

Environmental Ballot Measures and their Effects: Three Cases

By: Shauna Reilly Ryan Yonk, and Kayla Harris

Environmental ballot measures provide a unique opportunity for citizens and interests groups who feel their preferred policies aren't being realized by the legislature to enact their policies. Since the 1970's the number of conservation groups have increased along with their role in shaping environmental policy. Because questions over land use and environmental policy often pit conservation against economic growth the debates around these measures spirited. This is the case with Proposition 20 and Proposition 65 in California explored in this paper.

The use of ballot measures to enact policy was first widely implemented by the Populist and Progressive reformers in the early twentieth century. Their intention was to remove the corrupting influence of money from politics. Quite the opposite has happened, however. Smith and Tolbert (2007) argue that money may play a large role in direct democracy than it does in the traditional legislative process. They are becoming a major source of policy making in several states such as California, Oregon, and Washington, among others. But as these cases will demonstrate, that money does not always outweigh the will of the people – particularly when there are health benefits to doing so.

The use of ballot initiatives has been gaining momentum since the 1980's; growing from fifty-seven statewide ballot measures in 1980 to the ninety-four that were on the ballot in 2008 (Initiative and Referendum Institute 2009).

As ballot measure use across the United States rises, these measures have had a significant impact on state policy in a variety of areas - namely economic and social

WORKING DRAFT

policy. This means that the use of these measures has a powerful influence on the development of the state. Thus, if these are controversial topics and they have an impact on participation, this can be a double-edged sword for the state and political activists alike.

Direct democracy elections are subject to the same limitations as other elections (such as information, salience, turnout, etcetera). However, these elections provide an additional dilemma to the electoral agenda as the repercussions of these elections can be substantial and their salience low. This is further exacerbated as the growth of the importance of issue voting has taken hold in the United States (Nie, Verba, and Petrocik 1979), where voters cast ballots based on a specific issue rather than their underlying partisanship and this can be capitalized on when looking at ballot measures. Ballot measures, particularly on controversial issues, can drive the agenda of the voting season, affect voter turnout, and vote choice on other elections (Nicholson 2003; 2005). These have potential to change the political landscape in a state and influence policymaking on a larger scale and long-term.

Beyond the effects of issue voting and agenda setting, ballot measures have an impact on society, particularly when they receive significant media and campaign attention. Smith (2002) measures the salience of different direct democracy measures by looking at newspaper coverage of the ballot the day following the election (1972-1996). He finds that presence of more salient ballot measures increases turnout in midterm years but not presidential. He cites media coverage of state issues and state races are covered at a higher rate when there is not a national race as an explanation. Smith and Tolbert (2004) look at the education of citizens because of direct democracy

WORKING DRAFT

and find that the initiative process educates citizens as well as groups. Additionally, they find that citizens in states with frequent ballot initiatives were more likely to vote in Presidential and midterm elections.

Different electoral situations result in different levels of participation across elections, this is especially true for different electoral timing (primary, midterm and general elections) as well as elections on the same ballot. There are differences in national and state elections (Kelley, Ayres, and Bowen 1967; Kim, Petrocik, and Enokson 1975; Milbrath and Goel 1977; Ranney 1968; 1972; Salisbury and Black 1963; Verba and Nie 1972; Wolfinger and Rosenstone 1978; 1980). National elections have more salience and it must be expected that these different levels of turnout affect participation on statewide propositions (with low salience in regards to elections higher up the ballot).

One of the significant problems that contribute to the discussion about participation in direct democracy are the different motivations behind direct democracy proposals. Scholars have argued about the role of interest groups in the direct democracy process. They suggest that third parties, namely interest groups have used initiatives and referenda to promote their agendas and that the process is around special interests (Schmidt 1989). This has been disputed by different scholars who argue that direct democracy benefits more than these special interest groups (Matsusaka 2004) and that big spending on behalf of interest groups did not change policy, implying that interest groups do not have a big influence over policy (Gerber 1999). After all, even with interest group involvement, initiatives are primarily a citizen driven process

WORKING DRAFT

asking for citizen involvement in policy development both in the petition process and voting.

Regardless of who is driving the process, the effect of ballot propositions, particularly controversial measures, on the electoral outcomes can substantially influence electoral participation on up ticket races. Controversy is at the heart of many political activities in the United States. Controversy has affected Presidential and Congressional approval (Hibbing and Theiss-Morse 1995; Cameron, Cover, and Segal 1990; Overby et al. 1992; Lanier 1995; Segal, Timpone, and Howard 2000), and Judicial appointments (Gimpel and Ringel 1995, Gimpel and Wolpert 1996; Gibson et al. 2003; Reilly 2007). This controversy can be easily translated into the realm of environmental policy because of long-term effects that these types of ballot measures have on industry and environmental landscape in the state. Regardless, the controversy, environmental ballot measures have the potential to upstage other elections on the ticket and change the agenda of the election.

Much of the literature regarding environmental ballot measures covers those proposed in either the United States or Switzerland (Bornstein and Thalmann 2008). The literature regarding environmental ballot measures tends to take a Public Choice approach. Public Choice examines the costs of the proposal and how compare to the potential benefits (Kahn and Matsausaka 1995; Deacon and Shaprio 1975; Bornstein and Philippe, 2008; Helbheer, Niggli and Schmutzler, 2006; Fischel, 1979; Thalmann 2004; Bornstein and Lanz 2008). Following the literature, our paper will also use a form of Public Choice to analyze our case studies.

WORKING DRAFT

Kahn and Matsusaka's (1995) results are consistent with much of the other literature in the environmental ballot measure realm. They confirm that individuals who have increased levels of education, income, and do not work in a resource dependant industry are more likely to support ballot measures that aim to increase protections for the environment. Individuals with these socioeconomic characteristics view the environment as an inferior good; they can easy afford to provide their own green spaces and other goods that the environment provides. Thus, they are willing to pay the higher costs often associated with these measures because they can afford them. In addition, these individuals also tend to live in urban areas; have concerns over urban sprawl; and would prefer public policies that create a shared green space (Kline 2006).

Other work in this area (Green et al. 1996) has found that residents who permanently live in a state are less supportive of land use regulations than those living in that state part-time. The reason for this is logical; those living full-time in a state are further subject the economic conditions of that state and thus less likely to support measures that could negatively affect them. Support for an initiative is also dependent on the interest groups that lend their support to the measure (Gerber and Phillips 2003). The authors also find that individuals are more like to vote for a public good if they were close to the proposed site of that public good (Gerber and Phillips 2003), i.e. this means that citizens support what is going on in their own backyard than somewhere far removed.

The state of California is often the subject of papers looking at environmental ballot measures because of overwhelming use of initiatives to set environmental and

WORKING DRAFT

land use policies (Kahn and Matsusaka 1995; Deacon and Shapiro 1975; Kline 2006; Glickfled, Graymer, and Morrison 1987; Fulton et al. 2002). The use of ballot measures to decide land use and aid in city planning increased in the late 1980's in California (Glickfled, Graymer, and Morrison 1987). And since the use of 'ballot box zoning' has grown steadily in California, more than any other state (Fulton et al. 2002). Another issue these environment ballot measures are concerned with is preserving open space. Since 1999, 1070 open space initiatives have been put in front of voters (Kline 2006). Kline finds a positive relationship with the desire to preserve open space, through initiatives is a result of the population density of the community, and the income and education of each citizen.

History of Environmental Ballot Measures

South Dakota and Oregon were the first two states to attempt an environmental initiative in 1908. In South Dakota, the previous year the Governor signed a measure making the killing of quail illegal for the next five years (Williamson 1998). The next year (1908) the citizens of South Dakota passed a referendum reversing this law. That same year Oregon passed two initiatives regarding two different fishing techniques (Williamson 1998). These animal specific conservation efforts changed the face of the environmental effects and began larger conservation efforts.

Few other initiatives were presented from the early 1900s to the late 1960s when the conservation movement in the United States really began to proliferate and gain ground. Between 1970 and 1985 saw almost fifteen environmental initiatives brought to voters by citizens every election year. By 1996, forty-four environmental

WORKING DRAFT

ballot measures regarding either land conservation or animal protection were in the process of trying to get on the ballot (Williamson 1998).

In Arkansas and Missouri initiatives were circulated that would have directed a portion of their state's sales tax towards wildlife management (Williamson 1998). In 1995, Maine passed an initiative that created a conservation lottery to help with wildlife conservation efforts. In addition, that year Texas passed a proposition allowing expanding the open space tax evaluation to include land used for wildlife conservation.

Petitioners will commonly use initiatives to prohibit the hunting of specific animals. In state across the West, citizens have passed laws banning the hunting of: bears, lions, bobcats, lynxes, foxes, and wolves (Williamson 1998). At the same time, initiatives were passed reversing laws against the hunting of those same animals.

Overall citizens have used ballot initiatives to protect wildlife, regulate wildlife management, and direct the use of tax revues into conservation activities (Williamson 1998). Voters have seldom used this process to change how fees charged for access to wilderness, state parks, and other outdoor recreation areas are charged or used.

The use of environmental ballot measures has increased in coordination with the growth of the conservation movement. Often legislators are slow to enact policy that threatens to slacken economic growth. In response to the failure to pass what conservationists see as necessary policy, they circumvent the traditional lobbying process and bring environmental and health protection and land use policy measures directly to the public through the initiatives process.

Approach

WORKING DRAFT

In this paper we will explore the history and long-term effects of two case studies of environmental ballot measures in California, Proposition 20 in 1972 and Proposition 65 in 1986. Because of the breadth of these cases, we will use the Institutional Analysis and Development Framework. Developed by Elinor Ostrom this Framework allows for analysis across multiple policy levels. It is often employed when reviewing environmental dilemmas and has its roots in Public Choice methodology.

Institutions are the central focus of this Framework. Ostrom, however, focuses on the economic definition of institutions known as

“a widely understood rule, norm, or strategy that creates incentives for behavior in repetitive situations ... Institutions may be formally described in the form of a law, policy, or procedure, or they may emerge informally as norms, standard operating practices, or habits.” (Polski and Ostrom 1999).

In our case studies the formal rules we will examine are the actual Propositions themselves, as well as the rules used in the court cases that followed each of these Propositions.

First examined will be the environmental in which these initiatives were proposed, or as Ostrom calls it, the action arena. Also examined are the actors pushing for the implementation of these two Propositions. To understand the outcome of these measures we will review the incentives behind why the actors chose to engage with the Proposition as they did. The tools these actors used to attempt to reach their goal will also be reviewed, as well as their adeptness at using these tools. Finally, the outcome will be analyzed. Here is where the evidence of the public choice model will be most apparent. We will review the costs and benefits of these two Propositions and their long-term effects on the state of California.

WORKING DRAFT

Proposition 20

Conservations groups, such as the National Sierra Club began to organize in the late nineteenth and early twentieth century (Sierra Club n.d.). Many of these groups did not achieve national recognition until the passage of major environmental legislation in the 1960s and 1970s. These major successes include the Wilderness Act, National Environmental Policy Act, Clean Air Act, Clean Water Act, and Endangered Species Act (Sierra Club n.d.). President Nixon did not only respond to these concerns with legislation, but also with funding for research to help with decreasing pollution (Lutrin and Settle 1975).

California became the United States' most populous state in 1962, and with that came a host of health and environmental complications. To illustrate their frustrations at California's environmental situation, students at San Jose University bought a new car and buried it to demonstrate their anger at the pollution automobiles cause as the "great polluter" (Lutrin and Settle 1975, 354). One author, Curt Gentry, noted "the greatest irony of all is that no earthquake or act of God was necessary to destroy California. Man, with his ingenuity, was managing to do it all by himself" (354).

In 1962, Pacific Gas & Electric (a California utility company) attempted to build a nuclear power plant on the northern coast of California, a place called Bodega Head (Kortum 2003). Their plant was never sited, due in part, to protests from local and national environmental groups (Kortum 2003). Two years later an oil spill off the shore of Santa Barbara compounded these events. Citizens and conservation groups alike raised concerns over the future health of California's coastline. This shift in

WORKING DRAFT

public opinion in combination with series of environmental disasters and mishaps led to several environmental groups getting directly involved in state politics.

In response to these events the Sierra Club had been pushing for stricter environmental regulations, through both the legislature and courts, both with limited success (Lutrin and Settle 1975). Citizens formed a group in 1968 termed the California's Organized to Acquire Access to State Tidelines (COAAST) in response to a development that was allowed to go in, despite petitions to require public access to the beaches surrounding the development site (Kortum 2033). COAAST created an initiative that would have required all future development on shorelines would allow public access, the measures was defeated.

Two state representatives, John Dunlap and Alan Sieroty noticed these actions. Together they pushed for the creation of a Coastal Commission and eight coastal protection bills (Lutrin and Settle 1975, 362). All these bills failed due to protests from the California Real Estate Association, League of California Cities, and the County Supervisors' Association and the energy sector (Franklin et al. 1974; Kortum 2003). In addition to these bills, several laws regarding air pollution had been passed in 1970 and 1971 and had not been effectuated (Lutrin and Settle 1975). It was the text of one of these bills, Assembly Bill 1471, that served as the basis for Proposition 20 (Kortum 2003). In the judiciary, courts were cautious in the mandates they passed down, and often required evidence that there had been direct harm on the environment before allow lawsuits to go through.

As of 1975, 60 percent of California's almost 1,100-mile long coast was privately owned. The public could access 25 percent of the remaining coast. And the

WORKING DRAFT

final 15 percent was federally owned, and often locked up in military ownership (Lutrin and Settle 1975). The implications of federalism result in this final 15 percent being exempted from this law because Prop 20 would only have affected state lands. Previous to this Proposition, local governments managed most coastal areas, leading to a patchwork of management policies (Lutrin and Settle 1975). The goal of Proposition 20 was to centralize this management, with the hope it would lead to better conservation policies.

Needless to say, citizens and conservation groups were frustrated with their government's failure to act on their concerns and chose to bring their ideas to the people directly through ballot measures. In the 1972 general election two measures regarding the environment were on the ballot, the first two citizen-led, environmental initiatives to ever be on the ballot in California (Lutrin and Settle 1975). One was Proposition 9, the 'Clean Air Initiative', not discussed in this paper, and Proposition 20, the 'California Coastal Zone Conservation Act' (CCZCA) (Lutrin and Settle 1975).

Proponents

A group called the California Coastal Alliance (CCA) organized Proposition 20 (Lutrin and Settle 1975). This group was formed out of twelve environmental groups located in the California area and with the work of Dunlap and Sieroty, 110 other organizations initially joined this group (Kortum 2003). Jane Adams and Dr. William Kortum worked together to head up this organization (Kortum 2003; Lutrin and Settle 1975).

The text of the Proposition was similar to Assembly Bill 1471 and appeared in its official form as seen below.

WORKING DRAFT

“Creates State Coastal Zone Conservation Commission and six regional commissions. Sets criteria for and requires submission of plan to legislature for preservation, protection, restoration, and enhancement of environment and ecology of coastal zone as the area between the seaward limits of state jurisdiction and 1000 yards landward from the mean high tide line, subject to specific exceptions. Prohibits any development within permit area without permit by state or regional commission. Prescribes standards for issuances of denial of permits. Act terminates after 1976. This measure appropriates five million (\$5,000,000) for the period from 1973 to 1975. Financial impact: Cost to state of \$1,250,000 per year plus undeterminable local government administrative costs.” (Lutrin and Settle 1975, 364).

Proposition 20’s purpose was to coordinate the development along the coast and promote a managed approach to development that balanced conservation with development (Franklin et al. 1974). CCZCA created a statewide commission and six regional commissions that reviewed all new developments that could potentially affect California’s coastlines. This Act would have precluded all development within 3,000 feet of a coastline, unless a permit from one of the commissions had authorized it (Lutrin and Settle 1975).

Under this Act, if a developer is proposing the construction of a new development, they must first apply for a permit from the regional commission in their county. Any applicants with what is considered a “substantial” development then a public hearing will be held. The regional commission will decide if the development plans fit into their overall regional coastal plan, which they will have previously developed. Then a staff member will be responsible for writing a report on the development and the commission will vote as whether to allow that company permit or not (Franklin et al. 1974). The state commission is responsible for making decisions on permit appeals, and formulating the Coastal Zone Conservation Plan. A Master Plan stating all statewide coastal policies was due to the legislature by December 1, 1975.

WORKING DRAFT

Permits were not necessary for single-family homes undergoing less than \$7,500 in renovations. If the renovations are to exceed \$25,000 then an administrative permit must be sought (Franklin et al. 1974). One unusual instance in which a permit must be sought is when the elevators inside a building are to be repaired, although exterior work on a building does not require a permit.

In order to get a permit developers needed to demonstrate there would not be adverse environmental effects. They would also ask if the area around the area around the development site in question was already quite developed. Next, would the building obstruct the view of the ocean, decrease access to ocean? Would it lead to increased traffic? Would it lead to restraints on wildlife breeding, water quality? Finally, are there other areas where this structure could be developed (Franklin 1974).

Opposition

Most vocal against the CCZCA were land developers. Ryland Kelly, a small development representative and Lee Syracuse of the California Builders Association, expressed concern that this Act would inhibit California's ability to grow (Lutrin and Settle 1975). The California Chamber of Commerce also opposed this measure along with several city and county governments (mentioned above) over fears it would restrict them and add unnecessary bureaucracy. The *San Francisco Chronicle*, the *San Diego Union*, and *San Diego Evening Tribune*, all major papers at the time, opposed this measure. Most of the electrical providers opposed the CCZCA: Pacific Gas & Electric, San Diego Gas and Electric, Signal Oil, and Southern California Edison. A majority of the rest of \$2 million came from oil and gas companies. (See Lutrin and Settle 1975 pages 369-370 footnote 40 for more information about donations.)

WORKING DRAFT

It was estimated by the supporters that the opposition spent nearly \$2 million dollars. Of this \$353,000 was donated by land developers who wanted to keep land open. One real estate company was so opposed to this measure that they donated \$53,000. Labor unions also demonstrated their aversion to this measure by donating \$143,000 (Lutrin and Settle 1975).

Those against the CCZCA argued that it would unfairly sequester private lands in the law's attempt to grant access to the public. The moratorium that would be placed on development within these areas to allow the commissions time to set up their operations would only hurt economic growth and tax collection, eventually leading to a recession across the counties affected (Lutrin and Settle 1975). As stated above, concerns were also raised about the creation of an entirely new level of bureaucracy.

Supporters

Despite the massive coalition organized under CCA there were significant divisions among the environmental groups. CCA advocated for extreme conservation and the prevention of all future development, while the Sierra Club searched for middle ground. Previously mentioned Dr. Kortum and Adams tried to unite these factions under the Coastal Alliance. Adams had previously worked on a measure to "Save the Bay" that has successfully ended in a commission to work towards protection of the San Francisco Bay (Lutrin and Settle 1975). Also supporting this measure were sixty state legislators.

In total 1,500 member organizations eventually joined CCA. Other members included, the Planning and Conservation League, the League of Women Voters, the California P.T.A. United Auto Workers, and the California Roadside Council; quite a

WORKING DRAFT

diverse group (Lutrin and Settle 1975,). Together these groups collected 403,000 signatures and got Proposition 20 on the ballot. There was also a massive public relations campaign mounted, using slogans such as, “Where’s the Beach?” and “Don’t Lock Up the Beach, Vote No.” Ansel Adams, a famous nature photographer and Hank Ketchum, the author of *Dennis the Menace* cartoons donated their time to the cause.

This massive coalition was able to accomplish much more grassroots lobbying of the public than the major industries opposed to the measures. Thousands of volunteers formed phone trees and called voters on behalf of Proposition 20 asking for their votes. All of this support gave Prop 20 supporters quite the advantage because they had wide avenues from which they could get their message to the public.

In official literature, supporting Prop 20 proponents cited the “haphazard development”, wildlife that had been poisoned by pollution, and the lack of public access to the beach as their reasons for this bill (Lutrin and Settle 1975, 364). They further promised not to prevent development, only to create a permitting process to regulate access to the waterfront. Additionally those building within 1000 yards of the beach would have to show they would not negatively affect the environment.

Voter Reaction

The Field Research Corporation conducted two polls to collect public opinion on the twenty-two initiatives to be on the ballot in November. The first of these was on October 1, 1972 and found that only 58 percent of respondents were aware to any degree about any of the ballot measures. This general lack of awareness was to be expected due to the number of ballot measures, and their diversity; issues ranged from

WORKING DRAFT

the death penalty, to property taxes and of course, the coastal protection measure (Lutrin and Settle 1975).

The poll found that awareness for the coastal protection measure correlated with higher levels of education and income. The second poll conducted on October 31 shows that levels of awareness had not changed significantly. Individuals supporting the measure increased their support by 28 percent, from 8 percent to 36 percent in one month's time. A similar result was found among those opposed; opposition increased from 4 percent to 25 percent, a 21 percent increase (Lutrin and Settle 1975).

Results

The measure passed with 76% of eligible voters cast a ballot regarding this measure; it was approved by 55% of those voters (Lutrin and Settle 1975, 352). After citizens voted on this measure the legislature voted over if they should carry out the measure or not, and it narrowly passed (Kortum 2003). After which a State Commission was created, the state Assembly, Senate and Governor equally appointed the twelve members of that Commission. At this time the provision slowing developing also began and any companies hoping to develop within the controlled area would need to obtain a permit (Franklin et al. 1974).

Legal Dispute

The CCZCA and the California Coastal Commission has been locked in numerous legal battles since its inception (Ellison 2010). It is one of the most litigated against land-use authorities in the United States (Ellison 2010). In our case study, however, we will only discuss one of these cases that made it all the way to the U.S.

WORKING DRAFT

Supreme Court in 1987. It has been one of the few land-use cases that the Supreme Court has agreed to hear.

In 1987, a California resident, Mr. Nollan, applied for a permit from the California Coastal Commission (CCC). He had bought some beachfront property under the condition that he demolishes the dilapidated bungalows located on the property. He had agreed to do and instead would be building a three-story house, intended to match the houses in the area (*Nollan v. California Coastal Commission n.d.*). The CCC agreed to grant him a permit on the condition that he place a permanent easement, or passage on his beach property to allow citizens to pass between the two public beaches on either side of the property.

Nollan did not agree with this decision. He sued claiming that the CCC was depriving him of his property without due process (*Nollan v. California Coastal Commission n.d.*). He stated that the CCC had not demonstrated evidence that his development would negatively impact public access to the beach. After failing to receive a permit without the condition to provide an easement Nollan took the case to a trial court (*Nollan v. California Coastal Commission n.d.*).

In the first trial between Nollan and the CCC the court ruled in favor of Nollan (*Nollan v. California Coastal Commission n.d.*). The CCC disagreed with this decision and took the case to the Court of Appeals. Here the Appellate Court reversed the decision and agreed with the California Coastal Commission (*Nollan v. California Coastal Commission n.d.*).

Nollan, of course, did not agree with this reversal and petitioned the Supreme Court to hear his case; the Court agreed (*Nollan v. California Coastal Commission*

WORKING DRAFT

n.d.). The first issue the Court was to decide was, if a land use permit requiring an easement must be contingent on a legitimate government interest if it is not to constitute a taking by the government. The second issue was, because the original law (CCZCA) does not require easements as a condition on which permit can be issued does that mean the requirement in this case constitutes a taking. A taking in this case is a violation of the Takings Clause (Nollan v. California Coastal Commission n.d.). The ruling in this case was close, 5-4 reversing the earlier ruling and ruling in favor of Nollan (Nollan v. California Coastal Commission n.d.). The author of the Court's decision, Justice Scalia wrote that on both issues the state was violating the Taking Clause. He wrote, "The lack of a nexus between the condition and the original purpose for requiring the building restriction alters that purpose and causes the condition to constitute a taking (Nollan v. California Coastal Commission n.d.). The majority ruled that the taking didn't substantially advance government interests. Ultimately if the state would like an easement on this property they should pay for it (Nollan v. California Coastal Commission n.d.). In the dissent the Justices wrote that the state could exercise the power to require an easement under its policing authority (Nollan v. California Coastal Commission n.d.).

Analysis

Policy Arena

The citizens involved in this initiative took action after years of what they considered to be inadequate policy and failure by their representatives to take action. Citizens in California use initiatives quite frequently, and the success of Proposition 20, as one of the first environmental ballot measures, led the way for many more in its

WORKING DRAFT

wake. At the time this initiative was presented the economy was still doing well. The economic situation made it easier for those pushing Proposition 20 to force the debate around the initiative to center around the environmental concerns.

Actors

The industries opposed to this measure were obviously concerned about the economic effects. Developers such as Ryland Kelly were worried about the effects on housing development. Suddenly there would be a commission that could easily deny their building permits. The permitting process would add cost and time to any developments they were hoping to build. Oil and gas companies would suddenly be limited if not completely prevented from developing oil and gas sites along the coast. Utility companies, such as San Diego Gas and Electric worried about their access to cheap oil and gas, if energy development were to be restricted by Proposition 20. Also concerned with the economic costs was the California Chamber of Commerce.

The individuals and groups that pushed for Proposition 20 believed that the benefits protection would afford the coast and those who visit it would far outweigh the potential economic costs. Adams, who had already spent years fighting for protection for the San Francisco Bay, already demonstrated that for her the virtues associated with environmental protection were worth spending years to get. Dr. Kortum believes that the California coast is a common area that should be available to all citizens (Kortum 2003). As chair of the CCA, it was worth all the time and effort he put into passing this bill to receive the environmental protections it would provide. Finally, all the volunteers, the thousands of volunteers who spent hours calling,

WORKING DRAFT

forming grassroots coalitions weight the potential economic costs of stemming developing and thought the costs of the permitting process were worth the benefits.

Tools

For those opposed to this measured their most effective tool was money. Two million dollars is a significant amount of money, and demonstrates exactly how much these businesses thought they could lose if this measure were to pass. Also, because the economy was doing well, it was difficult to make arguments about how this initiative would harm the economy.

There were no figures available on the money spent by the California Coastal Association. Instead the use of coalitions as an informal tool was more important. Strange bedfellows emerged as Proposition 20 was placed on the ballot. The group supporting this measure grew from 110 to 1,500. The reason such a myriad of groups supported this initiatives was because they saw benefits for them if it were to pass. The United Auto Workers, the California Roadside Council, and the California P.T.A. might seem at first to be disparate groups with little in common; they do, however, all stand to benefit. The first two groups would benefit from the increased traffic driving down Highway 1, hoping to catch a glimpse of the ocean. The P.T.A. would benefit because parents would have more places to take their kids when they aren't in school to recreate. The combination of these strange bedfellows allows for grassroots organizing across a wide variety of people.

Another informal tool these actors use well was the public campaign they waged. Citizens were walking the streets wearing t-shirts with their slogan "Save the Beach". Those backing this measure had built a powerful and persuasive campaign

WORKING DRAFT

where they framed themselves as the caring individuals, and the big industries opposed were viewed as self-interests companies worried about future costs.

Outcome

As the case, *Nollan v. California Coastal Commission* demonstrates the requirements CCZCA has placed on private landowners. Whether it is right for the CCA to require private landowners to place easements on their land or not, it does impose a cost that private landowners are forced to cover. CCZCA has also led to a massive bureaucracy; CCC now has a backlog of over 1,500 cases and employs 125 staff. In 1980 the CCC employed 212 people (Ellison 2010). Another cost that has been imposed on citizens is the cost of litigation. Each time the CCC goes to court it is the taxpayers that cover the legal fees for the commission.

In Malibu, California some citizens appreciate the fact that CCZCA has prevented an unwanted nuclear plant and a freeway. These have come as a cost. It takes years and significant legal fees in order to obtain the necessary permit to develop that area. Per the Act much of Malibu has been designated an Environmental Sensitive Habitat area and full-scale urbanization has been prevented in most areas (Malibu Development and Coastal Act 2012).

There are of course also the environmental gains. It is impossible to know exactly in what state the environment would be without CCZCA. California does have one of the most beautiful and untouched beaches in the world because of the protections and oversight CCZCA affords. Doubtless, the habitats of several species have been protected and well as their livelihoods. Beach access has also been preserved, and with that comes economic benefits in the form of tourism.

Proposition 65

Proposition 65, the "The Safe Drinking Water and Toxic Enforcement Act of 1986", was passed as an initiative by California voters in 1986 by a 63%-37% margin (California Secretary of State 2012). The main goals of this act was to prevent the pollution of drinking water by toxic substances and change who was responsible for setting safe chemical exposure levels from the producers of goods to California's Office of Environmental Health Hazard Assessment (OEHHA) (Guber 2001; Lovett 1994). Proposition 65 contained the following language in the 1986 ballot initiative:

SECTION 1. The people of California find that hazardous chemicals pose a serious potential threat to their health and well-being, that state government agencies have failed to provide them with adequate protection, and that these failures have been serious enough to lead to investigations by federal agencies of the administration of California's toxic protection programs. The people therefore declare their rights:

- (a) To protect themselves and the water they drink against chemicals that cause cancer, birth defects, or other reproductive harm.
- (b) To be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.
- (c) To secure strict enforcement of the laws controlling hazardous chemicals and deter actions that threaten public health and safety.
- (d) To shift the cost of hazardous waste cleanups more onto offenders and less onto law-abiding citizens.

The people hereby enact the provisions of this initiative in furtherance of their rights. (Hastings' California Ballot Measure Databases 1986)

This measure regulated substances listed by the California Environmental Protection Agency as causing cancer or birth defects. This measure required administration and monitoring to be done by OEHHA (California Legislature 2003).

This measure had two regulatory components: one that prohibited businesses from knowingly discharging toxic substances into drinking water or anywhere that would allow these toxins to transfer into water sources. Second, the Act required

WORKING DRAFT

businesses to provide warnings about these toxic substances in their products (Guber 2001). Furthermore, this measure provided some discussion about how the financial end of the measure would be addresses.

The act [The Safe Drinking Water and Toxic Enforcement Act of 1986] imposes civil penalties upon persons who violate those prohibitions, and provides for the enforcement of those prohibitions by the Attorney General, a district attorney, or specified city attorneys or prosecutors, and by any person in the public interest. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, 50% of the penalties collected pursuant to that act are required to be deposited in the Hazardous Substance Account, 25% are to be paid to the prosecuting office or the person who brought the action in the public interest, and 25% are required to be used to fund the activities of certain local health officers. (California Legislature 2003)

The Proposition was intended by its authors to protect California citizens and the State's drinking water sources from chemicals known to cause cancer, birth defects or other reproductive harm, and to inform citizens about exposures to such chemicals. Proposition 65 requires the Governor to publish, at least annually, a list of chemicals known to the state to cause cancer or reproductive toxicity (to see how they are determined see Pease n.d.) (OEHHA 2007).

Consequences

The majority of the problems associated with Proposition 65 came from the enforcement of the measure. One the major concerns with this measure is the burden placed on businesses rather than the government to provide scientific evidence on these substances. This gave business both the incentive to cooperate with government but also increased the requirements for business to provide new products, scientific evidence and environmental friendly business practices and this caused controversy in the business community.

WORKING DRAFT

In 1988, at industry request, the Council of Economic Advisers conducted a study of Proposition 65's burden on commerce and impact on industry costs; they found that industry's claims were vastly overstated (EDF 2001). To that end, in 1992, two industries (food and non-prescription drugs) conceded that not one of the thousands of products produced by their industries and sold in California supermarkets require any labeling or warning under Proposition 65 (EDF 2001). This is true nearly 25 years later, where no fresh produce, brand-name food product, or brand-name cosmetic product for sale in California is being sold with any label or warning under Proposition 65, to the knowledge of the groups most actively engaged in implementing the law (EDF 2001). Thus, the concerns over the burden to business have been largely overplayed and unsuccessful in its pitch to the community.

The EPA conducted a review of the law in 1992 and found that emissions of dozens of toxic chemicals dropped significantly since the passage of the bill (EDF 1992). In fact, following hearings in 1991-92, Governor Pete Wilson's administration concluded that "By federal standards, Proposition 65 has resulted in 100 years of progress in the areas of hazard identification, risk assessment, and exposure assessment" (EDF 2001). Proposition 65 has been the reason why businesses have adjusted several products to eliminate toxic chemicals covered by Proposition 65, and as an effect make significant changes to reduce exposures such as toxic air emissions (EDF 2001). In some cases consumer products have been simply relabeled to show the components and their toxicity, however, just as many companies have reformulated the products.

WORKING DRAFT

A list of covered substances is maintained by the OEHHA and they make this list publicly available. Entries are added or removed based on current scientific information. This list provides known risk factors, unique chemical classification numbers, and the status of each toxic chemical (OEHHA 2007). As of 1992, 505 chemicals were listed as potential causes of cancer or birth defects. Furthermore, at the time, emissions decreased 2/3 for these chemicals (EDF 1992; Pease n.d.). The EPA praised companies who chose to limit the use of carcinogens or reproductive toxins to avoid liability issues in the future.

Proponents

The support for this measure had both citizen groups and government officials involved. Proponents of the measure include Ira Reiner, District Attorney; Art Torres, State Senator; and Penny Newman, Chairwoman of Concerned Neighbors in Action. The proponents of this measure sought to create a liability-oriented approach to environmental protection and put the burden of the protection on to the businesses to protect citizens from their own products (Graf 2001).

Opposition

Opposition from the oil industry, utility companies, the California Chamber of Commerce, the Farm Bureau Federation, and the California Manufacturers Association as well as then California Governor George Deukmejian spent significant amounts of money on the campaign. Opponents to the Proposition were concerned about the effect on business, the increase in costs on behalf of the company, which would result in fewer jobs and would have little impact on clean water (Skelton 1986).

Legal Challenges

WORKING DRAFT

Private attorneys, many of whom had direct connections to businesses affected by Proposition 65, filed most of the Proposition 65 complaints on behalf of plaintiffs. One of the major areas of contention has been the labeling requirements, which in reality have had limited affect on the consumer than if the contents of a purchase were unknown (Slatkin 2008). Industry critics and corporate defense lawyers charge that Proposition 65 is a way of interest groups (particularly environmental groups) to publicly flog these industries because of the chemicals used in their processes and products, these industries are politically incorrect and at the mercy of litigious environmental groups like the Environmental Defense Fund (Slatkin 2008).

One of the more concerning legal issues for private industry was the clause in the Act that allows private citizens to sue and collect damages from any business violating the law. There have been cases of lawyers and law firms using Proposition 65 to force monetary settlements out of California businesses, and this was one of the reasons for the 'No' campaign and one of the concerns about the economic impact of this law. The Attorney General's office of California has demonstrated several instances of settlements where plaintiff attorneys received significant awards without demonstrating or providing for environmental benefit, which is necessary for the Attorney General's approval of pre-trial Proposition 65 settlements (State of California Department of Justice 2005). As a result, the Attorney General objects to efforts made by both parties to design private settlements to pre-empt the Attorney General's duty to protect the public from future toxic violations of these industries.

Several preemption challenges against Proposition 65 have been rejected by the federal appellate courts since its initial passage. These challenges have suggested that

WORKING DRAFT

there are federal laws that preempt this California Act, such as the Food, Drug and Cosmetic Act, Federal Hazardous Substances Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the Occupational Safety and Health Administration (EDF 2001). So far, only one of these preemptive challenges has been upheld, one looking at the role of the Occupational Safety and Health Administration as Prop. 65 includes liabilities for non-employers in the workplace. This was upheld on technical grounds that do not apply to the workplace generally. As a result, the Federal Occupational Safety and Health Administration approved Proposition 65 in the California workplace as consistent with Federal OSHA in 1997, rejecting preemption requests from employers (EDF 2001).

The first trial of a case involving California's Proposition 65 was *EDF v. Thompson & Formby* (1992) which was the first ever determination of penalties under the landmark toxic warning law, a major victory for EDF (Foster n.d.). EDF sued Thompson & Formby for selling thousands of cans of paint stripper without proper cancer warnings; their products, like many other paint strippers, included more than 50% pure methylene chloride, listed by the OEHHA as a known carcinogen. The company chose not to provide the warnings required by Proposition 65. This was just one of more than 20 companies in the methylene chloride paint stripper business that EDF had threatened to sue for Proposition 65 violations; however, virtually all of these companies made changes or settled with the EDF by 1992 to reduce their risk of litigation. In this case, the jury found that a paint stripper manufacturer could not use federally approved cancer warnings to meet the state's tougher disclosure requirements and required follow up with retailers to ensure that they had actually posted warning

WORKING DRAFT

labels (Foster n.d). The jury assessed \$210,000 in penalties, a significant fine for a small company. This was profound for the Environmental Defense Fund, and provided a motivation to other companies to comply with Proposition 65 (EDF 1994).

The measure was fortified by the California Legislature with an amendment in 2003 that established a fund in the State Treasury and instructed the Governor and the Legislature to implement and administer the original Act. Further, 75% of the penalties collected as a result of the Act would be deposited into this fund, with the remaining 25% paid to the prosecuted office or the persons bringing the action to public interest. This made it both a self-funding enforcement act and encouraged both legal offices and citizens to pursue any means to enforces the Act (California Legislature). This was a change from the original law, in that the 25% reserved for the local health officers was removed in this new Act.

Analysis

Policy Arena

The passage of Proposition 65 has significantly changed several industries that affect citizens on a daily basis. Individuals encounter warning labels regularly, while also reaping the benefits of having clean, easily available drinking water. The costs of these have been paid by businesses that have in turn passed the increased costs onto the customers, as well as the extra tax dollars, increased by the fund passed in 2003.

Several cases have been brought against the enforcers of this law, in effort try and stem more economic costs put on businesses with increased regulations added to The Safe Drinking Water and Toxic Enforcement Act.

Actors

WORKING DRAFT

There are four different and important actors in this case, all how have influenced the passage and enforcement of this ballot measure. The Concerned Neighbors in Action (CNA) is a nonprofit organization of over 400 residents from the communities surrounding Glen Avon, California. This group was established in 1979 as a result of hazardous waste releases in the community. They formed to ensure appropriate clean-up efforts, monitoring of government agencies and protect the health of community residents (783 F.2d 821). While CNA started as more of a response to the contaminated water in the community of Glen Avon, the group went on to sponsor measures and intervene in state lawmaking. Their petition in 1986 sought to change the ability of businesses to operate in their state with disregard to the environmental consequences. Their motivations for participating are clear in this regard – it was a self motivated petition to save their communities from another toxic waste experience like that experienced in Glen Avon.

However, the most interesting proponents of these measures are the two political leaders. Ira Renier and Art Torres were focused on political gain particularly against the California Governor Deukmejian. The highly partisan reaction of these two proponents combined with the expertise of the CNA made a formidable team and one that receive significant press coverage. Renier and Torres were deeply focused on the role that business take in these efforts and to hold business accountable for their actions (UPI, 1987: 6).

One of the important environmental lobbies involved in this cases (besides the CNA) was the Environmental Defense Fund (EDF). This group not only provided attorneys, advise and campaign support during the campaign, also filed a number of

WORKING DRAFT

lawsuits after the bill was passed as a way of enforcing the Act. The EDF became one of the most important enforcers of the Act and often served as more of a watchdog than the State of California when it came to monitoring individual industries.

Tools

With the spending of close to \$5 million, the ‘No’ campaign sought to prevent what was seen as a business disaster for California (Epstein 1986). This spending was more than triple what the ‘Yes to Proposition 65’ or environmental proponents spent on the campaign. Despite this large opposition, there was widespread public support for this measure and the attempt to clean California’s water. This followed the 1972 Proposition 20, Coastal Act, which assisted in getting this measure to pass. By convincing voters about the preventable effects on the environment and their own health, the ‘Yes’ campaign was able to persuade voters to support the Proposition. This really became a citizen’s initiative rather than one that was dominated by one specific group although several environmental lobbies were very involved with Proposition 65.

Outcome

The passage of Proposition 65 in 1986 by 63% of California voters (California Secretary of State 2012) demonstrates the true citizen impact of this initiative. This initiative had significant opposition from the well organized business community. However, the timing of the measures – after the hazardous waste found in Glen Avon and the passage of Proposition 20 just a few years earlier set the scene for a serious citizen movement to control business practices around hazardous toxins. Beyond the simple passage of this measure, the impact of this new law on the environment in

WORKING DRAFT

California and the business practices of industry is monumental. Over 500 chemicals have been identified and monitored by the OEHHA and there has been a reduction of the emissions of these chemicals by more than 2/3. All legal challenges, except for a minor workplace safety preemption case have upheld the validity of Proposition 65 and facilitated both public and private enterprises.

Conclusion

Both of these measures had significant impact on the environment in California, changing not only the political landscape on these issues but also the environmental protection laws in the state. Both of these measures were successful and continue to have an impact on the environment in California, and despite their significant consequences to industry they continue to be upheld. Proposition 20 makes it more expensive for industry to operate in the coastal region and it takes years for companies to get permits and operating permission in the area. Yet, the coast of California remains one of the most beautiful and protected areas of the country. Proposition 65 increased the burden to business in transferring costs of not only determining the hazardousness of toxins as well as requiring labeling of all products with these toxic chemicals. As a result, toxic emissions have decreased over 65% in California. These forays into environmental protection have come at the cost of business but have had significant impacts on the 'greenness' of California.

WORKING DRAFT

Sources

- 783 F.2d 821: United States of America, et al., Plaintiffs-appellees, v. J.b. Stringfellow, Jr., et al., Defendants-appellees, concerned Neighbors in Action and Penny Newman, intervenors-appellants. Justia US Law. Argued and Submitted march 6, 1985. Decided February 18, 1986.
- Bornstein, Nicholas, and Philippe Thalmann. 2008. "I Pay Enough Taxes Already!" Applying Economic Voting Models to Environmental Referendums." *Social Science Quarterly*, 89(5): 1336-1384.
- Bowler, S., Donovan, T. and Happ, T. 1992. Ballot Propositions and Information Costs: Direct Democracy and the Fatigued Voter. *The Western Political Quarterly*, 45(2), 559-68.
- Brockington, D. 2003. A Low Information Theory of Ballot Position Effect. *Political Behavior*, 25(1), 1-27.
- Cameron, Charles, Albert D. Cover and Jeffrey A. Segal. 1990. "Senate Voting on Supreme Court Nominees: A Neoinstitutional Measure" *American Political Science Review* 84(2): 525-534.
- California Legislature, 2003, "Assembly Bill No. 1756: Chapter 228" California Legislature. Accessed April 5, 2012 http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_1751-1800/ab_1756_bill_20030811_chaptered.pdf
- California Secretary of State. 2012. "Statewide Election Results" Accessed April 5, 2012, http://www.sos.ca.gov/elections/elections_elections.htm
- Darcy, R., and Schneider, A. L. 1989. Confusing Ballots, Roll-Off, and the Black Vote. *Western Political Quarterly*, 42(3), 347-64.
- Deacon, Robert, and Perry Shapiro. (1975). "Private Preference for Collective Goods Revealed Through Voting on Referenda." *American Economic Association*, 65(5): 943-955. <http://www.jstor.org/stable/1806631>.
- Ellison, Katherine. 2010. "Leading the Coastal Commission for 25 years, a Crusader and Lightning Rod." *New York Times*, May 8. Accessed March 12, 2012. http://www.nytimes.com/2010/05/09/us/09sfcoastal.html?_R=1&pagewanted=all.
- Environmental Defense Fund (EDF). 1992. "Prop. 65 succeeded in reducing toxins, study's author says" posted January 18, 1992; Accessed April 5, 2012 http://apps.edf.org/documents/3418_Toxins_SanJoseMercNews.pdf

WORKING DRAFT

- Environmental Defense Fund (EDF). 1994. "Paint Stripper Company Fined for Prop. 65 Violations" Posted: 01-May-1994; Accessed April 5, 2012
<http://apps.edf.org/article.cfm?contentID=3454>
- Environmental Defense Fund (EDF). 1996. "Prop. 65 Kit: Fact Sheet on Small Business Impacts" Posted: 01-Oct-1996; Accessed April 5, 2012
<http://apps.edf.org/article.cfm?contentID=3437>
- Environmental Defense Fund (EDF). 2001. Prop. 65 Kit: Official Findings and Court Decisions on Preemption" <http://apps.edf.org/article.cfm?contentID=3436> Posted: 15-Dec-2001; Accessed April 5, 2012
- Epstein, Tom. 1986. Campaign to defeat Proposition 65. *Los Angeles Times* (November 27, 1986).
- Foster, Christopher G. n.d. "Proposition 65: Ten Years After" Smiland and Khachigian. Accessed April 5, 2012. <http://www.smilandlaw.com/Prop-65.01.htm>
- Fulton, William, Mia Nguyen, Chris Williamson, Paul Shigley, Erik Kancler, Jaime Diethofer, and Jill Sourial. 2002. "Growth Management Ballot Measure in California." Solimar Research Group, Inc.
http://www.lgc.org/freepub/docs/community_design/reports/ca_growt_mgmt_report.pdf.
- Gerber, E. R. 1999. *The Populist Paradox: Interest Group Influence and the Promise of Direct Legislation*. Princeton: Princeton University Press.
- Gerber, Elisabeth R., and Justin H. Phillips. 2003. "Development Ballot Measures, Interest Group Endorsements, and the Political Geography of Growth Preferences." *American Journal of Political Science*. 47(4): 625-639.
<http://www.jstor.org/stable/10.2307/3186123>.
- Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2003. "Measuring Attitudes toward the United States Supreme Court" *American Journal of Political Science* 47(2): 354-367.
- Gimpel, James G. and Robin M. Wolpert. 1996. "Opinion-Holding and Public Attitudes toward Controversial Supreme Court Nominees" *Political Research Quarterly* 49(1): 163-176.
- Gimpel, James G. and Lewis S. Ringel. 1995. "Understanding Court Nominee Evaluation and Approval: Mass Opinion in the Bork and Thomas Cases" *Political Behavior* 17(2), 135-153.

WORKING DRAFT

- Glickfeld, Madelyn, and LeRoy Graymer, and Kerry Morrison. 1987. "Trends in Local Growth Control Ballot Measures in California." University of California Los Angeles, *Journal of Environmental Law & Policy*. 111.
- Graf, Michael W. 2001. "Regulating Pesticide Pollution in California under the 1986 Safe Drinking Water and Toxic Exposure Act (Proposition 65)." *Ecology Law Quarterly* 28: 663-754.
- Green Gary P., David Marcouiller, Steven Deller, Daniel Erkkila, N. R. Sumathi. 1996. "Local Dependency, Land Use Attitudes, and Economic Development: Comparisons Between Seasonal and Permanent Residents." *Rural Sociology*. 61(3): 427-443.
- Guber, Deborah Lynn. 2001. Environmentla Voting in the American States: A Tale of Two Initiatives. *State and Local Government Review* 33 (2): 120-32.
- Halbheer, Daniel, Sarah Niggli, and Armin Schmutzler. 2006. "What Does it Take to Sell Environmental Policy? An Empirical Analysis of Referendum Data" *Environmental & Resources Economics*, 33:441-462. <http://www.environmental-expert.com/Files%5C6063%5Carticles%5C9171%5C1.pdf>
- Hastings' California Ballot Measure Databases. 1986. "California Ballot Pamphlet General Election Nov. 4, 1986: Proposition 65" Accessed April 5, 2012 http://library.uchastings.edu/ballot_pdf/1986g.pdf
- Hibbing, John R. and Elizabeth Theiss-Morse. 1995. *Congress as a Public Enemy: Public Attitudes toward American Political Institutions*. New York: Cambridge University Press.
- Initiative & Referendum Institute. 2009. "Initiative Use." *Initiative & Referendum Institute*, February. Accessed March 10, 2012. [http://www.iandrinstitute.org/IRI%20Initiative%20Use%20\(1904-2008\).pdf](http://www.iandrinstitute.org/IRI%20Initiative%20Use%20(1904-2008).pdf).
- Kahn, Matthew E., and John G. Matsusaka. 1995. "Demand for Environmental Goods: Evidence from Voting Patterns on California Initiatives." *1994-95 Discussion Paper Serious No. 737*, July.
- Kelley, S., Jr., Ayres, R. E. and Bowen, W. G. 1967. Registration and Voting: Putting First Things First. *American Political Science Review*, 61(2), 359-79.
- Kimball, D. C. and Kropf, M. 2006. Ballot Initiatives and Residual Ballots in the 2004 Presidential Election. Annual Meeting of the Southern Political Science Association, Atlanta, GA. 5-7 January 2006.

WORKING DRAFT

- Kim, J., Petrocik, J., and Enokson, S. 1975. Voter Turnout among the American States: Systemic and Individual Components. *American Political Science Review*, 69(1), 107-24.
- Kline Jeffery D. 2006. "Public Demand for Preserving Local Open Space." *Society and Natural Resources*. 19:649-659.
<http://ddr.nal.usda.gov/bitstream/10113/33396/1/IND43835887.pdf>.
- Kortum, Bill. 2003. "How It All Got Started." Accessed March 14, 2012.
<http://www.californiacoastaltrail.info/cms/pages/trail/kortum.html>.
- Lanier, Drew Noble. 1995. "The Supreme Court Nomination Process: Logit and Scobit Analyses in Two Neoinstitutional Contexts" Presented at the annual meeting of the Southern Political Science Association, Tampa, Florida, November 1-4.
- Lee, E. C. 1960. *The Politics of Nonpartisanship: A Study of California City Elections*. Berkley: California University Press.
- Lipow, A. 1973. Plebiscitarian Politics and Progressivism: The Direct Democracy Movement Annual Meeting of the American Historical Association, 27-30 December 1973. San Francisco.
- Lovett, Richard A. 1994. Proposition 65 comes of age. *California Journal* 25: 25-28.
- Lutrin, Carl E., and Allen K. Settle. 1975. "The Public and Ecology: The Role of Initiatives in California's Environmental Politics." *The Western Political Quarterly*. 28(2): 352-371. <http://www.jstor.org/stable/10.2307/447434>.
- Magleby, D. B. 1984. *Direct Legislation: Voting on Ballot Propositions in the United States*. Baltimore: Johns Hopkins University Press.
- Malibu Development and the Coastal Act. 2012. *MalibuComplete*. Accessed March 10, 2012. http://www.malibucomplete.com/mc_history_dev_1970s-91_coastal.php.
- Matsusaka, J. G. 2004. *For the Many or the Few*. Chicago: University of Chicago Press.
- Milbrath, L. W. and Goel, M. L.. 1977. *Political Participation*. 2nd Edition. Chicago: Rand McNally College Publishing Co.
- Nichols, S. M. and Strizek, G. A. 1995. Electronic Voting Machines and Ballot Roll-Off. *American Politics Quarterly*, 23(3), 300-18.
- Nicholson, S. P. 2005. *Voting the Agenda: Candidates, Elections and Ballot Measures*. Princeton, NJ: Princeton University Press.

WORKING DRAFT

- Nicholson, S. P. 2003. The Political Environment and Ballot Proposition Awareness. *American Journal of Political Science*, 47(3), 403-10.
- Nie, N. H., Verba, S., and Petrocik, J. R., 1979. *The Changing American Voter*. Cambridge, MA: Harvard University Press.
- Nollan v. California Coastal Commission. n.d. "Case Brief" *Lawnix*. Accessed March 15, 2012. <http://www.lawnix.com/cases/nollan-california-coastal-commission.html>.
- Pillsbury. A. J. 1931. The Initiative, Its Achievements and Abuses. *Commonwealth – Part II*, 25 (11 November), 426-33.
- Office of Environmental Health Hazard Assessment (OEHHA), 2007. "Proposition 65" Accessed April 4, 2012 <http://oehha.ca.gov/prop65.html>
- Overby, L. Marvin, Beth M. Henschen, Michael H. Walsh and Julie Strauss. 1992. "Courting Constituents? An Analysis of the Senate Confirmation Vote of Justice Clarence Thomas" *American Political Science Review* 89(4): 997-1003.
- Pease, William. "Identifying Chemical Hazards for Regulation: The Scientific Basis and Regulatory Scope of California's Proposition 65 List of Carcinogens and Reproductive Toxicants" Accessed April 5, 2012 <http://law.unh.edu/risk/vol3/spring/pease.htm>
- Ranney, A. 1968. The Representativeness of Primary Electorates. *Midwest Journal of Political Science*, 12(2), 224-38.
- Ranney, A. 1972. Turnout and Representation in Presidential Primary Elections. *American Political Science Review*, 66(1), 21-38.
- Reilly, Shauna. 2010. *Design, Meaning and Choice in Direct Democracy: The Influence of Petitioners and Voters*. New York: Ashgate Publishing, INC.
- Reilly, Shauna. 2007. "The Public and the Court: The Impact of Supreme Court Confirmations on Public Opinion of the Supreme Court" presented at *American Political Science Association Annual Meeting* August 30-September 2, 2007. Chicago, IL.
- Reilly, Shauna, and Sean Richey. 2011. Ballot Question Readability and Roll-off: The Impact of Language Complexity." *Political Research Quarterly* 64 (1): 59-67.
- Salisbury, R. H. and Black, G. 1963. Class and party in Partisan and Non-Partisan Elections: The Case of Des Moines. *American Political Science Review*, 57 (September), 584-92.

WORKING DRAFT

- Schmidt, D. 1989. *Citizen Lawmakers: The Ballot Initiative Revolution*. Philadelphia: Temple University Press.
- Segal, Jeffrey A., Richard J. Timpone and Robert Howard. 2000. "Buyer Beware? Presidential Success through Supreme Court Appointments" *Political Research Quarterly*, Vol. 53, No. 3, 557-573.
- Skelton, George. 1986. Deukmejian opposed 3 controversial propositions. *Los Angeles Times*. (September 3, 1986).
- Slatkin, Jay. 2008. Proposition 65: Do Warning Labels On Flashlights Really Mean Anything? *The Consumerist.com* <http://consumerist.com/2008/07/do-warning-labels-on-flashlights-really-mean-anything.html>
- Sierra Club. n.d. "History of Accomplishments." *The National Sierra Club*. Accessed March 14, 2012. <http://www.sierraclub.org/history/downloads/SCTimeline.pdf>.
- Smith, M. 2002. Ballot Initiatives and the Democratic Citizen. *Journal of Politics*, 64(3), 892-903.
- Smith, D. A. and Tolbert, C. J. 2004. *Educated by Initiative: The Effects of Direct Democracy on Citizens and Political Organizations in the States*. Ann Arbor: University of Michigan Press.
- Smith, Daniel A., and Caroline Tolbert. 2007. "The Instrumental and Educative Effects of Ballot Measures: Research on Direct Democracy in the American States." *State and Politics Quarterly*, 7(40): 416-445. <http://www.jstor.org/stable/40421585>.
- State of California Department of Justice. 2005. Press Release: Attorney General Lockyer Files Lawsuit to Require Consumer Warnings About Cancer-Causing Chemical in Potato Chips and French Fries. Office of the Attorney General. Released August 26, 2005. Accessed April 5, 2012. http://oag.ca.gov/news/press_release?id=1207
- Taebel, D. A. 1975. The Effect of Ballot Position on Electoral Success. *American Journal of Political Science*, 19(3), 519-26.
- Tolbert, Caroline J., John A. Grummel, and Daniel A. Smith. 2001. "The Effects of Ballot Initiatives On Voter Turnout in the American States." *American Politics Research*. 29(6): 625-648.
- UPI, 1987. "Governor urged to keep toxics law tough" Lodi (Ca.) News Sentinel. November 5, 1987, p. 6.
- Verba, S. and Nie, N. H. 1972. *Participation in America: Political Democracy and Social Equality*. New York: Harper and Row.

WORKING DRAFT

Walker, Jack L. 1966. "Ballot Forms and Voter Fatigue: An Analysis of the Office Block and Party Column Ballots" *Midwest Journal of Political Science* 10 (4): 448-463.

Wolfinger, R. E. and Rosenstone, S. J. 1978. Effects of Registration Laws on Voter Turnout. *American Political Science Review*, 72 (April), 245-56.

Wolfinger, R. E. and Rosenstone, S. J. 1980. *Who Votes?* New Haven, CT: Yale University Press.