

# **CHAPTER ONE. CONNECTING MICRO-DELIBERATION TO ELECTORAL DECISION MAKING: INSTITUTIONALIZING THE OREGON CITIZENS' INITIATIVE REVIEW. BY KATHERINE R. KNOBLOCH, JOHN GASTIL, TYRONE REITMAN**

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## **INTRODUCTION: DELIBERATIVE EVENTS AND (THE LACK OF) INSTITUTIONALIZATION**

The theory, practice, and study of public deliberation has undergone expansive growth over the past two decades, and it has given rise to—or theoretically framed—several novel opportunities for community discussion and empowered citizen decision making (Gastil and Levine 2005; Goodin and Dryzek 2006; Nabatchi et al. 2012)<sup>1</sup>. Few of these processes, however, have been institutionalized as formal parts of governing systems and granted official decision-making power or other forms of direct influence. In other words, most such processes are typically disconnected from the very decisions they seek to influence.

The Oregon Citizens' Initiative Review (CIR) is one deliberative event that has been granted governmental legitimacy as a means of public voice, if not authoritative decision making. The CIR was developed to improve the quality of information available to voters regarding state-wide initiatives by connecting small-scale deliberation with electoral decision making. Briefly, CIR organizers convened representative groups of twenty-four registered Oregon voters for five days to study and deliberate on statewide initiatives. At the end of their deliberations, each panel of citizens wrote a page of analysis about their assigned initiative for the official Oregon State Voters' Pamphlet,

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which the Secretary of State delivered along with mail-in ballots to every registered voter in the state. As many as eighty percent of voters report using the Voters' Pamphlet when making voting decisions (Gastil and Knobloch 2010). Such widespread use allows the Citizens' Statements produced by the CIR to play a prominent role in voter education and subsequently influence the outcome of binding governmental decisions.

In 2011, the CIR became a permanent part of the Oregon electoral process and a state commission was developed to oversee its implementation. In this chapter, we tell the story of the CIR and describe its journey to becoming a permanent part of state government as well as its prospects for fuller integration into electoral systems nationally and internationally.

The CIR is one variety of "mini-publics," small scale deliberative processes drawing on a representative sample of the population, that have proliferated over the past few decades (Dahl, 1989; Fung, 2003; Goodin, 2008). Like the CIR, most mini-publics serve to connect small-group deliberation with macro decision making by feeding the results of deliberative processes into larger public discourse (Goodin, 2008). This allows the wider public to use the information and conclusions from such events in their own decision making and thus promotes "vicarious deliberation" (Gastil, Richards and Knobloch 2012).

Most deliberative mini-publics, however, typically have neither institutionalized authority nor political influence. In short, they are disconnected from the very decisions they aim to influence, as was the case for the Australian Citizens' Parliament (Carson et al. in press). Very few mini-publics have gone so far as to invest real legal authority in a broad cross-section of the public, with prominent exceptions being Canadian Citizens' Assemblies (Lang 2007; Warren and Pearse 2008) and deliberative polls in China (Leib and He 2006). More often, these structures provide recommendations that are either distributed through the media without a tangible connection to policy decisions or are passed on to governing officials who may or may not use those recommendations when reaching their own conclusions (Goodin and Dryzek 2006).

Some exceptions that have been granted decision-making authority have addressed quasi-technical issues outside the most contentious political controversies (Einsiedel, Jelsøe and Breck 2001; Warren and Pearse 2008). Juries could count as another contrasting case, but the scope of juries remains narrow, albeit wider when one considers the potential for politically-motivated jury nullification of laws that jurors find unjust (Gastil et al. 2010). In sum, mini-publics have gained traction over the past few decades as a form of community engagement, but they tend to have limited power in influencing politically contentious policy debates.

By contrast, the Oregon CIR was designed to focus on ballot measures voted on by the general public that typically engender passionate debate (Broder 2000; Matsusaka 2008). The Citizens' Statements produced by the CIR panels receive a prominent space in the Voters' Pamphlet, a widely-read platform that can potentially sway a large portion of the electorate (Bowler and Donovan 1998). The United States has produced a plethora of deliberation scholars and practitioners (Ryfe 2007) as well as deliberative forums (Fung 2003; Goodin 2008; Nabatchi et al. 2012), but prior to the Oregon CIR, it had not established by law a deliberative innovation that granted a random sample of the public such substantial political power.

## **THE CREATION OF THE CITIZENS' INITIATIVE REVIEW**

### ***The Case for Reforming the Initiative Process***

Before examining the case of the CIR, however, we begin with reflections on the current state of initiative elections, as commonly practiced in the United States. The initiative and referendum process empowers the electorate to vote on the passage of a law or amendment to a constitution. Introduced during the Progressive Era, the initiative was designed to enhance direct democracy. Ballot initiatives were meant to make the government more accountable to the public by circumventing the corrupting powers of entrenched parties and special interest groups (Bowler and Donovan 1998; Guthrie 1912). South Dakota was the first state to write the initiative into their constitution in 1898 (Matsusaka 2008), and in 1902, Oregonians voted on a ballot referred by the legislature that implemented the initiative process and became the second state to adopt the initiative (Oregon State Archives 2013-2014). Oregon was the first state to bring a law before the voters, passing two initiatives, including direct primaries, in 1904 (Matsusaka 2008). Twenty-four states and Washington D.C. now have the initiative (Matsusaka 2008), as well as many Western European countries and former Soviet republics (Lupia and Matsusaka 2004). When one considers municipalities, and other smaller political units that put bonds and other measures to a popular vote, hundreds of political units across the globe practice the initiative or a closely related form of direct democracy.

Though public opinion tends to favor the initiative, scholars and public officials are wary of its usage (Broder 2000; Lupia and Matsusaka 2004; Keown 2010). One of the primary concerns relates to campaign finance. In Oregon, individuals or organizations interested in getting an initiative on the ballot must collect signatures of support from six percent of the voting population—eight percent for constitutional amendments—equating to roughly 85,000 to 120,000 signatures (Oregon Elections Division 2012). Signatures are often gathered by

solicitors who are paid for their time. In 2010 one accounting estimated that it cost an average of \$5.32 per signature to get a measure on the ballot in Oregon (Ballotopedia 2013), or between \$420,000 and \$630,000.

A related concern arises from the complexity of many initiatives. Lacking traditional heuristics, such as simple voting cues from political parties, and without in-depth knowledge about the proposition in question, voters often rely on interest group campaigns and political elites to form preferences (Gerber 1999; Gerber and Lupia 1999). This may be particularly detrimental when either proponents or opponents of an initiative can drastically outspend their competitors. In a state as large and diverse as California, \$155,000 can move the vote by as much as 1.1 percent (Stratmann 2006), with the price tag for a percentage swing likely lower in smaller political units. Thus, even though initiative elections may be more beholden to the public will than the legislature (Lupia and Matsusaka 2004; Matsusaka 2008), the complexity of initiative language and the large sums of money used to generate and contest them can undermine their ability to achieve the progressive ideals for which they were adopted.

When faced with initiatives' potential costs, elevating the quality of information provided to voters is even more apparent. In Oregon, half of the increases in expenditures since 1990 stem directly from the passage of initiatives (Keown 2010). Moreover, a longitudinal analysis of the fiscal effects of initiatives found that they were more likely to decentralize governing costs and shift expenses related to government services and infrastructure from state to local governments (Matsusaka 2000). While these fiscal impacts point to the power that initiatives give to citizens, they highlight the need to ensure that voters have the information necessary to make good, and economically sustainable, decisions.

### ***Methods***

The Oregon CIR grew out of an interest in correcting some of these problems. In exploring the development and institutionalization of the CIR, we bring together three different perspectives. The first author of this essay interviewed several individuals directly involved in this process, as well as various individuals who have worked closely with the project over the years. The second author has corresponded and collaborated with people advocating this and similar processes over the past decade. The third author served as co-director of Healthy Democracy Oregon (HDO), which lobbied for and ran the panels. The first and second authors directly observed the 2010 and 2012 CIRs, as well as several planning meetings before, during, and after them. In addition, we each took part in legislative hearings aimed at exploring the quality

and impact of the panels (Gastil and Knobloch 2010; Knobloch, Gastil, Richards and Feller 2013b), and we have attended several conferences with organizers and observers of the CIR in which we have discussed the growth of the CIR and its impact on the voting public.

We also have archived documents generated during the legislative hearings in which the CIR was discussed, as well as the promotional materials produced by HDO for the purpose of publicizing and building support for the panels. For the remainder of this paper, we rely on our vantage points—as different varieties of participant observer—and the evidence gleaned from our archives and funded research to reflect on this newly institutionalized form of deliberative governance.

### ***Development of the Citizens' Initiative Review***

In 2003 Tyrone Reitman and Elliot Shuford met in a public policy graduate program at the University of Oregon. Reitman had previously worked as an advocate for Oregon initiatives but was growing increasingly frustrated with the misleading tactics used by campaigns both for and against statewide ballot measures. He and Shuford discussed the value of the initiative process, with both agreeing that such attempts at direct democracy were positive but in need of a new approach to reform. Looking for solutions, in 2006 the two contacted Ned Crosby, the founder and president of the Jefferson Center for New Democratic Processes, a Minnesota-based non-profit that focused on improving democracy.

### ***Citizens' Juries***

Since the 1970s, Crosby had been working on deliberative democracy projects, in particular developing the Citizens' Jury, a mini-public that gathers a stratified random sample of between 12 and 24 citizens together to discuss public policy issues (Crosby and Hottinger 2011; Crosby and Nethercutt 2005; Smith and Wales 2002). In this process, citizens meet for several days, take part in small and large group discussions, and hear testimony from advocates and witnesses. In the end, a jury develops recommendations that public officials and/or the electorate can use when making decisions. Since their inception, more than three hundred citizens' juries have been run, by the Jefferson Center as well as other organizations, in the U.S., the U.K., Australia, Canada, Japan, and Spain, focusing on political issues like healthcare and education as well as on the policy-proposals and qualifications of candidates for elected office (Crosby and Hottinger 2011).

Hopeful for the prospect of citizen juries but recognizing their lack of institutional authority, the second author of this chapter, John Gastil, imagined the citizens' juries restructured as a

“citizen panel” process in his book, *By Popular Demand: Revitalizing Representative Democracy through Deliberative Elections* (Gastil 2000). Gastil argued that such panels could serve as a potentially powerful ‘deliberative voting cue’ that citizens might choose to follow when seeking guidance before voting on an initiative.

Crosby (2003) argued along similar lines, with a specific focus on adapting the Citizens’ Jury process. Shortly thereafter, Gastil and Crosby (2005, 2006) sought to bring such panels to the state of Washington, located in the Pacific Northwest region of the United States. Crosby developed a full-fledged proposal, in the form of legally vetted draft legislation, and he asked the state to fund citizens’ panels that would review state-wide initiatives. With opponents wary of the cost that an unproven institution may add to an already overburdened state budget, the idea faltered after a hearing in a state legislative committee.

Although Crosby was unsuccessful in implementing the process in the state of Washington, news of his proposal reached that state’s southern neighbor, Oregon, when Shuford attended a speech given by Crosby in 2001. The idea stagnated when the Jefferson Center’s tax-exempt status was revoked because some of its Citizens’ Juries had evaluated candidate positions on political issues (Keown 2010). In 2006, however, Shuford and Reitman returned to the idea while seeking to improve Oregon’s initiatives, and they worked together with Crosby and his wife Pat Benn. Reitman and Shuford acted as co-directors of a board that included Crosby and Benn, former secretaries of state from both parties, and legislative and election officials. They called their organization Healthy Democracy Oregon (HDO) with the express intent of establishing the first CIR in the state of Oregon.

### ***Legislative Development***

In 2007, HDO introduced House Bill 2911, sponsored by Representative Peter Buckley (D-Ashland).<sup>2</sup> This bill proposed establishing a CIR in a manner similar to the ongoing proposal in Washington state. The bill died in committee (Keown 2010), but it piqued the interest of several legislators and the secretary of state.

After seeking advice from former secretaries of state and current legislators, HDO ran a test of the CIR in 2008 to better establish the credibility of the process. With the help of the League of

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<sup>2</sup> In the United States, representatives and senators are commonly denoted by their political party and city of residence within a state. The “D” indicates membership in the Democratic Party, and “R” indicates belonging to the Republican Party. In modern American politics, the Democrats are the more liberal or progressive party, and the Republican Party advocates more conservative social and fiscal policies.

Women's Voters and private donations, HDO gathered twenty-four voters who had been randomly selected and stratified to match the demographics of the state electorate. For five days, the citizen panelists learned about and deliberated on Measure 58, which would limit the use of English as a second language for K-12 instruction in Oregon. Neutral experts, along with proponents and opponents (hereafter referred to jointly as policy "advocates"), provided testimony to the panelists, who used that information to create a statement identifying key facts and arguments relevant to the initiative. At the end of the week, HDO held a press conference at which the panelists presented their statement outside the state capitol building in Salem. The League of Women Voters independently evaluated the process and found that both panelists and advocates were highly satisfied with the review and did not perceive bias.

After this initial success, Secretary of State Kate Brown suggested that HDO introduce the CIR as a one-year trial run, with the goal of evaluating more extensively its quality and impact. That year HDO promoted House Bill 2895, which would establish the Oregon CIR pilot process. In their earlier attempts at institutionalization, citizen panels faced opposition partly because they required government funding. Based on feedback provided by Oregon legislators, the Oregon CIR would still be housed in government but would be funded by private donations. Soon after, the state legislature considered adopting the process.

Reitman and Shuford, along with some of the panelists from the 2008 test run, began lobbying for the bill. HDO reached out to the public and circulated a statement of support for the CIR, gaining upwards of 30,000 signatures. In addition, they created a short explanatory video of the CIR that provided an easy-to-understand overview of the process' design and purpose. The chair of the House Rules Committee at the time, Representative Arnie Roblan (D-Coos Bay), took up the bill by acting as one of its sponsors, and he helped lobby for its passage. A bipartisan group of legislators sponsored the bill, with seventeen members of the state House of Representatives and ten state senators signing on as co-sponsors. The bill received its first hearing in the House Rules Committee in March, 2009 (Keown 2010).

According to testimony provided before the House Rules Committee, the CIR was intended to provide informed, non-partisan information that voters could use when deciding how to vote. This was viewed as a supplement to the more narrowly focused explanatory statement and financial impact statements that already appeared in the state's Voters' Pamphlet, while also serving as an alternative to the more inflamed rhetoric that came to voters through paid campaign messages in that same Pamphlet. Alternative means of initiative reform, such as

campaign finance laws, faced opposition based on the argument that they limited free speech. By contrast, the CIR provided a means of reforming initiative elections without taking away anyone's rights.

Though some legislators voiced opposition to the CIR, primarily concerned with the cost and it continuing a wider trend of expanding state government, the bill received bi-partisan support. On June 16, 2009, the Oregon legislature approved House Bill 2895 with a vote of 47-7 in favor in the House and 23-7 in the Senate. Both Democrats and Republicans voted in favor of the bill, but all of the "nay" votes came from Republican legislators, an issue we revisit later in the context of the 2011 legislative session.

House Bill 2895 allowed for a pilot run of the process and inclusion of the statements produced by the CIR in the state's voters' guide. Though the bill included a sunset clause requiring evaluation before considering a permanent renewal of the CIR, this marked the first time a consequential, government-sanctioned deliberative project of this scale had been adopted in the United States. On June 26, 2009, Governor Ted Kulongoski signed the bill into law and paved the way for CIR pilot panels in the 2010 statewide general election. Shortly thereafter, the second author of this chapter obtained funding from the National Science Foundation for the evaluation of the event, and a team of researchers was organized for this task.<sup>3</sup>

## **IMPLEMENTATION AND DEVELOPMENT**

### ***2010 Citizens' Initiative Review Panels***

Having successfully conducted a test of the CIR in 2008 and being the primary agent behind the bill's passage, HDO was chosen by the Oregon Secretary of State to implement the 2010 project. Because the bill contained no funding mechanism, however, HDO was responsible for gathering the funds necessary to implement the panels. HDO set about finding private donors and organizations, primarily reaching out to good governance organizations at the state and

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<sup>3</sup> In 2013, the federal government passed legislation that restricted for one year the National Science Foundation (NSF) funding of political science projects. This is the result of an amendment by U.S. Senator Tom Coburn (R-Oklahoma). In 2015, Congress is considering cutting in half its funds for NSF in the social science, via the "America COMPETES Reauthorization Act of 2015." We mention it here only because a key to the reestablishment of the Oregon CIR was the research conducted in 2010-11 with NSF funds. Without public support for research evaluating deliberative processes like the CIR, it will become more difficult to assess, and consequently design and sustain, such innovations in the future. When we successfully sought a second NSF grant to continue our research in 2014, we applied to the Decision, Risk, and Management Science program, not Political Science.

national level. For the pilot process, each review cost approximately \$125,000; thus, the two reviews combined to cost a quarter of a million dollars.

To create the citizen panels, HDO randomly selected 10,000 Oregon state voters and mailed them an invitation that included a letter of support from Secretary of State Brown. HDO asked recipients whether they would be willing to participate in the CIR and complete a brief demographic survey. From the initial request, 3.5 percent responded to the survey and were then entered into a pool of several hundred voters. From this smaller pool, the HDO staff anonymously selected twenty-four panelists and five alternates for each week to match the demographics of the Oregon electorate in terms of age, gender, ethnicity, education, partisan affiliation and place of residence. The selection process was constructed in consultation with Davis, Hibbitts, and Midghall, Inc. (a survey research firm located in Portland, Oregon) and overseen by the League of Women Voters of Oregon. Panelists who were chosen to attend received a stipend of \$150 per day, which approximated the state's average daily wage. HDO also covered panelists' travel and lodging expenses and, in some cases, childcare.

HDO assembled a team to lead the forum. Larry Pennings, who had worked with the Jefferson Center in planning and moderating Citizens' Juries, was tasked with developing the long-form agenda for the five-day event. He and three other experienced moderators were hired to facilitate the CIR, with a different pair of moderators each week. In addition, HDO took on temporary staff members responsible for researching the initiatives, communicating with advocates, experts, and the media, and assisting in logistical planning.

Having secured funding as well as staff and citizen panelists, HDO ran a shortened version of the process in Seattle in mid-June of 2010. This forum was designed to test and debug aspects of the process, including the organization of questions and information when moving from small group discussions to plenary sessions (i.e., those involving all panelists at once), and it also tested the method for panelists to develop their key findings. Members of the HDO staff and board acted as advocates debating Initiative 1098, a Washington State measure that would have established an income tax exclusively for the state's top earners. HDO reached out to a focus group firm, which gathered twenty-four demographically diverse individuals for an abbreviated two-day deliberation. The result was numerous refinements to the CIR process, which likely improved its official sessions in Oregon later that summer.

During the planning process, HDO negotiated with the Oregon Secretary of State about how the Citizens' Statements produced by the CIR would be formatted in the Voters' Pamphlet.

Though the statements were given a prominent location, appearing after the explanatory information but before the paid for pro and con arguments, no consensus was reached on what the page should look like. Due to the fact that it would be written by citizens and would be unfamiliar to voters, HDO sought to differentiate it visually from other sections of the Pamphlet. The Secretary of State rejected all proposed graphics, and the result was a page that retained the two-column format similar to the paid pro and con arguments that already appeared in the Pamphlet.

Finally, with funding for two CIR panels but more measures appearing on the ballot in the fall 2010 election, HDO had to select which ones to review in the summer of that same year. In selecting which initiatives to review, HDO considered the complexity of the initiatives, voters' attitudes towards them, and the availability of both pro and con advocates. Members of the research team assisted with initiative selection by conducting a quick telephone survey of 100 Oregon voters. The survey asked respondents their position on the measures likely to appear on the November ballot as well as a number of related questions. These were used to determine on which initiatives the electorate was most closely divided and those issues that perplexed the public more than others.

During this time, HDO reached out to advocate teams to see if they would be available to participate in the CIR. Though initiative proponents were readily available, finding organized oppositions to the ballot measures proved more difficult. Whereas backers had spent months developing the initiatives and gathering signatures for them, critics were less likely to have developed an organized opposition months before the election.

Based on both voter feedback and the availability of advocates, HDO chose two initiatives to review. The first, Measure 73, would increase mandatory minimum sentences for repeat driving under the influence of intoxicants charges (DUII) and for certain repeat felony sex crimes. The second, Measure 74, would create a regulated system for the production and distribution of medical marijuana. Oregon had already legalized medical marijuana through a previous initiative but had limited mechanisms in place for either its growth or sale. (A third initiative, concerning the continuation of a parks tax, was initially chosen but failed to gain the number of signatures needed to qualify for the ballot.)

From August 9-13, 2010, panelists met at a conference center in Salem, Oregon for the first official CIR, which reviewed the mandatory sentencing measure. The second CIR, concerning medicinal marijuana, was conducted August 16-20. For each review, the panelists met for five

consecutive days from 8 AM to 5 PM. During that time, they learned about the initiative and listened to evidence provided by advocates and neutral witnesses. They engaged in small group discussions and facilitated plenary deliberations to identify important facts about the measure, lingering questions to be answered, and the strongest arguments in support and opposition. At the end of the week, the panelists worked together to write a Citizens' Statement that included Key Findings (information related to the initiative that more than a majority of the panel found both relevant and factually accurate) and Statements in Favor and Opposed, the latter written by the panelists who supported and opposed the measures, respectively (though even the pro and con arguments were reviewed and discussed by the full panel). The panelists voted 21-3 against the mandatory minimum measure and 13-11 in favor of medical marijuana dispensaries. The Statements were included in the official Oregon Voters' Pamphlet, received by every household in Oregon with a registered voter.

### ***Permanent Renewal in 2011***

After the pilot test, HDO began advocating for the permanent implementation of the CIR. HDO drafted House Bill 2634, which would renew the CIR in perpetuity and include the Statements' produced by the panel in the Voters' Pamphlet for all future initiative elections. In addition, the bill would set up a state commission responsible for overseeing and, eventually, implementing future reviews. The commission would be comprised of former CIR panelists and moderators as well as the neutral members of the committees that write the explanatory information and fiscal statements in the Pamphlet. The bill also placed stipulations on which measures could be considered for review by requiring that first priority be given to those measures that either altered the state constitution or would have the largest fiscal impact.

In line with the legislature's request for a review of the pilot process, HDO staff, CIR panelists, initiative advocates, and the research team (i.e., the first and second authors of this chapter) were invited to hearings held by the House and Senate Rules Committees in late 2010 and early 2011 to explain the CIR process and provide an assessment of its quality and impact. As part of that testimony, the research team compiled an evaluative report of the CIR, gauging its deliberative quality and impact on the election (Gastil and Knobloch 2010).<sup>4</sup>

Though the report noted specific areas for improvement, the evaluation concluded that the CIR lived up to the deliberative ideals that inspired it, particularly in comparison to the strategic rhetoric it was designed to supplement (Gastil and Knobloch 2010; Knobloch et al. 2013a).

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<sup>4</sup> The assessment was completed using the evaluative scheme developed in Gastil, Knobloch and Kelly 2012.

Figure 1 shows a key element of that report—the “CIR Report Card” that summarized the qualitative assessment of deliberative quality for the 2010 CIR panels. The figure included herein also includes equivalent ratings from the 2012 CIR panels (Knobloch et al. 2013b).

Figure 1. Summary assessment of the quality of deliberation in the 2010-2012 Oregon Citizens’ Initiative Review panels

Evaluative category	2010		2012	
	M73 Mandat. Mins.	M74 Marij. Dispens.	M85 Corp. Taxes	M82 Non- Tribal Casinos
<i>Promote analytic rigor</i>				
Learning basic issue information	B+	B+	B+	A-
Examining of underlying values	B-	B	B	A
Considering a range of alternatives	A	B	A	B
Weighing pros/cons of measure	A	A	A	A-
<i>Facilitate a democratic process</i>				
Equality of opportunity to participate	A	A	A	B+
Comprehension of information	B+	B+	A-	B+
Consideration of different views	A	A	A	A-
Mutual respect	A-	A	A	B
<i>Produce a well-reasoned statement</i>				
Informed decision making	A-	A	A	B
Non-coercive process	A	A	A	A-

The 2010 CIR report also found that the Citizens' Statement had a significant impact on the voting decisions of those who read the statements, with as many as twenty-five percent of readers finding new arguments or information regarding the initiatives, and that voters who read the Statement that strongly opposed mandatory minimum sentencing were much more likely to vote against the otherwise highly popular initiative (Gastil and Knobloch 2010).

In their legislative testimony, the panelists also reported high satisfaction with the process and a desire to see the growth of similar processes in other sectors of government. As Ann Bakkensen, a panelist who reviewed mandatory sentencing, noted in her testimony:

Just about the only thing people can agree on in politics right now, is that our system doesn't serve its citizens any more. To reclaim a political system that is of the people, by the people, and for the people, the change has to come from the people. That's why the time is right for the Citizens' Initiative Review. It puts some decision-making power back into the hands of the people.

Not all impressions were so positive. During the first review, proponents of mandatory sentencing, sensing that the panelists were moving toward opposition to the measure, threatened to leave during the CIR deliberations. HDO staff convinced them to remain, in part by making it clear that the review would continue with or without their involvement. By the end of the week, however, the proponents became highly dissatisfied with the process, arguing that the panelists needed many more hours to study the issue and that advocates had insufficient rebuttal time.<sup>5</sup>

In their legislative testimony, these advocates came out against the CIR. They argued that it could not produce a high quality and factually accurate statement and that the process amounted to the government telling the citizens how to vote on initiatives. In addition, they were concerned that the panelists may have pre-developed opinions on a measure under review and that organizations could use donations to the CIR to advance their particular causes and influence the process. These arguments gained little traction in the legislature, though some of these concerns were used to amend the bill by regulating more clearly who could donate to the CIR and what stipulations they could place on their donations.

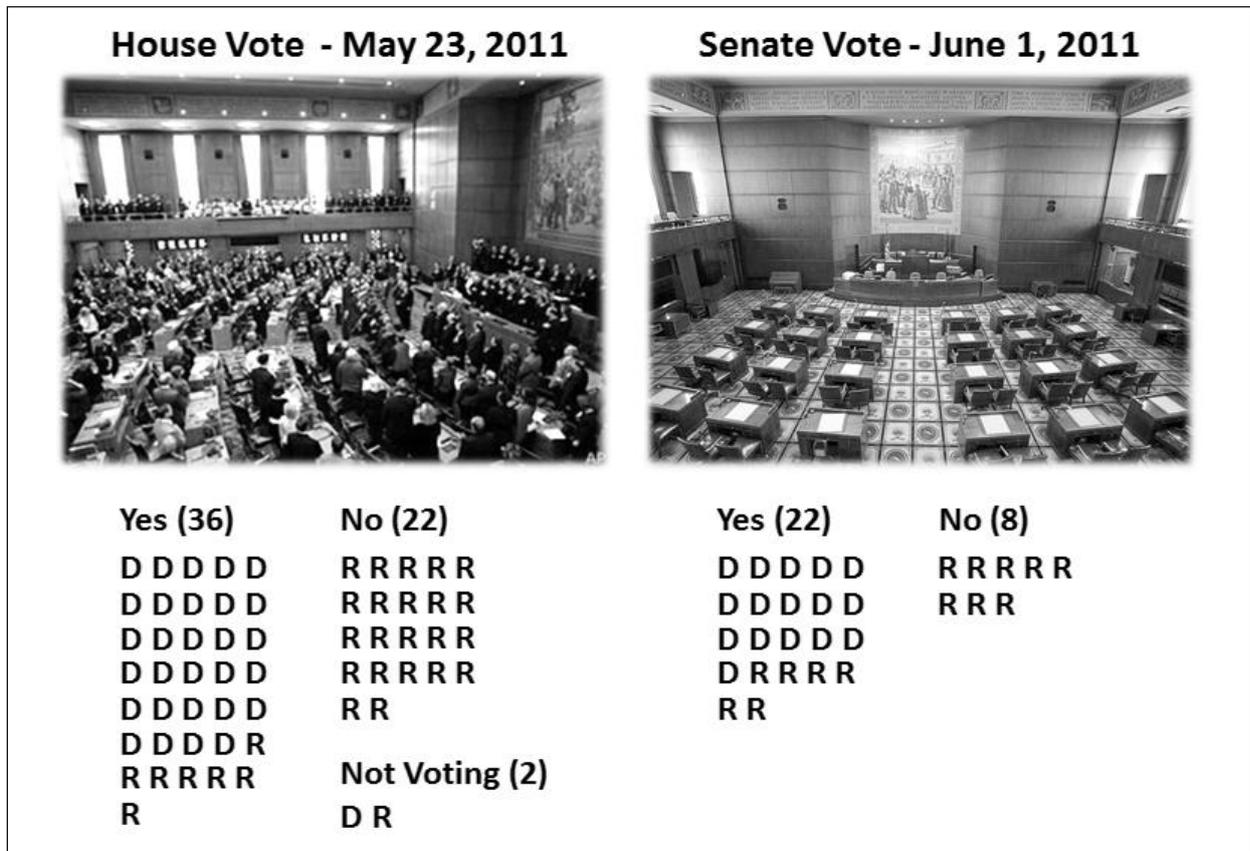
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<sup>5</sup> During its own rebuttal, the opposition to this measure noted the irony: Proponents had placed on the ballot a measure they believed the lay public could not grasp in a full week of deliberation, yet they asked the statewide electorate to judge their initiative while aware that the average voter devotes considerably less effort to deliberation on initiatives.

Ultimately, the bill received bi-partisan sponsorship with initial backing by ten state representatives and five senators. As Representative Vicki Berger (R-Salem) noted, “I wish I had a week to sit with the members of the committee and deliberate about the important things that we talk about” (Public Hearing, House Bill 2634 2011). In early June of 2011, both the House and the Senate approved the bills, with a vote in favor of 36-22 and 22-8 respectively. On June 16, the governor signed the bill into law.

Figure 2 shows the breakdown of the vote across the two parties and in the two chambers. As in 2009, every Democrat in the state legislature supported the CIR, and they were joined by a minority of Republican electeds. Republicans made up over one-quarter of the CIR bill’s support in the Senate and one-fifth of the support in the House. Looked at another way, almost one-in-four Republican state representatives (24.1%) supported the CIR, whereas 42.8% of Republican state senators took that position. (These figures exclude the two state representatives—one Democrat and one Republican—who did not vote.) In sum, the CIR sustained bi-partisan support from 2009-2011, and it managed to pass in a chamber (the House) that was split 50/50 between two parties.

Figure 2. Vote in the Oregon Senate and House on House Bill 2634 to creates a Citizens' Initiative Review Commission



Note. The political party of those voting is indicated by D (Democratic) and R (Republican).

***The 2012 Review***

The first permanent iteration of the CIR took place in August 2012. Because the newly created CIR commission had not had time to develop adequately by this point, HDO was again tasked with implementing the reviews. House Bill 2634 required that the CIR first consider those measures that changed the state constitution, so this meant selecting for review two particular issues: Measure 82, which would allow non-tribal casinos in the state of Oregon, and Measure 85, which would eliminate a corporate tax refund and divert the money to education funding.

To implement the 2012 reviews, HDO modified the strategy used two years earlier, and they managed to reduce cost per review to approximately \$100,000. They again sought funding from “good government” organizations, and they received the bulk of their funds from the Omidyar Network, a “philanthropic investment firm” created by the founder of eBay. Larry Pennings was again chosen to develop the agenda for the process, and four moderators were selected to facilitate the review, three of whom had experience from 2010. Panelist recruitment followed

the 2010 protocol, though this time the invitation was stamped with the official state seal and, likely due to its official nature and voters' greater familiarity with the CIR, the survey had a response rate of approximately eight percent, more than twice the result from 2010.

The highest hurdle HDO faced in preparing for the 2012 panels was the advocates. The advocates for corporate tax reform (Our Oregon, a 501c[4] political advocacy organization) backed out of participating one week before the CIR panel convened. In defense of their withdrawal, the communications director of Our Oregon told *The Oregonian* newspaper that "the output of the Citizen's Initiative Review has zero impact on shaping the opinions of voters." In response, former secretaries of state and a former attorney general—members of HDO's board—wrote a rebuttal, arguing that the CIR served Oregon voters and was an important addition to initiative elections (Frohnmayr and Keisling 2012). The second author of this chapter also weighed in by pointing out that the 2010 report did, in fact, show a clear impact on voters' knowledge and preferences on initiatives (Gastil 2012).

Even without the support of the measure's advocates, however, the review would still be held. HDO set about contacting other supporters of the initiative, ultimately creating an advocate team that included tax reform and education advocates. The first review, regarding corporate tax reform, was held from August 6-10, at the conference center in Salem where the 2010 reviews were held. The second review, regarding non-tribal casinos, was held August 20-24, this time in Portland. The move from Salem to Portland allowed for greater visibility of the event, because it was held in the most populous city. In the future, the CIR may be held in different cities across the state to heighten its exposure and allow a wider swath of the public to attend the review as audience members.

The panelists again met for five days, utilizing a similar format to that used in 2010, though slight adjustments were made based on HDO's internal critique and recommendations provided by the research team (Gastil and Knobloch 2010). The 2012 process improved the CIR in many aspects, particularly by permitting more time for feedback on the final statements from the advocates and panelists, the embrace of values-centered discussions, and via the new "Additional Policy Considerations" section to the Citizens' Statement. In 2012, the panelists voted 17-7 against non-tribal casinos and 19-5 in favor of the corporate tax reform. Once again, the CIR showed signs of influencing voters, as measured through panel surveys and an online experiment, and voter awareness of the CIR reached 51 percent (Knobloch et al. 2013b).

## **CONCLUSION: FUTURE PROSPECTS**

While the CIR develops as a part of state government, the role of the non-governmental organization Healthy Democracy Oregon is changing. In fact, to reflect its broader purpose, the new name of this organization is simply Healthy Democracy, a fact that underscores its potential reach beyond the geographic borders of Oregon.

The bill that permanently implemented the CIR empowered the CIR Commission as an official state agency to take over the process. As the CIR commission plays a greater role in orchestrating the review panels, Healthy Democracy's presence will likely diminish. During this transition, the Healthy Democracy Fund, a charitable organization that grew out of the work of Healthy Democracy Oregon, will provide advice on implementing reviews in other locations and continue to serve as the development arm for the CIR.

The CIR process itself is transforming as well. Though improved compared to 2010, the most recent panels encountered challenges that may further develop as advocates and the public become more aware of the CIR (Oregonian Editorial Board 2012). As the CIR potentially expands its power, entrenched interests are likely to seek its co-optation. The advocates at the 2012 CIR, on private casinos in particular, were better prepared to engage in sustained debate than were their predecessors, and they provided detailed sourcing materials for most of their factual claims. Proponents and opponents brought in their own economists, who offered conflicting budget forecasts and made it difficult for panelists to discern the truth. (In their Statement, the panelists said that the economic data on that issue was equivocal.) Advocates will become even savvier as the process develops, and the robustness of the CIR's deliberative process will be tested further in coming years.

As we noted at the outset, the governmental authority granted to the CIR remains rare. The CIR is the first of its kind, and those deliberative structures that do exist often lack both the ability to influence wider public discourse and the legitimacy granted to the CIR as a state-sanctioned institution. The CIR represents a remarkably important step in the deliberative movement precisely because it has been sanctioned by state government, and such processes have the potential to spread. Participatory budgeting in Brazil has seen such expansion, growing from an experiment in participatory governance to an institutionalized system of budget allocation

in Brazil and other countries in South America and Europe (Cabannes 2004) and now even the United States.<sup>6</sup>

The CIR has similar potential. Non-governmental organizations and elected officials in other states have already expressed interest in bringing Citizens' Initiative Reviews to their communities. Several representatives of such organizations, as well as elected officials, sat in on parts of the 2012 Portland review. During their visit, they learned about the project and its prospects and met with HDO staff and members of the research team to discuss implementation and outcomes. Civic organizations and individual citizens in Arizona, California, Colorado, Washington state, and Switzerland have expressed interest in implementing CIRs. More recently, in 2014 pilot CIR projects were held in the city of Phoenix, Arizona and the State of Colorado. In 2015, legislation to create the CIR was introduced in Washington State, where the bill advanced through multiple committees but did not come to a floor vote, and a bill is now active in the State of Massachusetts legislature.<sup>7</sup>

Though setting up CIRs at the state level will require time and funding, cities and counties with initiatives and referenda may be able to adopt and implement similar processes in shorter time frames and at substantially reduced cost. As with Participatory Budgeting, it will likely take time for widespread uptake of the process, but the CIR has the potential to dramatically alter the way citizens connect with government, and with one another, to reach decisions.

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<sup>6</sup> One useful resource for tracking the advance of such programs is the Participedia case repository, which is available online at <http://www.participedia.net>.

<sup>7</sup> Up-to-date information about these efforts and evaluations of the 2014 CIRs can be accessed online at <http://sites.psu.edu/citizensinitiative-review>.

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