or without group discussions, Druckman and his colleagues demonstrate that these features of real-world elections can reduce political elites' ability to use framing to sway voters' opinions.

Building on Druckman's results, Burnett and Kogan conducted survey experiments that directly assessed the effects of ballot proposition framing on citizens' opinions about them.<sup>146</sup> In different treatment groups, the experimenters manipulated how ballot propositions were framed, as well as whether interest group endorsements were provided.<sup>147</sup> They then asked respondents to state whether they would vote for each proposition.<sup>148</sup> Results indicate that although the framing of ballot propositions affected respondents' propensity to vote for them, these framing effects were much smaller when interest group endorsements were also provided.<sup>149</sup> In this way,

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AM.J. OF POL. SCI. 729 (2003) [hereinafter Druckman & Nelson, *Framing and Deliberation*].

142. See generally Chong & Druckman, *Competitive Democracies*, *supra* note 141; Chong & Druckman, *Dynamic Public Opinion*, *supra* note 141; Druckman, *On the Limits of Framing Effects*, *supra* note 141; Druckman, *Political Preference Formation*, *supra* note 141; Druckman, *Using Credible Advice to Overcome Framing Effects*, *supra* note 141; Druckman & Nelson, *Framing and Deliberation*, *supra* note 141.

143. From political parties, for example. See generally Druckman, *On the Limits of Framing Effects*, *supra* note 141; Druckman, *Using Credible Advice*, *supra* note 141.

144. Chong & Druckman, *Competitive Democracies*, *supra* note 141; Chong & Druckman, *Dynamic Public Opinion*, *supra* note 141; Druckman et al., *Competing Rhetoric over Time*, *supra* note 141.

145. Druckman, *Political Preference Formation*, *supra* note 141; Druckman & Nelson, *Framing and Deliberation*, *supra* note 141.

146. Burnett & Kogan, *supra* note 70.

147. *Id.* at 12-15.

148. *Id.* at 12.

149. *Id.* at 24.

Burnett and Kogan's experiments indicate that the framing of ballot propositions may affect voters' decisions on low-salience propositions, where there is little campaign activity and few endorsements from major interest groups.<sup>150</sup> However, on more high profile propositions that receive vigorous campaign activity and prominent interest group endorsements, concerns over ballot language and framing effects may be overstated.<sup>151</sup>

*D. Lessons Learned from Laboratory and Survey Experiments*

The studies described in this section take advantage of the causal leverage experiments provide in order to address important questions about the conditions under which different types of information help voters to make informed decisions in direct democracy elections. Collectively, the results suggest a number of lessons for those who seek to understand and improve voters' decisions in direct democracy elections. Specifically, credible endorsements from political parties or interest groups can help uninformed voters to determine whether particular propositions are in their interests and whether they should vote for or against them.<sup>152</sup> The detailed policy information that "good government" groups and others disseminate can also help voters with their choices. However, endorsements from political parties and interest groups can affect the way voters process more detailed information. Such endorsements can cause voters to become more resistant to the frames elites use, but also more likely to respond to information in a biased, partisan way.<sup>153</sup>

In a nutshell, both cues and policy information can help voters make informed decisions in direct democracy elections, but these two types of information interact in subtle and often overlooked ways. Thus, a complete understanding of voters' decisions in direct democracy elections will require further study of the ways in which voters choose from and use the multiple sources of information that exist in these elections. Experiments will undoubtedly play an important role in such future studies, as will observational studies like

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150. *Id.*

151. *Id.*

152. LUPIA & MCCUBBINS, *supra* note 65; Boudreau, *supra* note 65; Boudreau & MacKenzie, *supra* note 65; Burnett & Kogan, *supra* note 70.

153. Boudreau & MacKenzie, *supra* note 65, at 25.



those described in the previous section. Indeed, if experimental and observational studies yield similar findings about the effects of particular types of information, then scholars will have even greater confidence in their conclusions about how such information affects voters' decisions. Thus, by combining the precise causal leverage of experiments with the external validity of observational studies, scholars will further increase the validity of their conclusions about voter decision making in direct democracy elections.

#### IV. PROPOSALS TO SPUR DELIBERATION IN DIRECT DEMOCRACY ELECTIONS

Though there is clearly more to be discovered from both experimental and observational studies of cues and direct democracy voting, many of the lessons that have been learned are being translated into practice by real-world campaigns and reforms. Few of these reforms are framed as mechanisms to enhance deliberation, but we can evaluate them through this lens. We do so here, grouping reforms by the type of deliberation they are intended to address.

The first category of reforms groups proposals aimed at requiring elite deliberation. Former Assembly member John Laird's A.B. 1245,<sup>154</sup> though modest in its goals, would have enhanced the potential for deliberation by instituting a formal notice-and-comment period for California initiatives. This would allow "[a]ny interested person or interest . . . [to] provide comments to the author, other legislators, or legislative committees."<sup>155</sup> By putting the proponents of initiatives into conversation with other relevant political actors—conversations in the form of policy debates, which could lead to amendments, or might simply provide clarity about a proponent's intent—a formal notice-and-comment period could help create the conditions that are associated with deliberative democracy.<sup>156</sup> It would do so for the large range of proposed initiatives that are in circulation but which have not yet qualified for the ballot.

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154. Governor Gray Davis vetoed A.B. 1245 in 2003. John Laird & Clyde Macdonald, *More Deliberation? Perspectives on the California Initiative Process and the Problems and Promise of its Reform*, 47 CAL. W. L. REV. 301, 308 (2011).

155. *Id.* at 306.

156. *Id.* at 304-06.

For ballot measures that qualify for the ballot, California supposedly requires hearings on the measures, but they only take place when a Senate or Assembly Committee elects to hold one.<sup>157</sup> The relevant standing policy committee holds hearings, which typically go into greater depth and thus provide more opportunity for elite deliberation than hearings held on the many bills pending before these committees.<sup>158</sup> For instance, the Senate Environmental Quality Committee's October 2010 Proposition 23 hearing reserved forty-five minutes on its agenda for public comment.<sup>159</sup> The Senate Governance and Finance Committee's September 2004 Proposition 65 hearing was televised, attended by four legislators and approximately forty audience members, and featured testimony from five state agency officials.<sup>160</sup> An examination of committee records revealed the legislature also held hearings on Propositions 4, 63, and 71 in September 2004; Proposition 1B in October 2006; Proposition 17 in March 2010; and Proposition 22 in September 2010.<sup>161</sup>

Perhaps the most innovative experiment in elite deliberation is the new Oregon Citizens Initiative Review Commission, a panel that will bring together a randomly selected group of twenty-four citizens to review an initiative in great depth. Based on the "citizen jury" methodology developed by Ned Crosby and the Jefferson Center in Minneapolis,<sup>162</sup> this process constitutes a citizens panel that will learn background information about a ballot measure, hear pro and con

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157. Interview with California State Assembly Staff, in Cal. (June 2011); see also CAL. ELEC. CODE § 9034 (West Supp. 2011).

158. Interview with California State Assembly Staff, *supra* note 157.

159. *Suspension of California Global Warming Solutions Act of 2006 Until California Unemployment Rate is 5.5% or Less for One Year: Joint hearing on Proposition 23 Before the S. Comm. on Envtl. Quality & Assemb. Comm. on Natural Res.*, 2009-2010 Leg., Reg. Sess., at 4 (Cal. 2010), available at <http://senv.senate.ca.gov/sites/senv.senate.ca.gov/files/PROP23.pdf>.

160. S. & ASSEMB. LOCAL GOV'T COMMS., SUMMARY REPORT FROM THE PROPOSITION 65: LOCAL TAXPAYERS AND PUBLIC SAFETY PROTECTION ACT INFORMATIONAL HEARING, S. 2003-2004 Leg., Reg. Sess., at 1-2 (Cal. 2004), available at <http://senweb03.senate.ca.gov/committee/standing/GOVERNANCE/PROP65SUMMARYREPORT.pdf>.

161. Interview with California State Assembly Staff, *supra* note 157.

162. DeAnna Martin, *Citizen Initiative Review to Educate Oregonians on Ballot Measures*, SOC. CAP. REV. (Apr. 20, 2010), <http://socialcapitalreview.org/citizen-initiative-review-to-educate-oregonians-on-ballot-measures-2/>.

arguments, and deliberate for five days. They will produce a one-page analysis of the proposition that will appear in the state's voter pamphlet.<sup>163</sup> After conducting a privately funded pilot trial of the process was conducted in 2010, Oregon Governor John Kitzhaber signed the bill to publicly sanction the process in June, 2011.<sup>164</sup>

Explicitly aimed at bringing a deliberative democracy model into practice, this process encourages panelists to make informed, generalized arguments, and then conveys their analysis and recommendations to voters. It is not, however, without its critics. Proponents of a ballot measure reviewed during the Commission's pilot exercise argued that "panelists were not screened to assemble a group that started out with a balanced view on the topic, they were not allowed to cross-examine opponents of the measure—only panelists could ask questions—and witnesses were not questioned under oath."<sup>165</sup> As this experiment plays out on a grander scale, it will undoubtedly provide more opportunities to research how voters use commission members' information and cues.

A second category places reforms and informal campaigns designed to provide voters with a better informational basis for their deliberations together. One way to do this is to enact provisions that require initiative proponents themselves to more completely describe their measures' policy consequences through the so-called "PAYGO" requirements in place in Arizona and proposed in California. Such laws force ballot measure backers to detail the new revenue sources or spending cuts that would be required to implement their initiative. Arizona's 2004 Proposition 101 applies only to initiatives that create new programs,<sup>166</sup> while proposals in California—pending constitutional amendments A.C.A. 6, A.C.A. 7, and S.C.A. 4 in the

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163. Press Release, Oregon State Legislature, Citizens Initiative Review Commission Extended (May 23, 2011), *available at* [http://www.leg.state.or.us/press\\_releases/hdo\\_052311.pdf](http://www.leg.state.or.us/press_releases/hdo_052311.pdf).

164. See Editorial, *Initiative Review Adds Voices of Reason*, CORVALLIS GAZETTE-TIMES (June 20, 2011), [http://www.gazettetimes.com/news/opinion/editorial/article\\_2a3ea93e-9ad3-11e0-8193-001cc4c03286.html](http://www.gazettetimes.com/news/opinion/editorial/article_2a3ea93e-9ad3-11e0-8193-001cc4c03286.html).

165. Jennie Drage Bowser, *A Pilot Project in Oregon Would Make the Ballot a Tool for Civic Education*, NAT'L CONF. ST. LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=21419> (last visited Sept. 20, 2011).

166. Ariz. Proposition 101 (2004), <http://www.azsos.gov/election/2004/info/pubpamphlet/english/prop101.htm> (codified in ARIZ. CONST. art. IV, § 23).

state legislature—would apply both to new programs and to tax cuts.<sup>167</sup>

There are many less formal approaches to providing voters with access to encyclopedic information about measures. This information can be delivered either through traditional small group meetings held by a variety of community groups, most prominently the League of Women Voters, or through web sites such as the League's "Smartvoter.org" site and "Ballotpedia.org." The longest standing examples of this approach, of course, are the ballot pamphlets describing propositions that are automatically mailed to voters in some, but not all, states.

A third category of reforms aims to provide voters with clear cues, whether they deliberate or not, and whether they access encyclopedic information or search for shortcuts. One cue all those who enter a voting booth receive is the initiative's title. This piece of information may appear basic, but it is far from neutral. Jamie Druckman's stream of experimental studies show framing effects can be influential.<sup>168</sup> Further, political campaigns often contest ballot titles and summaries written by state appointed and elected officials. In a search for a neutral, deliberative body to write these titles, Colorado created a ballot title board before which initiative sponsors appear to receive an official title before they even circulate a ballot measure.<sup>169</sup> The board engages in give-and-take with the proponents to clarify their intent in a public hearing.

In California, a proposal that passed the state legislature would have provided voters with a different kind of cue by printing on the state's ballot pamphlet the five largest contributors to the campaign for any initiative, as well as to the campaign against it.<sup>170</sup> To allow for

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167. Analyses of each measure are available on the California Legislature's bill information website: [leginfo.ca.gov](http://leginfo.ca.gov) (follow "Bill Information" hyperlink; then search "ACA 6," "ACA 7," or "SCA 4" where Session dropdown option "(2011-2012) CURRENT" is selected). A description of the policy arguments is contained in Wyatt Buchanan, *Bill Would Require Funding Source for Initiatives*, S.F. CHRON. (May 2, 2011), <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/05/04/BAMR1JBIN2.DTL>.

168. See *supra* notes 141-45 and accompanying text.

169. *Preparation of a Ballot Title and Summary*, NAT'L CONFERENCE OF STATE LEGISLATORS, <http://www.ncsl.org/Default.aspx?TabId=16586> (last visited Nov. 8, 2011).

170. S.B. 334, 2011-2012 Leg., Reg. Sess. (Cal. 2011).

printing of the ballot pamphlet, State Senator Mark DeSaulnier's S.B. 334 only applied to contributors who had given more than \$50,000 110 days or more before an election.<sup>171</sup> This long lead time caused concern that major donors would simply wait until the deadline had passed to make a contribution. In fact, Governor Jerry Brown vetoed this bill, just as Governor Arnold Schwarzenegger vetoed a similar bill, S.B. 1202, for that reason.<sup>172</sup>

Less formal mechanisms also exist to give voters clear cues about ballot measures. The website CaliforniaChoices.org lists the endorsements and formal opposition statements of parties, interest groups, and newspaper editorial boards for all propositions on California ballots. It also gives visitors the opportunity to make their own endorsements, and use email or social media to communicate these cues to their friends and family. In the weeks before the November 2010 election, nearly 50,000 users visited this site and spent an average of more than five minutes on it.<sup>173</sup>

Finally, Facebook provides supporters and opponents of ballot measures with many opportunities to signal their stances and to send others in their social networks this cue. Based on a survey conducted in June 2011, the Facebook page "Vote Yes on Proposition 19" reported that 29,640 users "liked" this failed 2010 California initiative to legalize marijuana possession,<sup>174</sup> and 20,352 users liked a page set up in opposition to Proposition 23.<sup>175</sup> Campaigns and other groups that effectively harness social media could, for better or worse, spread a large number of personal cues very quickly.

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171. *Id.*

172. Gov. Edmund G. Brown's Veto Message to S.B. 334 (Oct. 11, 2011), available at [http://leginfo.ca.gov/pub/11-12/bill/sen/sb\\_0301-0350/sb\\_334\\_vt\\_20111007.html](http://leginfo.ca.gov/pub/11-12/bill/sen/sb_0301-0350/sb_334_vt_20111007.html); Gov. Arnold Schwarzenegger's Veto Message to S.B. 1202 (Sept. 9, 2010), available at [http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_1201-1250/sb\\_1202\\_vt\\_20100923.html](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_1201-1250/sb_1202_vt_20100923.html).

173. Authors Michael Binder and Thad Kousser disclose that they are part of the collaborative of academic centers and organizations that designed and promoted this website.

174. *Vote Yes On Proposition 19*, FACEBOOK, <http://www.facebook.com/VoteYesOnProposition19> (last visited August 22, 2011).

175. Proposition 23 was a 2010 measure which would have suspended the state's global climate change regulations, but which was defeated. *Stop Dirty Energy Prop*, FACEBOOK, <http://www.facebook.com/StopDirtyEnergyProp> (last visited September 29, 2011).

## V. DO CUES HELP OR HINDER DELIBERATION?

What are the implications of these tentative findings for deliberation? Providing more information to voters about the nature of policy proposals, especially in the realm of direct democracy where voter knowledge is so often called into question, enhances deliberation. Indeed, placing "a large set of arguments . . . on the table" helps to satisfy Steiner's concerns about the lack of deliberation in many political contexts.<sup>176</sup> When parties and interest groups weigh in with their endorsements, their frequently conflicting messages implicitly bring different arguments into tension with each other; however, this shortcut to civic debate surely falls short of Cohen's standard that participants in deliberation "aim to defend and criticize institutions and programs in terms of considerations that others have reasons to accept."<sup>177</sup>

In fact, it is the dual role of party and interest group cues that presents the most significant threat to deliberation. First, these messages are meant to signal the narrow interests of particular sets of voters rather than to appeal to the broader interests of all voters—for example, Initiative X is good for Republicans, while the Sierra Club wants its members to support Initiative Y. Second, such narrow appeals set the frame for how voters view encyclopedic information, making voters less receptive to arguments that do not support their side. In this way, partisan and interest group cues push voters toward making decisions based on their individual preferences at the same time they inoculate voters against wider ranges of information that might broaden their perspectives.

From the viewpoint of deliberative democracy advocates, the role played by partisan interest group cues appears to be unequivocally bad. Instead of pushing voters to encounter each other "as citizens searching for common ground . . . in a common enterprise,"<sup>178</sup> these narrow cues are pushing voters in the way that Ackerman and Fishkin espouse: toward ethnic, religious, or partisan voting blocs.

Not all cues are bad for deliberation, of course. Cues that make factual information more readily available (such as Pay-As-You-Go

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176. Steiner, *supra* note 8, at 5-6.

177. Cohen, *supra* note 5, at 185.

178. Ackerman & Fishkin, *supra* note 1, at 22.

provisions or the listing of top campaign funders), as well as cues from bodies such as Oregon's Citizen Initiative Review Commission that are constituted to pursue something like Rousseau's "General Will," can aid deliberation. But those signals only help if they are heard by voters. For those who make normative arguments for deliberative democracy, the most troubling revelation is that cues from parties and narrow interests seem to dampen the effects of those beneficial, broadly oriented cues.

Yet from a different democratic perspective—for those who simply want elections to lead to policy choices that maximize social welfare<sup>179</sup>—party and interest group cues may play the role of the heroes rather than villains. While they may not spur deliberation, these cues provide reliable shortcuts that let voters translate individual interests into votes. Lupia's influential study in California and work by Christin, Hug, and Sciarini in Europe demonstrate party and interest group cues can help a substantial portion of the electorate cast the vote that fits their policy preferences.<sup>180</sup> Certainly these appeals are narrow, but those who see the goal of politics as delivering rational social choices could ask what is wrong with voters basing their decisions on how to regulate car insurance, taxation and government spending levels, or even social policy based on their personal interests and values?

These questions address a broader debate over deliberative democracy. Though there are clearly many appealing aspects of the deliberation process, recent critiques question the outcomes it delivers. Gastil and Dillard note that "[d]eliberative democratic theorists maintain that if citizens reach more reflective political judgments, they will directly and indirectly lead the polity toward better public policy decisions."<sup>181</sup> Some empirical studies question this assumption. Hibbing and Theiss-Morse argue "real-life deliberation can fan emotions unproductively, can exacerbate rather than diminish power differentials among those deliberating, can make people feel frustrated

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179. This perspective is often attributed to scholars such as Schumpeter and Downs, and the debate between this perspective and proponents of deliberation is addressed in Dennis F. Thompson, *Deliberative Democratic Theory and Empirical Political Science*, 11 ANN. REV. POL. SCI. 497 (2008).

180. Christin et al., *supra* note 26; Lupia, *supra* note 11.

181. John Gastil & James P. Dillard, *Increasing Political Sophistication Through Public Deliberation*, 16 POL. COMM. 3, 3 (1999).

with the system that made them deliberate, is ill-suited to many issues and can lead to worse decisions than would have occurred if no deliberation had taken place.”<sup>182</sup> Jackman and Sniderman find deliberation does not lead to “better grounded judgments—that is, judgments that reflect one’s considered view of the best course of action all in all.”<sup>183</sup> Mendelberg and Oleske’s study of town meetings in New Jersey also offers a pessimistic view.<sup>184</sup> McCubbins and Rodriguez present results that demonstrate “experimentally that, contrary to popular belief, deliberation under realistic conditions actually decreases social welfare.”<sup>185</sup> Instead, they suggest expertise systems that more closely resemble cue-giving in actual direct democracy elections.

It is far beyond this Article’s scope to adjudicate between these differing perspectives. What we can offer are observations about the divergent roles played by different types of cues in direct democracy. Cues that make encyclopedic information about ballot initiatives more readily available, as well as the endorsements from citizen panels or elite bodies that are instructed to ignore their individual interests, could clearly aid deliberation. By contrast, party and interest group cues, by activating voters’ narrow concerns and making them less receptive to factual information, appear to work against deliberation. Yet because they exert such a powerful effect upon voters’ choices—and because they often help voters to give individually rational answers to vastly complicated policy questions—these controversial cues remain a vital part of direct democracy.

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182. JOHN R. HIBBING & ELIZABETH THEISS-MORSE, *STEALTH DEMOCRACY: AMERICANS’ BELIEFS ABOUT HOW GOVERNMENT SHOULD WORK* 191 (James H. Kuklinski & Dennis Chong eds., 2002).

183. Simon Jackman & Paul M. Sniderman, *The Limits of Deliberative Discussion: A Model of Everyday Political Arguments*, 68 J. POL. 272, 272 (2006).

184. See generally Tali Mendelberg & John Oleske, *Race and Public Deliberation*, 17 POL. COMM. 169 (2000).

185. McCubbins & Rodriguez, *supra* note 14, at 39.



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