

# The Dilemma of Direct Democracy

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## ABSTRACT

The dilemma of direct democracy is that voters may not always be able to make welfare-improving decisions. Arthur Lupia's seminal work has led us to believe that voters can substitute voting cues for substantive policy knowledge. Lupia, however, emphasized that cues were valuable under certain conditions and not others. In what follows, we present three main findings regarding voters and what they know about California's Proposition 7. First, much like Lupia reported, we show voters who are able to recall endorsements for or against a ballot measure vote similarly to people who recall certain basic facts about the initiative. We show, second, that voters whose stated policy preferences would otherwise suggest they would favor the "no" position cast their ballots with far less error than do people who favor the "yes" position. This suggests that many voters may employ a "defensive no" strategy when faced with complex policy choices on the ballot. Our third result is a bit surprising: we find that better-informed voters, whether this information is derived from factual knowledge of the initiative or from knowledge of well-publicized voting cues, are no more likely to make reasoned decisions than those who are, by our measure, uninformed. This suggests that existing theories of voter choice, especially in direct democracy, may be inadequate. We conclude with some preliminary policy recommendations that could help improve the information environment for initiatives and referenda by providing key information on the ballot.

## I. INTRODUCTION

**D**EMOCRACY DEMANDS much of its citizens. Democracy asks them to hold office, to assess facts as jurors, to provide testimony in public hearings, to select dozens of public officials at all levels of government, and to approve public policy directly

through popular initiatives, constitutional amendments, and the approval or rejection of bond measures. While there are questions about the ability of citizens to perform these activities, there is particular consternation regarding vote choice, which is fundamental to a well-functioning democracy.<sup>1</sup> The ability of voters to translate their preferences into ballot choices has long been the topic of scholarly debate. The dilemma of direct democracy is that voters may not be capable of making policy choices through initiatives and referenda that improve their welfare.

Daniel Lowenstein has pioneered the diagnosis and rehabilitation of this particular dilemma. Many of his articles over the past three decades have fo-

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<sup>1</sup> See, e.g., Walter Lippmann, *Public Opinion* (1922); Angus Campbell, Philip E. Converse, Warren E. Miller, and David E. Stokes, *The American Voter* (1960); Philip E. Converse, "The Nature of Belief Systems in Mass Publics," in *Ideology and Discontent* (D.E. Apter ed., 1964); Larry M. Bartels, *Uninformed Votes: Information Effects in Presidential Elections*, 40 *Am. J. Pol. Sci.* 194 (1996).

cused on institutions that govern the process of qualifying, campaigning, and voting on initiatives.<sup>2</sup> His empirical scholarship has shown how and when voters can make reasoned policy choices.<sup>3</sup> Lowenstein has also forcefully articulated the concern that voters who rely on voting cues provided by campaign communications, such as slate mailers, are susceptible to manipulation by savvy political consultants hired by moneyed interests.<sup>4</sup> Lowenstein's empirical analysis grounds his proposals to reform direct democracy so that initiatives and referenda can better serve the goal of empowering ordinary citizens and grassroots movements.<sup>5</sup>

Drawing on Lowenstein's work, as well as on other scholarship assessing voting shortcuts, we seek to measure empirically what people know when they vote on a typical initiative. Lupia's influential paper on voting cues and voter competence in initiative elections has shown that voters can learn from endorsements publicized during initiative campaigns.<sup>6</sup> In this article, we provide an additional empirical test of the efficacy of voting cues, using the results of an exit poll concerning California's Proposition 7 on the statewide ballot in November 2008.<sup>7</sup> Proposition 7 would have required California public utilities to generate at least 50 percent of their energy output from renewable energy sources by the year 2025.

Analysis of our exit poll yields three main findings. First, we agree with Lupia's conclusion: voters who report knowing an information shortcut (e.g., who knew that the electricity utilities opposed Proposition 7) make decisions that are indistinguishable from voters who recall a basic set of facts about the measure (i.e., who could answer a short list of summary questions about the proposed policy). Lupia's analysis—and subsequent research on direct democracy—assumes, but never tests, that knowledgeable voters will be better able to translate their preferences into a vote choice. Surprisingly, we discover that this is not so: knowledge is not power. Whether or not voters knew the set of facts we asked regarding Proposition 7 and whether or not voters knew the voting cue of the utility companies' position against Proposition 7, they were invariable in their ability to make vote choices that aligned with their stated policy preferences. Specifically, our second finding is that most voters—even those who could not recall credible voting cues or the most basic details of the ballot proposition—cast their votes in a manner consistent with their stated policy preferences regarding the state's energy policy.<sup>8</sup> The lack of a palliative ef-

fect of recalled knowledge on this initiative vote stands in stark contrast to findings concerning votes in candidate elections.<sup>9</sup> Third, our results are also consistent with Bowler and Donovan's conclusion that voters seem to cast a "no" vote as a defense against complicated ballot measures.<sup>10</sup> In particular, we discover that the proportion of voters who expressed support for renewable energy but voted against the measure is far greater than the proportion of voters who voted in favor of the measure despite opposing renewable energy.<sup>11</sup>

<sup>2</sup> See, e.g., Daniel Hays Lowenstein, *Campaign Spending and Ballot Propositions: Recent Experience, Public Choice Theory and the First Amendment*, 29 UCLA L. Rev. 505 (1982); Daniel H. Lowenstein, *California Initiatives and the Single-Subject Rule*, 30 UCLA L. Rev. 936 (1983).

<sup>3</sup> See, e.g., Shanto Iyengar, Daniel H. Lowenstein, and Seth Masket, *The Stealth Campaign: Experimental Studies of Slate Mail in California*, 17 J. L. & Pol. 295 (2001).

<sup>4</sup> See, e.g., *id.* at 330–32.

<sup>5</sup> See, e.g., Daniel Hays Lowenstein and Robert M. Stern, *The First Amendment and Paid Initiative Petition Circulators: A Dissenting View and a Proposal*, 17 Hastings Const. L.Q. 175 (1989).

<sup>6</sup> Arthur Lupia, *Shortcuts versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88 Am. Pol. Sci. Rev. 63 (1994). Arthur Lupia and Mathew D. McCubbins, *The Democratic Dilemma: Can Citizens Learn What They Need to Know?* (1998), extended, formalized, and tested Lupia's theory experimentally and found additional support for his empirical results.

<sup>7</sup> For a description of Proposition 7, including its text, see Secretary of State, Official Voter Information Guide for the California General Election on November 4, 2008, available at <<http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop7-title-sum.htm>>.

<sup>8</sup> We use the terms "reasoned voting," "consistent voting," and "competent voting" to mean the same thing, namely, that voters "cast the same votes they would have cast had they possessed all available knowledge about the policy consequences of this decision." Elisabeth R. Gerber and Arthur Lupia, "Voter Competence in Direct Legislation Elections," in *Citizen Competence and Democratic Institutions* 147, 149 (S.L. Elkins and K.E. Soltan eds., 1999). See also Craig M. Burnett and Mathew D. McCubbins, *Informed Democracy?* 11 (unpublished manuscript 2010).

<sup>9</sup> Bartels, for example, finds that voters who have less knowledge of presidential candidates make decisions inconsistent with their policy preferences more often than informed voters. Bartels, *supra* note 1, at 209, 221.

<sup>10</sup> Shaun Bowler and Todd Donovan, *Demanding Choices: Opinion, Voting, and Direct Democracy* 33–35 (1998).

<sup>11</sup> Of course, as has been suggested to us, it is possible that Proposition 7 was not very good policy, and thus voters who supported renewable energy may have voted against it not out of error but instead out of a deeper understanding of the proposed policy. If this is true, then all of the other voters who preferred renewable energy, but who voted for the measure, cast erroneous votes; we have to question voters' ability to cast informed votes at all.

Following Lowenstein's example, our results suggest the need to consider certain reforms to the institutional structure of direct democracy in California. Specifically, we recommend that ballot measures themselves could contain more—and more useful—information, thereby increasing the chance that voters will find and use trustworthy cues. Additional information on the ballot would provide voters with more facts at the “point of sale”; even for knowledgeable voters, it reminds them to use the information they already possess. Although we find that most voters, no matter what their level of knowledge, vote consistently with their preferences, there are still significant numbers of voters who seem to make erratic vote choices. Including crucial information on the ballot could improve the decision-making of these voters. In making this recommendation, we are aware that information provided on the ballot itself may carry with it disproportionate power to set the agenda, and we suggest ways to attenuate the official power to inform.

This article proceeds as follows. In Part II, we provide a brief discussion of the previous theoretical, experimental, and empirical scholarship regarding voter competence and direct democracy. We also formulate a set of hypotheses based on that scholarship. In Part III, we describe our data and the proposition that we studied. In Part IV, we outline our research design and methods. In Part V, we present our results. We conclude in Part VI with discussion of what our results mean for direct democracy, and we offer, in a preliminary way, reforms that may help improve voter competence in low-information elections.

## II. VOTING CUES AND VOTER COMPETENCE: A BRIEF REVIEW

Political scientists have observed that ordinary citizens do not know much about candidates, politics, or policy.<sup>12</sup> Voters know even less about the relevant facts and arguments concerning most ballot measures than they do about candidates (at least those candidates at the top of the ticket who capture the attention of most scholars). Moreover, propositions do not provide voters with effective voting cues found on the ballot in candidate elections: gender, ethnicity, occupation (in some states), and, especially, partisan affiliation.<sup>13</sup>

Scholars have produced theoretical, experimental, and empirical work designed to identify when short-

cuts can enhance voter competence. Lupia and McCubbins provide a theoretical framework for determining when voters can learn from endorsements and can therefore substitute this cue for personal knowledge and experience.<sup>14</sup> They find that under some conditions, endorsements by knowledgeable and trustworthy groups or individuals can provide voters effective cues for initiatives and referenda. Additionally, they demonstrate that institutions can establish some of the conditions for trust by imposing penalties for lying, by providing credible methods of verification, or by disclosing the expenditures of groups seeking to communicate their positions. For example, accurately knowing the position of a group with well-known ideological commitments or economic interests, such as the National Rifle Association, the Sierra Club, the American Association of Retired Persons, the insurance industry, tobacco companies, or labor unions, can provide a shortcut. Information about how much money the group is spending in the campaign can enhance the effectiveness of the endorsement as a voting cue by suggesting the intensity with which the group and its members hold their views.<sup>15</sup> A vigorous two-sided campaign that may catch the eye of uninterested voters does not accompany all state ballot measures, however. As a result, not all the information provided to voters through official channels or material generated by campaigns can serve as effective voting cues.

Do voters, when facing complex decision environments, choose to “just vote no”? Bowler and Donovan believe that they do, and argue that the “defensive no” is the default position for voters who

<sup>12</sup> See, e.g., Michael X. Delli Carpini and Scott Keeter, *What Americans Know About Politics and Why It Matters* (1996); Philip E. Converse, “Voting Systems and the Representation of Public Opinion,” in *Handbook of Political Science* 79 (F.I. Greenstein and N.W. Polsby eds., 1975).

<sup>13</sup> For work discussing the strength of the party cue in candidate elections, see, e.g., Campbell, Converse, Miller, and Stokes, *supra* note 1; Gary C. Jacobson, *The Politics of Congressional Elections* 119–22 (7th ed. 2009). On the relevance of demographic information, see, e.g., Samuel L. Popkin, *The Reasoning Voter: Communication and Persuasion in Presidential Campaigns* 60–65 (1991). On the relevance of race, gender, and occupation, see, e.g., Monika L. McDermott, *Race and Gender Cues in Low-Information Elections*, 51 *Pol. Res. Q.* 895 (1998); Monika L. McDermott, *Candidate Occupations and Voter Information Shortcuts*, 67 *J. Pol.* 201 (2005).

<sup>14</sup> Lupia and McCubbins, *supra* note 6.

<sup>15</sup> For a discussion of such cues, see Elizabeth Garrett, “Direct Democracy,” in *Research Handbook in Public Choice and Public Law* 137, 151–55 (D.A. Farber and A.J. O’Connell eds., forthcoming 2010).

they assume are generally risk averse.<sup>16</sup> To date, however, there has been no direct test of this hypothesized default response.

With this background in mind, we formulate a set of hypotheses about knowledge and voting. In particular, we examine four hypotheses based on the extant literature's predictions:

- First, as Lupia and Lupia and McCubbins have found, knowing a trustworthy endorsement can equal knowledge of the facts in their influence on vote choice. We therefore hypothesize that voters who know a trustworthy endorsement will make reasoned choices—that is, they will cast votes that are consistent with their policy preferences—as often as do voters who know basic facts about the proposed policy.
- Second, we hypothesize that individuals who recall the basic facts of a ballot measure will be able to make reasoned choices more often than do voters who have neither a basic knowledge of the facts nor a trustworthy voting cue.
- Third, we hypothesize that individuals who have knowledge of a trustworthy endorsement will be able to make reasoned choices more often than do voters who have neither a basic knowledge of the facts nor a trustworthy voting cue.
- Fourth, if voters adopt a “defensive no” strategy, then we hypothesize that individuals who disfavor a proposed policy will vote in accordance with their policy preference more often than voters who favor a proposed policy.

These hypotheses, of course, hold all other factors constant. If we reject any of the above predictions, we need to rethink the existing theories concerning how voters make decisions on ballot measures.

### III. SURVEYING VOTERS' KNOWLEDGE ABOUT CALIFORNIA'S PROPOSITION 7

We use data from interviews undertaken during the November 4, 2008, general election to test our four hypotheses. We conducted the survey in San Diego, California, at 13 polling locations covering 19 precincts. We gathered responses from voters as they exited their voting location from the opening (7:00 a.m.) to the closing (8:00 p.m.) of the polls. Student volunteers asked every other departing voter to participate in an interview in or-

der to randomize our sample.<sup>17</sup> We asked 2,053 voters to participate; 1,002 complied, for a response rate of 49.9 percent. While not a representative sample, we are confident that this sampling structure allows us to assess our hypotheses using a within-subjects design.<sup>18</sup> In other words, we do not have any reason to suspect that our sampling structure correlates with our treatment variables. Similar to Lupia's study, we sample a single city during one election; however, we do not believe that our San Diego sample differs substantially from other cities in California.

<sup>16</sup> Bowler and Donovan, *supra* note 10, at 34–35.

<sup>17</sup> We trained our student volunteers on how to conduct interviews about a week before the election. Each student volunteer worked a three and one-half hour shift; our volunteers received extra credit for their effort.

<sup>18</sup> As the table below highlights, our respondents are more likely to be Caucasian and more educated than the 2000 Census. Moreover, our sample was 8 percent more likely to vote for Obama in the 2008 election. The remaining demographics come close to matching the 2000 Census, which suggests that we obtained a reasonable snapshot of San Diego voters. Because we obtained a reasonable sample, we are confident that our results would not be different if we had a 100 percent response rate.

	<i>Survey</i>	<i>2000 Census of San Diego<sup>a</sup></i>
Age	Median between 36–45; 7.8% > 65 yrs.	Median age 32 <sup>b</sup> ; 10.5% > 65 yrs.
Household Income	Median between \$50–100,000	\$45,733
HS Diploma (Age > 25)	99%	82.8%
College Degree (Age > 25)	71.9%	35%
Female	48.6%	49.6%
Asian or Pacific Islander	8.2%	13.6%
Black	2.7%	7.9%
Latino	8.4%	24.5%
Caucasian	72.7%	60.2%
More than one race	4.3%	—
Vote % for Obama	79.9%	62.6% <sup>c</sup>

<sup>a</sup>Census data are available here: <<http://quickfacts.census.gov/qfd/states/06/0666000.html>>

<sup>b</sup>Median age provided by the city of San Diego, available here: <<http://www.sandiego.gov/economic-development/glance/sdfacts.shtml>>

<sup>c</sup>Presidential vote results by city are available from the California Secretary of State: <[http://www.sos.ca.gov/elections/sov/2008\\_general/ssov/5-pres-political-dists-within-counties.xls](http://www.sos.ca.gov/elections/sov/2008_general/ssov/5-pres-political-dists-within-counties.xls)>

Among other things, we asked respondents to answer questions about California's Proposition 7.<sup>19</sup> Proposition 7 was a complicated policy proposal with potentially large effects on each household. It would have required California's public utility companies to generate at least 50 percent of their energy from renewable sources by 2025. Significantly, the initiative did not limit how much California residents' utility bills could increase; large increases in the average utility bill were probable.<sup>20</sup>

The campaign surrounding Proposition 7 was typical for California initiatives that affect well-funded interests. We sought to avoid ballot questions on the one hand that commanded extraordinary public interest or were characterized by prodigious political campaigns, and on the other hand that were entirely obscure. Notwithstanding its likely effect on voters' welfare, Proposition 7 did not capture the interest of most voters, in part because on the same November 2008 ballot there was a momentous presidential election and two controversial and expensive initiatives (Propositions 4 and 8).<sup>21</sup> Proposition 7 was not obscure, however. The supporting and opposing campaigns spent almost \$10 million and \$30 million, respectively.<sup>22</sup> Peter Sperling, heir to the University of Phoenix fortune,<sup>23</sup> bankrolled the campaign in support of Proposition 7. The coalition of groups opposing Proposition 7 included Edison International, Pacific Gas & Electric (PG&E), and Sempra Energy.

We asked our respondents to answer five questions about Proposition 7, interspersed among questions about other ballot measures, candidates, and many individual-level covariates. The questions directly relevant to Proposition 7, in the order we asked them, are:

- (1) Do you favor or oppose requiring California's public utilities to increase the amount of power they generate from renewable energy substantially, even if it means higher electricity rates?
- (2) Under Proposition 7, what percent of California's energy would be required to come from renewable sources by 2025? (The correct answer was 50 percent.)
- (3) True or False: Proposition 7 does not limit potential energy bill increases for Californians. (That statement is true.)
- (4) How did you vote on Proposition 7?
- (5) Do you happen to know if gas and electric companies supported, opposed or took no position on Proposition 7 (the one about renew-

able energy generation)? (They had opposed the proposition.)

The first question assessed the voters' underlying preferences about renewable energy even if their own electricity bills might increase. We asked Question (1) at the beginning of the survey before asking Question (2) through (5) to obtain voters' fundamental policy preference on the issue raised by the proposition. This question sets our baseline for evaluating whether voters were able to make a reasoned choice; that is, to what extent they report voting consistently with their answer to Question (1).<sup>24</sup> By design, Question (1) does not measure the respondent's actual support for Proposition 7. We discuss the importance of this below.

The next two questions aimed to test our respondents' depth of knowledge by asking them to recall facts that could be obtained directly from the voter information guide and the ballot.<sup>25</sup> Both questions

<sup>19</sup> The official title, summary, and voter information guide provided by the Secretary of State are available here: <<http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop7-title-sum.htm>>.

<sup>20</sup> The official fiscal analysis of Proposition 7, prepared by the Legislative Analyst, concluded that "[i]n the short term, the prospects for higher rates—and therefore higher costs, lower sales and income tax revenues, and higher local utility tax revenues—are more likely. In the long term, the impact on electricity rates, and therefore state and local government costs and revenues, is unknown." See Official Voter Information Guide, available at <<http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop7-title-sum.htm>>.

<sup>21</sup> Proposition 4 (<<http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop4-title-sum.htm>>) was an initiative constitutional amendment that would have required doctors to provide notification to the legal guardian(s) of a minor seeking an abortion. Proposition 8 (<<http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop8-title-sum.htm>>) defined marriage as a union between a man and a woman. It generated a substantial campaign with endorsers and opponents spending well over \$70 million.

<sup>22</sup> For campaign finance details, see the California Secretary of State campaign finance database: <<http://cal-access.ss.ca.gov/Campaign/Measures/Detail.aspx?id=1303161&session=2007>>.

<sup>23</sup> See *infra* text accompanying notes 61 through 62 (discussing Sperling's involvement in the Proposition 7 campaign).

<sup>24</sup> We separated Questions (1) and (4) to minimize the likelihood that respondents' reports of how they voted would be influenced by their answers to Question (1).

<sup>25</sup> In California, these guides contain the official title and summary of the measure drafted by the Attorney General; a substantive analysis and fiscal impact statement prepared by the Legislative Analyst; results of legislative votes, if the state legislature has referred the measure to the people; arguments for and against the measure, with names of supporters and opponents; and the text of the proposed law. See Cal. Elec. Code § 9086. The ballot provides only the ballot title, a brief summary of the measure, and a summary of the fiscal analysis.

aimed to measure factual knowledge that we believe informed voters should possess about Proposition 7.<sup>26</sup> To be sure, we expected the open-ended nature of Question (2) to make it difficult for most voters to answer. The correct answer, however, was part of the official ballot title and summary provided in the voter information guide and was included on the ballot.<sup>27</sup> Indeed, if they had read the ballot carefully, they were likely to have seen this information just minutes before taking our survey; however, the open-ended format of the question required them to remember the specific information about one ballot question among many choices. Thus, this question serves as a measure of relatively deep factual knowledge from the voter guide and the actual ballot.<sup>28</sup>

Question (3) asked voters to indicate whether they knew if Proposition 7 placed limits on how much consumers' electricity bills could increase. The correct answer to this question was not as clear from the officially sanctioned sources of information as was the answer to Question (2). The fiscal impact summary contained on the ballot stated only that the measure would have an "uncertain impact on retail electricity rates." Accordingly, we used a true or false question format to provide our respondents with a binary choice. We chose this question because the opponents of the measure emphasized in their arguments in the voter information guide and in ads funded by the electricity companies that consumer electricity bills could increase substantially, given the absence of rate controls in the measure.

Question (4), whether the respondent voted "yes" or "no," is the dependent variable in our study. Much of our analysis is based on the assumption that Questions (1) and (4) should elicit similar responses from rational voters informed of the content of Proposition 7. Using a baseline policy preference (Question (1)) to account for vote choice on a ballot measure (Question (4)) is equivalent to using self-reported party identification or ideology to account for candidate vote choice, a common approach in voting behavior studies.

Question (5) asked respondents to report whether they knew the position that the electricity companies took on Proposition 7, as they were the most prominent opponents of the bill. This was arguably the most effective information shortcut for the ballot measure. The electricity companies bankrolled the almost \$30 million campaign to defeat the proposition, thereby concretely demonstrating the intensity of their preference to retain the status quo.

The industry's position was hard for attentive voters to miss. Moreover, utilities were credible cue-givers because they have expertise about electricity generation and they have a well-defined and understandable profit motive. Voters can assess whether the interests of the energy companies align with their own interests. Thus, this question allowed us to measure the differences between those voters who knew and those who did not know about a key group endorsement.

There were 41 questions on the survey. A typical interview took about ten minutes to complete. Accordingly, there was a significant buffer between each question relevant to our study. For example, there would be about an eight-minute gap between Question (1) and (4) for the average respondent. By spacing out the questions pertaining to Proposition 7, we hoped to minimize priming and framing effects.

#### IV. RESEARCH DESIGN AND METHODS

Our research examines whether voter knowledge, as measured by our questions, helps individuals make reasoned choices on ballot measures. In what follows, we test the four hypotheses that we derived from the existing literature. We employ a post-test only factorial design that utilizes logit regression and post-regression Monte Carlo simulations to test our hypotheses. Our test is post-test only in that we observe votes only after they exit a polling booth. By importing and interacting several factors, such as answers to questions and statements about the policy in Proposition 7, we seek to enhance our abil-

<sup>26</sup> For a discussion of what makes a voter competent, see Arthur Lupia, *How Elitism Undermines the Study of Voter Competence*, 18 *Crit. Rev.* 217 (2006).

<sup>27</sup> The Voter Information Guide is available online at <<http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop7-title-sum.htm>>. The text on the actual ballot was: "RENEWABLE ENERGY GENERATION. INITIATIVE STATUTE. Requires government-owned utilities to generate 20% of their electricity from renewable energy by 2010, a standard currently applicable to private electrical corporations. Raises requirement for all utilities to 40% by 2020 and 50% by 2025. Fiscal Impact: Increased state administrative costs up to \$3.4 million annually, paid by fees. Unknown impact on state and local government costs and revenues due to the measure's uncertain impact on retail electricity rates."

<sup>28</sup> We would have preferred to be able to ask many more specific and nuanced knowledge questions, but we faced the reality of space and time limitations.

ity to find the effect of each factor. Our dependent variable is the respondent's reported vote on Proposition 7. In line with spatial and other theories of voting, we assume that voters prefer their votes to be in accord with their policy preferences, as reflected in their answers to Question (1).<sup>29</sup> A preference for renewable energy even with more expensive electricity should then yield a "yes" vote on Proposition 7. Lack of such a preference should yield a "no" vote.<sup>30</sup> We interact the dichotomous policy preference variable (Question 1) with our knowledge variables (Questions 2, 3, and 5).

Two concerns arise from using policy preference as an explanatory variable. First, as noted above, we expect that policy preference will be an excellent predictor of vote choice. But if our baseline policy preference measure was a perfect or nearly perfect predictor of vote choice, our research could not yield any results and our regression equation would be an identity. Fortunately for our research, our policy preference measure, while being a strong predictor of vote choice on Proposition 7, is far from perfect: overall, 26.4 percent of our sample reported that they voted against their stated policy preference.<sup>31</sup> This suggests that there is still significant variation between stated policy preference and reported voting behavior.<sup>32</sup> In essence, by including policy preference as one of our factors, our study focuses on the differences between those respondents who voted in accordance with their stated preferences and those who did not.

The second concern is one of endogeneity. It is possible that some underlying and unmeasured variable predicts both stated policy preference and knowledge of Proposition 7. We consider this possibility very slight. Furthermore, we think our policy preference question measures a stable attitude about renewable energy. Similar to studies of voting behavior that employ feeling thermometers, party identification, and ideology to predict votes, we treat the responses to Question (1) as exogenous.

We use a simple logit model to evaluate our hypotheses. We provide a formal representation of our estimated model in Equation (1).

$$Pr(y_i = 1) = 1 / (1 + e^{-n_i})$$

$$n_i = (\beta_0 + \beta_1 CUE_i + \beta_2 REQ_i + \beta_3 BILL_i + \beta_4 CUE * REQ_i + \beta_5 CUE * BILL_i + \beta_6 CUE * REQ * BILL_i + \beta_7 REQ * BILL_i + \beta_8 Favor_i + \beta_9 Favor * CUE_i$$

$$+ \beta_{10} Favor * REQ_i + \beta_{11} Favor * BILL_i + \beta_{12} Favor * CUE * REQ_i + \beta_{13} Favor * CUE * BILL_i + \beta_{14} Favor * CUE * REQ * BILL_i + \beta_{15} Favor * REQ * BILL_i + \beta_{16} X_i) \quad (1)$$

In Equation (1),  $y_i$  is respondent  $i$ 's likelihood of voting yes on Proposition 7, where a "0" represents a "no" vote and a "1" signifies a "yes" vote, and  $n_i$  defines the model we use to find respondent  $i$ 's probability. Henceforth, dropping the subscript  $i$  for each respondent,  $CUE$  is a dichotomous variable that denotes whether the respondent knew that the electricity companies opposed Proposition 7 ("1" for knew cue, "0" for did not know).  $REQ$  is a dichotomous measure of whether a respondent knew Proposition 7's proposed renewable energy requirement by 2025 ("1" for knew requirement, "0" for did not know).  $BILL$  measures whether respondent  $i$  knew that Proposition 7 did not include limits on how much an electricity bill could increase ("1" for knew of the absence of limits, "0" for did not know). Finally,  $Favor$  is a dichotomous measure of whether respondent  $i$  supported renewable energy even if the policy resulted in higher energy rates ("1" for favor, "0" for oppose).

The interaction terms in Equation (1) allow us to estimate the effects of knowledge on vote choice,

<sup>29</sup> By controlling for policy preference, we follow the lead of voting behavior scholars who use party identification, candidate thermometers, and ideology to estimate vote choice. This design allows us to reduce the variance between disparate groups of individuals—in our case, individuals who have different policy preferences—and isolate the treatment effect. In fact, if we excluded policy preference we would suffer from omitted variable bias. Moreover, if policy preferences are endogenous, we should include them in our econometric model. Unfortunately, we cannot assess whether our measure is endogenous and we do not have an instrument that can account for policy preference. In future research, we will conduct panel studies that will help us account for endogeneity.

<sup>30</sup> By including a measure of policy preference, we correct for Lupia's lack of explicit assumptions about how voters should decide. See Lupia, *supra* note 6.

<sup>31</sup> A closer look reveals that 12.5 percent of the respondents who did not favor renewable energy still supported the measure, and 35.7 percent of respondents who favored renewable energy voted against the measure. This disparity further demonstrates the need for us to control for policy preference.

<sup>32</sup> To add context to our measure, only 10.3 percent of our sample's self-identified Democrats and Republicans voted against their party's nominee. While there is more variation between policy preference and votes on Proposition 7 than party identification and votes for president, our measure of policy preference predicts a large majority of the votes.

holding constant policy preference. We separate respondents into two groupings based on policy preference with *Favor*. We then interact *Favor* with our knowledge factors (*CUE*, *REQ*, and *BILL*), thereby implementing our factorial design. At base, the interacted terms measure the effects of knowledge for individuals who supported renewable energy; the non-interacted terms measure the effects of knowledge for individuals who did not support renewable energy.

We also use five additional covariates in our regression. In Equation (1),  $X$  denotes a matrix of covariates that includes *Age*, *Income*, *Education*, *Party Identification*, *Ideology*, and *General Political Knowledge*.<sup>33</sup> We utilize these variables in our regression since they are common predictors of individual voting behavior.

## V. RESULTS

We present our results in three steps. First, we use descriptive statistics to assess how much voters knew about Proposition 7. Second, we report and interpret our regression results for Equation (1). Third, we generate predicted probabilities of respondents voting “yes” on Proposition 7 for those who favored renewable energy and voting “no” otherwise. To begin, we calculated averages and correlations for the survey respondents’ policy preferences, knowledge of Proposition 7, and the covariates we defined in the previous section.

Of the 1,002 completed surveys, 717 voters gave answers to the questions that we include in the regression.<sup>34</sup> In Table 1, we provide basic descriptive statistics of respondents’ knowledge about Proposition 7. For the two rows, we separated our respondents by policy preference. Across the columns, we divided the respondents according to their level of knowledge concerning Proposition 7. All of the percentages and raw numbers reported in Table 1 are independent of each other and each respondent appears only once. That is, the cell percentages total to 100. For example, someone who appears in the “Knew All” category does not also appear in the “Knew Cue Only” category, even though someone who “Knew All” knew the cue.

We can make two generalizations from Table 1. The first generalization is that a sizeable majority of voters knew something about Proposition 7, but a significant minority of voters knew nothing—or, at least, could answer none of our questions cor-

rectly. Indeed, only 2.4 percent of voters knew the correct answer to all three of the knowledge questions. Most voters knew something about the proposition insofar as we could measure it, but a strong majority of voters could not answer more than one of our three questions correctly.

The second generalization we can make is that policy preferences and knowledge about Proposition 7 are, by our measures, only modestly related. For example, 1.9 percent of respondents who favored renewable energy and 3.1 percent of respondents who did not favor renewable energy knew the correct answer to all three knowledge questions. In fact, the largest gap in knowledge between the two preference groupings occurs in recognizing that the proposition did not have pre-set limits on how much an energy bill could increase (with a slim 4.2 percent difference). Policy preferences did not explain how much information a person could recall about Proposition 7.

Next, we analyzed the data to see if there are significant differences in policy preference and knowledge based on our regression covariates. Table 2 includes descriptive statistics for party identification and ideology.<sup>35</sup> For policy preference, we see substantial though not overwhelming differences between partisans and ideologues. Whereas Democrats favored renewable energy 66.7 percent of the time, Republicans favored renewable energy only 43.8 percent of the time—a difference of more than twenty percent. Likewise, 69.7 percent of liberals supported renewable energy, while only 40.4 per-

<sup>33</sup> To measure *General Political Knowledge*, we constructed an index of correctly reporting these five facts: 1) Dick Cheney was the Vice President; 2) the percent of votes required for Congress to override a presidential veto; 3) John Roberts was the Chief Justice of the United States; 4) the Democrats had the most seats in the House of Representatives; and 5) the Supreme Court can declare laws unconstitutional.

<sup>34</sup> We dropped respondents from the analysis if they did not answer any of the questions we use in our regression. In our sample, 878 respondents voted on Proposition 7—a roll off rate of about 12.4 percent. 891 respondents indicated their policy preference; 850 respondents answered the question about the position of the energy companies; 978 respondents answered the question about the 2025 renewable energy requirement; and 873 respondents answered the question about energy bills.

<sup>35</sup> In the regression equation, *Party Identification* is a seven-point ordinal variable and *Ideology* is a five-point ordinal variable. For simplicity, we have collapsed both variables into three categories. Here, we combine party identification “leaners” with their respective partisans.

TABLE 1. VOTER KNOWLEDGE ABOUT PROPOSITION 7, BY POLICY PREFERENCE

	<i>Knew All</i>	<i>Knew Requirement and No Limit</i>	<i>Knew Requirement and Cue</i>	<i>Knew No Limit and Cue</i>	<i>Knew Cue Only</i>	<i>Knew Requirement Only</i>	<i>Knew No Limit Only</i>	<i>Knew Nothing</i>	<i>Total</i>
Favored Renewable Energy	1.9% (8)	3.7% (16)	6.1% (26)	10.3% (44)	19.8% (85)	5.8% (25)	16.3% (70)	36.1% (155)	59.8% (429)
Did Not Favor Renewable Energy	3.1% (9)	2.1% (6)	5.2% (15)	8.3% (24)	22.9% (66)	5.6% (16)	20.5% (59)	32.3% (93)	40.2% (288)
Total	2.4% (17)	3.1% (22)	5.7% (41)	9.5% (68)	21.1% (151)	5.7% (41)	18.0% (129)	34.6% (248)	100.0% (717)

Raw numbers are in parentheses.

cent of conservatives supported renewable energy—a difference of almost 30 percent. These results confirm the findings of national polls that show major differences in policy preferences about energy between partisans and ideologues.<sup>36</sup>

The partisan and ideological differences, however, do not extend to knowledge of Proposition 7. Partisans and ideologues differ very little in their ability to answer our set of factual questions and our cue questions, and only one difference is significant. Moderates were about seven percent less likely than liberals and conservatives to know that Proposition 7 did not provide an energy bill ceiling. This single aberration, however, is not indicative of a pattern in the data, and we would expect one significant difference at random. Overall, knowledge about Proposition 7 does not vary across partisan or ideological groups. This is indeed what drives our later results.

Preferences for renewable energy do not correlate with most of the covariates from Equation (1). As shown in Table 3, an individual’s policy preference about renewable energy does not correlate sig-

nificantly with age, income, or having general political knowledge. By contrast, individual preferences do correlate positively with increased education, but the correlation is negligible.

Table 3 also contains correlations for knowledge about Proposition 7. Similar to the just stated results, knowledge about the initiative correlates with few of our covariates. In sum, Tables 2 and 3 demonstrate that we cannot rely on the covariates from Equation (1) to explain preferences for renewable energy or knowledge about Proposition 7 in any systematic way. They also demonstrate that multicollinearity will not be a problem for our estimation.

To summarize the demographic results, most voters knew something about the proposition; a significant minority of voters, however, knew nothing. Moreover, we did not find any systematic patterns

<sup>36</sup> See, e.g., Eric R. A. N. Smith, *Energy, the Environment, and Public Opinion*, Chapter 5 (2002).

TABLE 2. DESCRIPTIVE STATISTICS FOR PROPOSITION 7 AND REGRESSION COVARIATES

	<i>Democrats</i>	<i>Independents</i>	<i>Republicans</i>	<i>Liberals</i>	<i>Moderates</i>	<i>Conservatives</i>
Favored Renewable Energy	66.7% (302)	57.0% (49)	43.8% (78)	69.7% (225)	59.7% (139)	40.4% (65)
Knew Requirements	15.7% (71)	18.6% (16)	19.1% (34)	17.7% (57)	16.7% (39)	15.5% (25)
Knew No Limit	33.3% (151)	32.6% (28)	32.0% (57)	35.9% (116)	27.5% (64)	34.8% (56)
Knew Cue	38.0% (172)	39.5% (34)	39.9% (71)	37.8% (122)	38.2% (89)	41.0% (66)

Raw numbers are in parentheses. N = 717.

TABLE 3. PAIR-WISE CORRELATIONS OF KNOWLEDGE TREATMENTS REGARDING PROPOSITION 7 AND COMMON COVARIATES

	<i>General Political Knowledge</i>	<i>Age</i>	<i>Income</i>	<i>Education</i>
Favored Renewable Energy	0.03	-0.03	-0.01	<b>0.11</b>
Knew Requirements	-0.02	<b>-0.14</b>	<b>-0.10</b>	-0.02
Knew No Limit	0.06	0.02	0.00	<b>0.13</b>
Knew Cue	<b>0.22</b>	0.00	0.02	0.06

**Bold** denotes significant correlation coefficients at the  $p < .05$  level.

within the data that could explain which respondents were likely to recall factual or cue-like information about the initiative. We also cannot predict how much an individual will learn about the initiative. This evidence suggests that (1) the two policy preference groups are indistinguishable from each other in regard to knowledge about the proposition; (2) the regression covariates do not explain policy preferences (with the exception of partisanship and ideology); and (3) the regression covariates are unrelated to knowledge of the ballot measure.

Our next task is to calculate whether policy preferences and knowledge about Proposition 7 influenced individual voting decisions. We present the results of our logit regression in Table 4.

The logit regression results provide some surprising insights. First, the recollection of facts or a cue about Proposition 7 appeared to have no measurable effect on decision making. Once we account for policy preference (using the interactive terms), voters who could recall either a basic set of facts or a cue about the initiative are not different statistically from those voters who knew nothing about the initiative. With these raw coefficients, we find tentative support for the first hypothesis and theories of Lupia and Lupia and McCubbins: voters with knowledge of the ballot measure are indistinguishable from voters who knew nothing more than a voting cue. The regression results, however, require us to reject the second and third hypotheses: voters who could recall basic facts about Proposition 7 or who had knowledge of a voting cue made decisions that are statistically equivalent to decisions of voters who were unable to recall this information. In other words, knowing some facts and knowing a cue does not appear to influence vote choice in this instance at least.

The second conclusion we can draw from the regression is that the two remaining significant terms, *Education* and *General Political Knowledge*, sug-

gest that voters who were more educated and knew more about the political world tended to vote against Proposition 7. Education and general political knowledge could have a negative effect for many reasons. One obvious possibility is that educated and politically-knowledgeable voters were more aware

TABLE 4. LOGIT REGRESSION RESULTS FOR VOTE ON PROPOSITION 7<sup>a</sup>

Knew Electricity Co. Opposed ( <i>CUE</i> )	-0.246 (0.51)
Knew 50% Requirement ( <i>REQ</i> )	-0.178 (0.75)
Knew No Limits on Energy Bill ( <i>BILL</i> )	0.241 (0.47)
<i>CUE*REQ</i>	-0.170 (1.35)
<i>CUE*BILL</i>	-0.283 (0.97)
<i>CUE*REQ*BILL</i>	-0.133 (2.13)
<i>REQ*BILL</i>	1.007 (1.23)
Favored Renewable Energy ( <i>Favor</i> )	2.653** (0.36)
<i>Favor*CUE</i>	0.700 (0.59)
<i>Favor*REQ</i>	0.286 (0.90)
<i>Favor*INC</i>	-0.084 (0.57)
<i>Favor*CUE*REQ</i>	-0.197 (1.52)
<i>Favor*CUE*BILL</i>	-0.147 (1.10)
<i>Favor*CUE*REQ*BILL</i>	0.348 (2.44)
<i>Favor*REQ*BILL</i>	1.425 (1.45)
<i>Age</i>	-0.124 (0.06)
<i>Income</i>	0.031 (0.09)
<i>Education</i>	0.916 (1.10)
<i>Party Identification</i>	0.067 (0.06)
<i>Ideology</i>	0.011 (0.12)
<i>General Political Knowledge</i>	-1.968** (0.40)
<i>Constant</i>	0.238 (0.73)
<i>Pseudo-R<sup>2</sup></i>	.258
<i>N</i>	717

<sup>a</sup>We ran two additional regressions. The first regression is identical to the model that Lupia uses. That is, we did not include a measure of policy preference. For this model, only *Age* and *Political Knowledge* were significant (and both negative). In the second unreported regression, we excluded the common covariates (*Age*, *Income*, *Education*, *Party Identification*, *Ideology*, and *Political Knowledge*). The magnitude, direction, and significance of the coefficients for all of our treatment variables were the same as the results reported in Table 4.

Logit Regression of Binary Vote Choice; 0 = Vote against Proposition 7, 1 = Vote for Proposition 7

Standard errors are in parentheses.

\* $p < 0.05$ , \*\* $p < 0.01$ .

of the drawbacks of Proposition 7 and they voted “no” to avoid a potential policy blunder.

We next calculated Monte Carlo predictions based on the logit results in Table 4. Predictions are useful for exploring the magnitude of the regression coefficients from which we can generate simple graphical representations. We used King, Tomz, and Wittenberg’s *Clarify* software for Stata<sup>37</sup> to estimate predicted probabilities and confidence intervals of voting “yes” for respondents who supported renewable energy.<sup>38</sup> We then calculated predicted probabilities and confidence intervals of voting against Proposition 7 for respondents who did not support renewable energy. For each set of predictions, we varied the type of knowledge individuals recalled, holding the covariates at their mean value. In keeping with our research design, we present our predicted probabilities first for those who favored renewable energy and then for those who opposed it. We present these two sets of predictions, respectively, in Figures 1 and 2.

By estimating these probabilities, we can move beyond the four hypotheses we set out to test and, within the limits of the power of our estimates, we can test some additional conditions. If knowledge is power and the ability to recall facts or cues equates to knowledge about the ballot measure, then we can rank voters in line with their ability to answer our three knowledge questions. With binary responses and three questions, we have eight possible outcomes, which we rank below from the highest level of recalled knowledge to the lowest. We would expect to see a decline in the predicted probability of voting consistently with policy preference moving left to right in the figures, following our predicted ranking of the combination of recalled knowledge:

- (1) Voters who knew all pieces of information (“Knew All”)
- (2) Voters who knew the 2025 renewable energy requirement and the lack of a limit on consumer energy bills (“Knew Requirement and No Limit”)
- (3) Voters who knew the 2025 renewable energy requirement and the position of the energy companies (“Knew Requirement and Cue”)
- (4) Voters who knew the lack of a limit and the position of the energy companies (“Knew No Limit and Cue”)

(5) Voters who knew the information shortcut only (“Knew Cue Only”)

(6) Voters who knew the 2025 renewable energy requirement only (“Knew Requirement Only”)

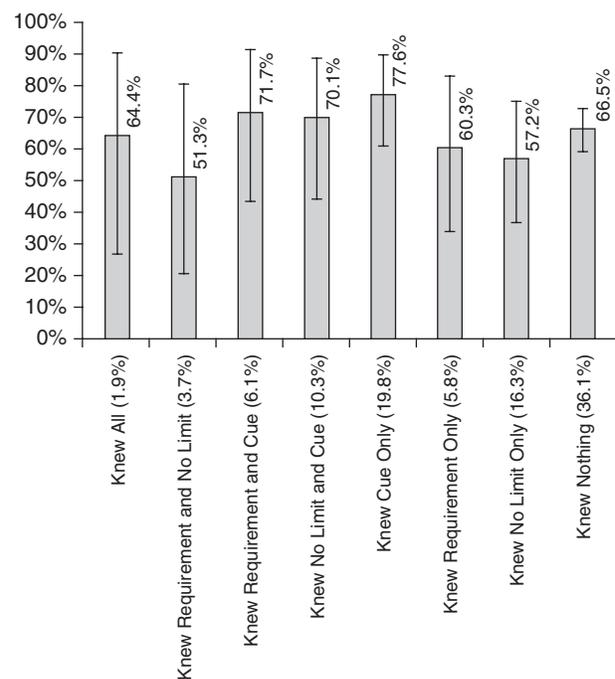
(7) Voters who knew that the initiative did not provide limits on how much an electricity bill could increase (“Knew No Limit Only”)

(8) Voters who did not know any of the three knowledge questions asked (“Knew Nothing”)

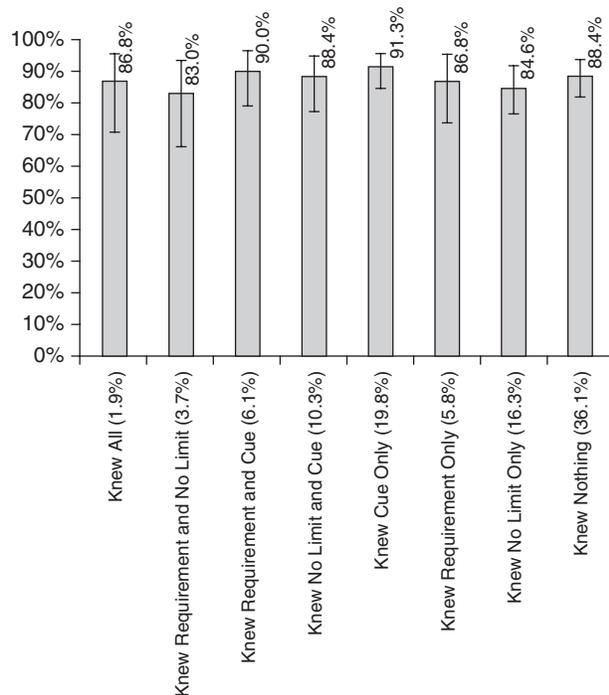
Each figure contains predictions for the eight levels of knowledge just described; the black bars represent the 95 percent confidence intervals for each prediction. Figure 1 shows that voters across all eight knowledge groupings are indistinguishable from one another. For example, we find that the most knowledgeable voters—Knew All—who favored renewable energy voted in accordance with

<sup>37</sup> Gary King, Michael Tomz, and Jason Wittenberg, *Making the Most of Statistical Analyses: Improving Interpretation and Presentation*, 44 *Am. J. Pol. Sci.* 341 (2000).

<sup>38</sup> We anticipate, however, that some of our Monte Carlo estimates will have very large confidence intervals because some of our groupings—e.g., voters who provided more than one correct answer—have very few observations.



**FIG 1.** Probability of voting yes on Proposition 7 (respondents favored renewable energy).



**FIG. 2.** Probability of voting no on Proposition 7 (respondents did not favor renewable energy).

their policy preference 61.9 percent of the time. We also predict that voters who had two pieces of information—Knew Requirement and No Limit at 35.9 percent, Knew Requirement and Cue at 57.3 percent, and Knew No Limit and Cue at 60.1 percent—voted consistently with their policy preferences at rates that were statistically equivalent not only from each other, but from every other level of knowledge. Likewise, voters who knew only one piece of information and voters who did not provide a correct answer to any of the knowledge questions are indistinguishable. In fact, every error bar overlaps, which indicates that none of the predicted probabilities is statistically different from any other. In other words, for respondents who favored renewable energy, the type and amount of information about Proposition 7 that a voter knew did not influence vote choice, and voters who had the least knowledge voted the same as individuals who knew everything about the proposition that we asked them.

Similar to Figure 1, Figure 2 shows that voters across all eight knowledge groupings who opposed renewable energy made decisions that were indistinguishable from one another. Such voters who knew all the information we tested voted “no” 78.7

percent of the time. All the other groupings were close to this figure and statistically indistinguishable from it. As with the voters who favored renewable energy, the predictions presented in Figure 2 are statistically equivalent, as every error bar overlaps.

The results from the simulations contained in Figures 1 and 2 offer further support for the preliminary conclusions from the regression results. Specifically, we accept the first hypothesis: voters who knew the basic facts and voters who knew an endorsement had statistically similar voting behavior. Our results, however, require us to reject the second and third hypotheses. In the initiative we analyzed, voters with knowledge of a set of basic facts or knowledge of a voting cue did not have greater success in translating their policy preferences into reasoned votes than voters who knew less or perhaps nothing about the initiative. Finally, voters who did not favor renewable energy (Figure 2) had an easier time casting a consistent vote (voting “no”) than voters who favored renewable energy (Figure 1) had (voting “yes”). Indeed, voters who favored renewable energy were more likely to vote against their policy preferences than voters who disfavored renewable energy. This means that the majority of the policy preference defections were “no” votes. As a result, we take this finding to be supportive of the Bowler and Donovan “defensive no” and of our fourth hypothesis. This finding, however, is not definitive: it is possible that some voters who favor renewable energy even if it brings higher energy prices still had other reasons for opposing Proposition 7 and voted in accordance with those reasons rather than because of a “when in doubt vote no” policy.

While it would have been more satisfying to have found some evidence about the effect of knowledge on vote choice, our results should not be over-interpreted. It is quite possible that voters learned, at one time or another, the information they needed to make a reasoned choice and then forgot the facts or the cues that guided them, and thus did poorly on the recall questions in our survey.<sup>39</sup> Nonetheless, we

<sup>39</sup> See, e.g., Morris P. Fiorina, *Retrospective Voting in American National Elections* (1981); Lupia and McCubbins, *supra* note 6; Popkin, *supra* note 13; Milton Lodge, Kathleen M. McGraw, and Patrick Stroh, *An Impression-Driven Model of Candidate Evaluation*, 83 *Am. Pol. Sci. Rev.* 399 (1989).

expected to see some observable differences depending on the voters' knowledge.

## VI. DISCUSSION

We did not find support for two of our four hypotheses. Unexpectedly, we have shown that uninformed voters appear to make decisions that are indistinguishable from voters who have knowledge of key facts and voters who have knowledge of a voting cue. As a result, we reject the overall model of initiative voting that Lupia presents. Unlike Lupia's and other previous studies of ballot measures, we do not find evidence to suggest that the ability to recall basic facts and voting cues has a systematic effect on vote choice. We think that our study is an improvement upon the existing empirical research because we account for policy preference in voter choice. That is, even if preferences are endogenous, we include a control for this potential problem in research design.

We do not know whether our results, or Lupia's, are generalizable, or which ballot measures fit which model. At one end of the spectrum, Lupia found that voters who were aware of a cue or knew the basic facts of an initiative made statistically identical voting choices, and he assumed that each group was using its different form of knowledge to attain similar results. In our study, voters did not appear to use either facts about the proposition or a cue to make decisions different from voters lacking both forms of knowledge. Our study is the only one that considers voters lacking both knowledge and a cue; however, it deals only with a single election. With additional research, we can estimate whether our finding is generalizable at all and, if so, whether there is any pattern for identifying propositions for which it is likely to be applicable and others for which it is not.

This returns us to the question that has been at the core of Lowenstein's scholarship. Do we need to improve the information environment for voters, and if so, how? Our survey revealed that more than 34 percent of voters lacked any of the knowledge our questions sought to measure. Moreover, approximately 34.7 percent of those voting "yes" cast a ballot that may have been inconsistent with their preferences, and around 13.9 percent of those voting "no" could not vote competently by this standard. Although our

results suggest caution about easy assumptions regarding the value of information for voters deciding on initiatives, at the same time it would be rash to conclude from one study of one proposition that information is unimportant to voters.

We speculate that our results may reflect the possibility that the information environment is not helping all voters make competent decisions. Compared to candidates, ballot measures rely more heavily on an adversarial information environment—namely political campaigns—to inform voters. Voters understand that campaign materials may be biased or misleading.<sup>40</sup> Moreover, not every ballot measure has a meaningful supporting and opposing campaign. Voters are often too busy to follow closely even those measures that do.

A long history of research on voting behavior suggests that decisions improve with useful information. Why, then, did we find that neither factual knowledge nor knowledge of a cue influenced voters' decisions on Proposition 7? Part of the answer, we suspect, is that in direct democracy voters do not receive a reminder to use their knowledge at the point when they vote. We therefore believe that providing effective voting cues and other key information in credible and salient ways at the time voters casts their ballot could prompt them to use information they already have. Moreover, additional credible information on the ballot could inform voters who were not aware of the facts before they entered the voting booth and could provide verification for other information that voters encounter in the campaign, perhaps from broadcast advertisements or slate mailers.

Previous research has shown that voters often identify official voter information pamphlets as an important source of information about initiatives and referenda.<sup>41</sup> We do not know, however, how many of our respondents had read a voter pamphlet

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<sup>40</sup> Id. at 781; John Zaller, *A New Standard of News Quality: Burglar Alarms for the Monitorial Citizen*, 20 Pol. Comm. 109, 119 (2003).

<sup>41</sup> In California, nearly half of respondents in a 1997 Field Poll reported using guides as their main or secondary source of information for deciding how to vote on ballot measures. Shaun Bowler and Todd Donovan, *Do Voters Have a Cue? Television Advertisements as a Source of Information in Citizen-Initiated Referendum Campaigns*, 41 Eur. J. Pol. Res. 777, 781–82, and Table 1 (2002).

before the election, or how many might have brought the pamphlet with them to consult as they voted. We propose that policymakers reduce the burden on official voter information guides and campaigns to credibly inform voters about ballot measures; instead, the ballot itself should provide more information to voters. While the ballot now contains a title and summary for each measure and a statement of fiscal impact, policymakers could design it to provide more and better cues. We have found few studies that asked voters about their use of information appearing on the ballot rather than facts and arguments provided in the voter information pamphlet.<sup>42</sup>

Additional empirical research should concentrate on the role of the ballot in shaping voter choice; we believe it may well be a powerful force in determining electoral outcomes for several reasons. First, the state issues the ballot, and this frame offers the credibility of an official announcement.<sup>43</sup> Of course, this advantage also provides reason for caution, as state actors are neither necessarily disinterested nor perfectly competent. Voters may not appreciate this, however, because the ballot is not associated in their minds with any particular political actor. Instead, the ballot is an official statement that the state endorses and therefore has the capacity to be particularly influential. Second, not only does the ballot present the most timely information for the act of voting—an important aspect of cues on the ballot as the effects of information tends to dissipate over time<sup>44</sup>—but it is also the information available at the pivotal moment when voters mark their choice. Third, although other information is available to voters throughout the campaign—and perhaps even when they vote if they bring voter information pamphlets to the polls or use them at home when they vote there—the ballot is the one source of cues and information that we are confident every voter sees.

We argue that ballot summaries should resemble nutrition labels. Individuals do not have the time or resources to study the details about a particular food product; likewise, voters do not have the time or resources to examine every ballot measure closely. With labels, consumers can discern nutrition facts quickly and use them to make decisions. Additional credible information on the ballot will make the summaries closer to nutrition labels, which would help voters make reasoned choices. To be sure, some voters may choose to ignore the additional infor-

mation in the summary, as many consumers ignore nutrition labels; however, both voters seeking new information and voters who receive a reminder to use the information they already know will benefit.

We recognize that providing more information on the ballot may face challenges. Partisan, elected officials will have views and positions on most ballot measures, controversial or not. Moreover, they are likely to disagree, perhaps vehemently, with many citizen initiatives.<sup>45</sup> Even if officials act in good faith and try to provide neutral wording, drafting the titles and summaries involves judgments that their views on the merits of the policy will influence, consciously or not. We propose a solution to this impediment below.

Furthermore, political actors currently devote much attention to trying to shape what information appears on the ballot; that attention will increase as more, and more helpful, information is added to the ballot. It is no surprise that the number of challenges to the wording of ballot titles and summaries has increased substantially since the 1990s.<sup>46</sup> Some of this rise is a function of the accelerating use of initiatives over the same time period. The increase is also related, however, to a greater recognition by campaign professionals of the potential influence of information available on the ballot on voters' decisions. For example, in some states, ballot measure proponents commonly use a technique called "ballot title shopping" to file multiple versions of an ini-

<sup>42</sup> One exception is Roger Gafke and David Leuthold, *The Effect on Voters of Misleading, Confusing, and Difficult Ballot Titles*, 43 Pub. Op. Q. 394 (1979). The authors focus on the effect of confusing titles on voter decisions, finding that certain voters, such as those with less information before they enter the polling booth or who are less politically active, are more susceptible to confusion that interferes with their ability to vote according to their policy preferences.

<sup>43</sup> See Elizabeth Garrett, *The Law and Economics of "Informed Voter" Ballot Notations*, 85 Va. L. Rev. 1533, 1552–53 (1999).

<sup>44</sup> See, e.g., James N. Druckman and Arthur Lupia, *Preference Formation*, 3 Ann. Rev. Pol. Sci. 1, 8–9 (2000); Shanto Iyengar, *The Accessibility Bias in Politics: Television News and Public Opinion*, 2 Int'l J. Pub. Op. Res. 1 (1990); John Zaller and Stanley Feldman, *A Simple Theory of the Survey Response: Answering Questions versus Revealing Preferences*, 36 Am. J. Pol. Sci. 579, 592–93, 607 (1992).

<sup>45</sup> See Elisabeth R. Gerber, Arthur Lupia, and Mathew D. McCubbins, *When Does Government Limit the Impact of Voter Initiatives? The Politics of Implementation and Enforcement*, 66 J. Pol. 43 (2004).

<sup>46</sup> Kenneth P. Miller, *Direct Democracy and the Courts* 103 (2009).

tative and obtain different titles and summaries, which they then test through focus groups and polls to determine which tend to increase voter support. They use the most favorable wording when they circulate petitions.<sup>47</sup>

California has seen several recent legal challenges to ballot titles and summaries written by the Attorney General. The law requires the Attorney General to prepare a title and summary to highlight the “chief purposes and points” of the proposed measure.<sup>48</sup> The title and summary cannot exceed 100 words, and must be “true and impartial, and not argumentative [or] likely to create prejudice for or against the measure.”<sup>49</sup> After the Attorney General submits the title and summary to the Secretary of State, interested parties can challenge them in pre-election litigation. In such litigation, the court defers to the Attorney General’s drafting if “reasonable minds can differ” on whether the summary is an accurate depiction that captures the chief purposes and points of the proposition.<sup>50</sup>

Given the presumption in favor of the Attorney General, challenges to ballot titles and summaries in California often fail. For example, the title for Proposition 8, the measure that made same-sex marriages illegal in California, was challenged by supporters who objected to the word “eliminates” in the title drafted by Attorney General Jerry Brown: “Eliminates the Right of Same-Sex Couples to Marry.” Proponents sought more positive language that avoided highlighting the elimination of a right but that arguably more closely tracked the language of the proposition, preferring a title such as “Only Marriage Between a Man and a Woman is Valid or Recognized in California.”<sup>51</sup> The state supreme court ruled that Californians of the same sex had won the right to marry in the time after the certification of the original title and before the preparation of the ballot.<sup>52</sup> Thus, the court upheld the Attorney General’s wording as accurately reflecting the effect of the proposition on the legal status quo.

Although California law contemplates that the Attorney General will generally draft ballot measure titles and summaries, increasingly the legislature is demanding that privilege when it places a measure on the ballot, demonstrating lawmakers’ belief that the wording affects outcomes.<sup>53</sup> This practice can prompt judicial challenges to the ballot title, such as the litigation and negotiations surrounding two of the measures placed on the ballot by the legislature and Governor in 2009 in an effort to close the state’s substantial budget gap.<sup>54</sup>

There is a dearth of research on when, where, and how voters learn about ballot measures, and whether the wording of ballot titles and summaries can influence vote choice. In future research, we will focus on these gaps in the literature. For now, we tentatively propose two reforms aimed at California, one designed to provide relevant information on the ballot in addition to the title and summary and one aimed at the process of drafting a ballot title and summary.

#### A. Increasing the information provided to voters on the ballot

We propose as our first major reform that California provide more information to voters on the bal-

<sup>47</sup> William A. Lund, *What’s in a Name? The Battle over Ballot Titles in Oregon*, 34 *Willamette L. Rev.* 143, 156 (1998). See also Rick Attig, *Initiative: No More “Ballot Shopping” with Your Tax Dollars*, *The Oregonian*, Jan. 4, 2009, available at <[http://www.oregonlive.com/opinion/index.ssf/2009/01/initiative\\_no\\_more\\_ballot\\_shop.html](http://www.oregonlive.com/opinion/index.ssf/2009/01/initiative_no_more_ballot_shop.html)>. The ability to use this tactic depends on state law. Oregon recently changed its law to reduce the opportunity for ballot title shopping. See Ore. Elect. Code § 250.045(1). In California, the ballot title is not the same as the title appearing on the petitions and is written after the initiative qualifies for the ballot. There are concerns about title-shopping even with these protections, however. See Bill Analysis of AB 436 (Saldana) for a Hearing in the Assembly Committee on Elections and Redistricting, Mar. 31, 2009 (proposing to increase fee to \$2,000 and noting that in 2007–08 proponents of Proposition 9 submitted four versions for titling but circulated only one), available at <[http://info.sen.ca.gov/pub/09-10/bill/asm/ab\\_0401-0450/ab\\_436\\_cfa\\_20090327\\_140712\\_asm\\_comm.html](http://info.sen.ca.gov/pub/09-10/bill/asm/ab_0401-0450/ab_436_cfa_20090327_140712_asm_comm.html)>.

<sup>48</sup> Cal. Const., Art. II, § 10(d); Cal. Elec. Code § 9004.

<sup>49</sup> *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 243 (1978); Cal. Elec. Code § 9051.

<sup>50</sup> *Epperson v. Jordan*, 12 Cal. 2d 61, 70 (1938). See also *Zarembek v. Superior Court of Sacramento County*, 115 Cal. App. 4th 111 (2004).

<sup>51</sup> *Jansson v. Bowen*, Case No. 34-2008-00017351 (Cal. Super. Ct. Sacramento) (Aug. 7, 2008), available at <[http://ag.ca.gov/cms\\_attachments/press/pdfs/n1597\\_ruling\\_on\\_proposition\\_8.pdf](http://ag.ca.gov/cms_attachments/press/pdfs/n1597_ruling_on_proposition_8.pdf)>.

<sup>52</sup> See *In re Marriage Cases*, 43 Cal. 4th 757 (2008).

<sup>53</sup> See, e.g., Dan Walters, *Politicos Use Ballot Titles to Sway Voters*, *Sac. Bee*, Mar. 3, 2009, at A3.

<sup>54</sup> See Act of Feb. 20, 2009, ch. 7, 2009 Cal. Legis. Serv. 842 (West) (originally enacted as Act of Feb. 20, 2009, ch. 6, 2009 Cal. Legis. Serv. 837 (West)). See also *Howard Jarvis Taxpayers Ass’n v. Bowen*, Case No. 34-2009-80000182-CU-WM-GDS (Cal. Super. Ct. Sacramento) (Mar. 5, 2009), available at <[http://www.sos.ca.gov/elections/ccrov/pdf/2009/march/0902\\_9jh.pdf](http://www.sos.ca.gov/elections/ccrov/pdf/2009/march/0902_9jh.pdf)> (ruling that the title for Proposition 1A, concerning the state’s rainy day stabilization fund, must use the word “changes” rather than “reforms” with respect to its effect on the budget process and deleting “unsustainable” as a modifier to describe state spending because the word carried too much emotional impact).

lot itself. Our goal is to make ballot summaries analogous to nutrition labels. If adopted, the ballot summaries will provide enough information to remind knowledgeable voters to use what they already know and inform voters who are searching for information. We propose several related changes to the current ballot format.

First, increasing the California ballot summary to about 250 words or so would allow the ballot to offer more information without substantially increasing the demands on voters. For example, in Oregon, the ballot includes a 15-word title, 25 words describing the effect of a “yes” vote and another 25 words describing the effect of a “no” vote, and 125 words summarizing the measure.<sup>55</sup> In essence, ballots, like nutrition labels, should provide ordinary voters with information about the effect of the measure on their lives, such as their tax burdens, the level of government service they will receive, the effect on the state’s economy, and quality of life for its citizens.

Second, California and other states should also consider enhancing the information provided by fiscal statements appearing in the voter information pamphlet and, in very abbreviated form, on the ballot. One concern with decision-making in direct democracy is that voters do not have a full sense of the costs and trade-offs entailed in approving a ballot measure or keeping the status quo. Because states operate with limited resources, decisions to spend money in one area mean that funds will not be available for other purposes. Revenues raised for a particular government service will reduce the flexibility of the state to raise revenue for other services. When the Legislative Analyst abbreviates the fiscal impact statement on the ballot, she should detail the costs of the proposal and the effects on state and local revenues. In other words, the summary should convey a more concrete sense of the fiscal consequences of the proposal to voters in terms they can understand. As a result, the fiscal summary on the ballot may need to be slightly longer.

We require additional research to determine how best to communicate this relatively complex information. Even for legislative bodies with full-time lawmakers and expert staffs, the fiscal impact of most policies is vital to decision-making and yet acknowledged to be difficult to project. Federal budget rules including PAYGO requirements seek to equip members of Congress with a basic understanding of a proposed policy’s budgetary ramifi-

cations; while they may be better than no such attempt to quantify fiscal consequences, they are subject to criticism.<sup>56</sup> Nonetheless, the federal PAYGO model could serve as starting place to think about how a ballot measure’s fiscal impact statement could provide an effective cue for voters. It may be that such information cannot be conveyed in a way that voters can easily understand with limited attention and knowledge, or that such simple language designed to describe fiscal trade-offs would be too controversial. Nonetheless, we urge more study and consideration of possible ways to increase the usefulness of fiscal impact statements.

Third, and most importantly, the ballot should inform voters of the main groups supporting and opposing a ballot measure. Not only would such information arm citizens with some of the strongest and most effective cues likely to increase voter competence, but the availability of the shortcut on the ballot would also send a powerful signal to voters that they should use the shortcuts.<sup>57</sup> If the legislature placed the measure on the ballot, or the legislature has considered the proposal, the ballot could include the overall vote totals, as well as the votes of the state legislators, identified by name and party affiliation, who represent the voters at that particular polling place.<sup>58</sup> The other key voting cue is support and opposition by groups with well-known reputations for particular ideological positions or economic interests. The voter information guide provides information about proponents and opponents, but these groups are not always the groups we would propose to disclose on the ballot. Instead, voters will learn more if they know the groups that are spending the most money in the campaign on either side of a ballot measure; these are the groups demonstrating a costly commitment to their positions.

<sup>55</sup> Ore. Elec. Code § 250-035. Idaho appears to allow the most words for a ballot measure summary, requiring the purpose of the measure be described in 200 words or less. Idaho Elect. Code § 34-1809.

<sup>56</sup> See, e.g., Elizabeth Garrett, *Harnessing Politics: The Dynamics of Offset Requirements in the Tax Legislative Process*, 65 U. Chi. L. Rev. 501 (1998); Edward D. Kleinbard, *Tax Expenditure Framework Legislation*, 63 Nat’l Tax J. 353 (2010).

<sup>57</sup> Burnett and McCubbins, *supra* note 8, at 23–24.

<sup>58</sup> For a similar proposal aimed at the voter information pamphlet, see Elisabeth R. Gerber, “Reforming the California Initiative Process: A Proposal to Increase Flexibility and Legislative Accountability,” in *Constitutional Reform in California: Making State Government More Effective and Responsive* 291, 301 (B.E. Cain and R.G. Noll eds., 1995).

Proposition 7 is an example of how advocates can manipulate the information provided by the official voter information pamphlet about the groups supporting and opposing a ballot measure. The groups bankrolling the opposition to the renewable energy measure were utility companies, with PG&E and Edison each spending more than \$13.5 million and Sempra spending more than \$2 million.<sup>59</sup> Yet, the opposing groups signing the arguments against Proposition 7, as well as the groups they listed in their arguments as part of their coalition, did not include a single major utility company. Instead, representatives of groups such as the California Taxpayers Association and the California Small Business Association signed the voter pamphlet. While some of these groups might serve as voting cues for ordinary people,<sup>60</sup> none would be as effective as information about the substantial spending by the state's largest energy companies.

In some cases, knowing the top financial backers and opponents of a proposition may not provide effective cues, however. In the case of Proposition 7, the main proponent, Peter Sperling, contributed over \$9 million.<sup>61</sup> Sperling is a part-time resident of California (with a primary residence in Arizona) and a billionaire through his family's involvement in the University of Phoenix.<sup>62</sup> Knowing his identity and involvement would not provide many voters a shortcut to competent decision making. He is not an elected representative or a representative of any business with an obvious economic interest in renewable energy. Even providing his occupation on the ballot—as voter pamphlets did for proponent Donald Aitken, described as a “renewable energy scientist”—would not provide sufficient information about Sperling's interests regarding renewable energy for voters to learn. The individual endorsers of Proposition 7 listed in the voter pamphlet were probably more helpful to voters than knowing the major sources of campaign funding. Those signing the arguments included the co-founder of a labor union and several former and current well-known politicians, although the pamphlet did not provide information about these politicians' party affiliation. The group affiliation of other signers—such as the Californians for Solar and Clean Energy—provided no helpful information. Such groups are merely attractive names designed to appeal to voters and often to veil the real parties in interest behind initiative campaigns.<sup>63</sup>

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cues on the ballot through information about financial and other backers accounts for this complex information environment. We advocate including on the ballot the top three sources of funding on both sides at the time the ballot is printed. If such sources are individuals, and therefore not particularly effective voting cues, the ballot should provide their occupations. If the sources are organizations, the ballot should include information about the business or group that provided financial support over a particular, relatively high threshold. If a group providing funding is a front to shield individuals, businesses, economic interests, or ideological groups from disclosure (for example, “Americans for a Healthier America” funded by the pharmaceutical industry), the ballot should pierce the veil so that the voters receive information about the actual sources of funding. In addition, if any elected officeholder, candidate for office, or committee controlled by such a person has provided more than a minimal amount of funding to support or oppose an initiative, the ballot should disclose that information, along with the office held or sought, and party affiliation.

One serious challenge facing our recommendation is that the state prints ballots 60 to 70 days before an election.<sup>64</sup> It may not be clear at the time

<sup>59</sup> Secretary of State, Campaign Finance, Contributions Received by Californians Against Another Costly Energy Scheme—No on 7, available at <[http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1304245&session=2007&view=received\[t\]](http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1304245&session=2007&view=received[t])>.

<sup>60</sup> For example, the Taxpayers Association has a well-known political brand name.

<sup>61</sup> Secretary of State, Campaign Finance, Contributions Received by Yes on Proposition 7—Californians for Solar and Clean Energy, available at <<http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1302703&session=2007&view=received>>.

<sup>62</sup> See Forbes List of Billionaires, #562 Peter Sperling (Mar. 11, 2009), available at <<http://www.forbes.com/lists/2006/10/RQWL.html>>.

<sup>63</sup> See Elizabeth Garrett and Daniel A. Smith, *Veiled Political Actors and Campaign Disclosure Laws in Direct Democracy*, 4 Election L.J. 295 (2005).

<sup>64</sup> This timeline develops from the interplay of several statutory provisions, including the last date for measures to qualify for the ballot (Cal. Elec. Code §§ 9016, 10403); time provided for public inspection of the ballot (id. at § 13313); the need to send ballots abroad to absentee voters (id. at § 3103); and the requirements surrounding the vote by mail procedure (id. at § 3001). Telephone Interview with Diane Jones, Voter Services Manager, Sacramento County, conducted by Jonder Ho, Feb. 9, 2010 (notes on file with authors).

the state prints the ballots who the major funders of the campaigns will be. Moreover, political actors seeking to avoid publicity on the ballot can wait to make substantial contributions until after the ballot has gone to the printer. Such delay would not hamper many campaigns because the groups or individuals backing the campaign could promise future financial support so the consultants running the campaign could enter into contracts to spend the money with confidence. While the significant cost of funding the petition circulation drive occurs early in the campaign, major expenditures for broadcast advertisements, political consulting, and slate mailers happen toward the end of the campaign. It is difficult to compress production time for ballots because there must be a period to publicly display the ballot, to hear challenges, and to translate the ballot into several foreign languages.

Although technology may reduce the time between the finalization of a ballot and the election period, we do not expect California to adopt Internet voting or other technological advances anytime soon. If the state must continue to produce ballots more than two months in advance, the additional information provided on the ballot that we propose above may not be helpful enough for voters to justify its addition. Providing more information on the ballot is not costless; it lengthens the ballot and the time for voting, thereby contributing to voter fatigue and, on Election Day, the length of time people must wait to enter the voting booth. As more Californians vote by mail, however, the state could provide this information via the Internet, perhaps with instructions on the ballot guiding voters to the Web site.

A second challenge to our proposal is that, if accepted, there will be opportunities for political actors to manipulate the additional information to serve their purposes. As we outline below, we recommend relying on a nonpartisan or bipartisan entity for discretionary aspects of our proposals. We have already pointed out that officials are often interested in the outcome of ballot measure elections and, even when they are disinterested, cannot necessarily achieve neutrality. Members of a nonpartisan or bipartisan entity will not be exempt from these human imperfections, but relying on them is intended to increase the likelihood that the information will assist voters rather than one side or the other in the campaign.

### *B. Delegating the power to draft ballot titles and summaries to nonpartisan institutions*

Our second proposal is to transfer the responsibility of writing ballot titles, summaries, and other information away from elected political officials, such as the Attorney General and Secretary of State in California.<sup>65</sup> Most states allocate this responsibility to elected, partisan state officials.<sup>66</sup> Others allow more power to individuals necessarily on one side of the issue, such as those in which the proponents of the initiative write the official title and summary, with review by a state official.<sup>67</sup> The process is nearly always political, either overtly by involving the proponents of the proposition or inevitably by delegating the power to elected officials with partisan goals. Yet, the ballot obscures the involvement of partisan actors with political agendas and reinforces the sense that the titles and descriptions of the measures are impartial and removed from the give-and-take of politics.

To reduce the influence of political actors over the crucial text that appears on the ballot, we recommend that California empower a nonpartisan, unelected entity with the responsibility of devising ballot titles and summaries. This procedure should be followed for all ballot measures—those initiated by the people through petitions and those placed on the ballot by the legislature. This proposal is not without precedent, although it is unusual. Utah delegates the job of drafting “impartial” ballot titles to the Office of Legislative Research and General Counsel.<sup>68</sup> Colorado has adopted a hybrid process in which a Title Setting Board, composed of the Secretary of State, the Attorney General, and the head of the Office of Legislative Legal Services, drafts initiative titles and summaries.<sup>69</sup> We do not expect that mov-

<sup>65</sup> For general discussion of reforms in election rules to shift responsibilities to nonpartisan and unelected officials, see Daniel P. Tokaji, *The Future of Election Reform: From Rules to Institutions*, 28 *Yale L. & Pol’y. Rev.* 125, 131–34, 144–53 (2009).

<sup>66</sup> M. Dane Waters, *Initiative and Referendum Almanac* 16–17 (2003).

<sup>67</sup> This is the case in Arkansas, Florida, Illinois, and Ohio. In Arizona, the proponent writes the title but not the summary. *Id.* at 17.

<sup>68</sup> Utah Elec. Code § 20A-7-209.

<sup>69</sup> Co. Elect. Code §§ 1-40-106, 1-40-107; Richard J. Ellis, *Democratic Delusions: The Initiative Process in America* 152 (2002).

ing drafting responsibility to a less partisan entity will eliminate all challenges. There is no guarantee that even a nonpartisan entity will always be disinterested. Even when it is, contending parties will seek advantage through favorable wording, and even relatively neutral language can prompt disagreement.<sup>70</sup> Measures can be accurately summarized in multiple ways. Presumably, however, the process of drafting the influential ballot title and summary is less susceptible to partisan manipulation when it is delegated to nonpartisan, expert staffs rather than elected officials.

In California, the job of drafting ballot titles and summaries could be delegated to the Legislative Analyst,<sup>71</sup> who is already involved in the initiative process through the preparation of fiscal impact statements. The Legislative Analyst has sole authority to draft an analysis of each proposal for the voter information pamphlet and to advise voters of the effect of a “yes” or “no” vote through a neutral statement of a few sentences.<sup>72</sup> The office has existed for nearly seven decades, served as the model for the federal Congressional Budget Office, and has a reputation as a repository of expertise and nonpartisan perspectives.<sup>73</sup> The high regard with which the office is held and its reputation for independence have led to proposals that the responsibility to draft ballot titles and summaries for initiatives be delegated to the Legislative Analyst.<sup>74</sup>

Another possibility is delegating the power to prepare titles and summaries to the Office of Legislative Counsel; its staff provides nonpartisan legislative services to elected lawmakers, including bill drafting and legal advice on statutes and other legislative activity.<sup>75</sup> In addition, the Office offers drafting advice to proponents of ballot measures when 25 or more voters request assistance. Indeed, the Legislative Counsel will draft the text of the measure if proponents request her to do so and she determines that the proposition is reasonably likely to qualify for the ballot.<sup>76</sup> Some observers, however, perceive the Legislative Counsel to be too closely aligned with lawmakers, who are the main clients of the office, and therefore not sufficiently impartial.

Alternatively, California could rely on a nonpartisan or bipartisan commission to write ballot titles and summaries. For example, given sufficient resources, the legal staff of the Fair Political Practices Commission (FPPC) could draft titles and sum-

maries. The commission has five members with representatives of both major parties appointed by the Governor (two appointees), Secretary of State, Attorney General and Controller. They each serve one four-year term without the possibility of reappointment. Alternatively, a new nonpartisan body could be created for this purpose. Garrett and McCubbins have proposed a substantial reform of the initiative process that would include establishing a Citizens Initiative Implementation Oversight Commission (CIIOC) to ensure more effective implementation of ballot measures that voters have passed.<sup>77</sup> Each successful initiative would name one person to serve a single term on the CIIOC. The commission’s staff could play the primary role in drafting titles and summaries, and the CIIOC would hear the first appeal from displeased parties to reduce the amount of litigation in the courts.

The advantage of using a commission such as the CIIOC is that its jurisdiction focuses solely on the initiative process, unlike the other entities discussed

<sup>70</sup> Colorado has seen an increasing number of challenges to ballot titles and summaries. Its Supreme Court has frequently been willing to revise the wording, often in conjunction with a finding that the measure violates the single-subject rule. Ellis, *supra* note 69, at 152. Utah’s courts have also been aggressive in reviewing and rewriting titles. *Id.* at 156.

<sup>71</sup> For a description of the Office of Legislative Analyst, see <<http://www.lao.ca.gov/laoapp/main.aspx>>.

<sup>72</sup> The Legislative Analyst submits the analysis to a committee of five citizens, including an expert in education, a bilingual citizen, and a professional writer, to ensure that the average voter can understand the text. Cal. Elec. Code § 9087.

<sup>73</sup> See Elizabeth G. Hill, *California’s Legislative Analyst’s Office: An Isle of Independence*, Spectrum: The Journal of State Government 26, 27–28 (Fall 2003). Ms. Hill is a former Legislative Analyst.

<sup>74</sup> See, e.g., California Assembly Constitutional Amendment 20, proposed by Roger Niello (R) in 2009 (proposing that the Legislative Analyst have primary responsibility for ballot titles), available at <[http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_0001-0050/aca\\_20\\_cfa\\_20090622\\_092656\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/aca_20_cfa_20090622_092656_asm_comm.html)>.

<sup>75</sup> See Office of Legislative Counsel, Firm Overview, available at <<http://www.legislativecounsel.ca.gov/portal/site/OLCInternet/menuitem.5fb4241e84ab3773facec79ae131b65a/?vgnnextoid=a249142510585110VgnVCM1000001e136ba5RCRD&vgnnextfmt=default>>.

<sup>76</sup> See Waters, *supra* note 66, at 142. Furthermore, current law delegates the responsibility of writing ballot titles and summaries to the Legislative Counsel in circumstances where the Attorney General is a proponent of the measure. Cal. Elec. Code § 9003.

<sup>77</sup> Elizabeth Garrett and Mathew D. McCubbins, *The Dual Path Initiative Framework*, 80 S. Cal. L. Rev. 299, 332–40 (2007).

above, which have jurisdiction over aspects of the regular legislative process or over elections and campaigns generally. Moreover, all the members of the CIIOC or some similar specialized commission will have been active in the initiative process, albeit to pursue a variety of policies. Therefore, they may be more sensitive to the kind of information that will empower voters to make competent decisions. Importantly, the commission would include no elected officials and the ideology of members would be diverse since many different political and economic interests use the initiative process to effect policy change.

Notwithstanding the evidence that political actors understand the importance of information on the ballot and our own sense that it affects outcomes, we acknowledge the need for more research. In particular, we need to survey voters with regard to additional ballot measures. We also would prefer to conduct panel studies of voters during an entire election to estimate what they learn, when they learn, where they learn, and how they use what they know to form opinions. We intend to focus questions on the ballot itself, as well as other sources of infor-

mation, to attempt to disentangle the influence of various sources of cues.

Despite the challenges outlined above, policy makers should begin to focus on the question of how to provide crucial information to voters at the critical time of voting and in a way that encourages them to use such ballot information, either as a credible cue or as verification for the trustworthiness of information obtained in other ways throughout the campaign. In our view, more information would empower the knowledgeable voter, who is now lost in the noise of campaigns, unable to use credible information to vote more competently than voters with no information at all.

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