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**USC Center in Law, Economics and Organization
Research Paper No. C07-14
USC Legal Studies Research Paper No. 07-13**



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When Voters Make Laws: How Direct Democracy is Shaping American Cities

Elizabeth Garrett* and Mathew D. McCubbins**

City, county and municipal ballot propositions are often used to raise funds for new infrastructure projects. Although scholars have extensively studied statewide initiatives,¹ local ballot measures have not received nearly as much academic attention.² In this paper we discuss three challenges facing the use the initiative and referendum process to fund local infrastructure projects; these problems suggest that we cannot be confident that voters have been able to make decisions that best serve their interests. We do not conclude that such difficulties are necessarily fatal to the use of direct democracy to determine funding for infrastructure investment, but our analysis has consequences for the regulatory structure that shapes this process in cities, counties and special districts.

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¹ See, e.g., SHAUN BOWLER & TODD DONOVAN, *DEMANDING CHOICES: OPINION, VOTING AND DIRECT DEMOCRACY* (1998); ELISABETH GERBER, *THE POPULIST PARADOX: INTEREST GROUP INFLUENCE AND THE PROMISE OF DIRECT LEGISLATION* (1999); JOHN MATSUSAKA, *FOR THE MANY OR THE FEW: THE INITIATIVE PROCESS, PUBLIC POLICY AND AMERICAN DEMOCRACY* (2004); CITIZENS AS LEGISLATORS: *DIRECT DEMOCRACY IN THE UNITED STATES* (Shaun Bowler, Todd Donovan & Caroline Tolbert, eds., 1998); Mathew D. McCubbins, *Putting the State Back into State Government: The Constitution and the Budget*, in *CONSTITUTIONAL REFORM IN CALIFORNIA: MAKING STATE GOVERNMENT MORE EFFECTIVE AND RESPONSIVE*, 353-77 (Bruce Cain & Roger Noll, eds., 1995); Roger Noll & Bruce Cain, *Principles of State Constitutional Design*, in *CONSTITUTIONAL REFORM IN CALIFORNIA*, *supra*, at 9-31; Elisabeth R. Gerber, Arthur Lupia & Mathew D. McCubbins, *When Does Government Limit the Impact of Voter Initiatives? The Politics of Implementation and Enforcement*, 66 J. OF POL.43 (2004); D. Roderick Kiewiet & Kristin Szakaly, *Constitutional Limitations on Borrowing: An Analysis of State Bonded Indebtedness*, 12 J. L., ECON. & ORG. 62 (1996); Arthur Lupia & John G. Matsusaka, *Direct Democracy: New Approaches to Old Questions*, 7 ANN. REV. OF POL. SCI., 463, 463-82 (2004).

² For a notable exception, see Clayton P. Gillette, *Voting With Your Hands: Direct Democracy in Annexation*, 78 S. CAL. L. REV. 835 (2005). For a review of California initiative use by local governments, see TRACY GORDON, *THE LOCAL INITIATIVE IN CALIFORNIA* (2004).

First, Romer and Rosenthal have showed how public agencies, such as local hospital or school districts, can make “take-it-or-leave-it” offers to voter that may leave them with a Hobson’s choice, for example, between overcrowded schools or hospitals and a new bond measure.³ Voters do not have the ability to amend a bond proposal to move it closer to their preferences; they face a binary choice between either the status quo or the particular bond on the ballot. This type of decision making confers substantial power on the agenda setter and may result in an outcome that does not match the preferences of the median voter. This problem plagues direct democracy at the state level, as well as the local level, but we fear that it may be exacerbated by low voter turnout that characterizes many purely local elections where bond measures are decided.

Second, Kousser and McCubbins have identified several common social choice problems that arise when sophisticated political actors manipulate the initiative agenda.⁴ One of the most pernicious of the problems they identify is that of sequential elimination agendas.⁵ Alternatives are offered one at a time, in a sequence. The core problem with sequential elimination agendas is that they do not allow citizens to directly compare all of the alternatives and, therefore, do not allow them to make tradeoffs among their options. We illustrate this decision making pathology by providing descriptions of the plethora of targeted bond measures that have faced voters in Austin, Texas, throughout the 1980s and 1990s.

³ Thomas Romer & Howard Rosenthal, *Political Resource Allocation, Controlled Agendas, and the Status Quo*, 33 PUB. CHOICE 27 (1978).

⁴ Thad Kousser & Mathew D. McCubbins, *Social Choice, Crypto-Initiatives and Policy Making by Direct Democracy*, S. CAL. L. REV. 949 (2005).

⁵ Peter C. Ordeshook & Thomas Schwartz, *Agenda and the Control of Political Outcomes*, 81 AM. POL. SCI. REV. 179 (1987).

The typical problems created by sequential elimination agendas, suffered by state-level initiatives as well as local ballot propositions, are further compounded by two related aspects of local bond measures: 1) limits on bond capacity created by state law, bond rating agencies or voters' (un)willingness to be taxed; and 2) the presence of overlapping governmental authorities that can each propose bond measures to voters. A voter may be under the tax authority of a city, county, school district, other special district such as a water district, and in California, one or more community facilities districts. If there is also an aggregate limit on the amount of taxes that can be raised – whether the limit is imposed by the state, generated by the bond-rating agencies and the bond market, or enforced by voter's unwillingness to pay higher taxes – then the various overlapping taxing authorities have an incentive to be the first mover in securing tax revenue, whether or not there is a specific need for the money at the time. The race for tax revenue can create a situation where bonds cannot be passed when they are needed; instead, funding is already allocated to unneeded or unwanted projects that were approved at an earlier election (i.e., earlier in the agenda). At the very least, this attenuates the connection between raising taxes and the need to use tax revenue.

Third, we find that voters can be faced with an information environment that precludes their making reasoned choices at the ballot box. The Progressives, who originally supported bond initiatives as a means of self-government, relied on a faith in reason: they believed that when presented with reasons for a bond proposal or other referendum, voters could choose the proper course of action based on the persuasiveness of the different appeals. Indeed, most states require arguments for and against ballot measures be presented with the ballot itself in the official voter's guide, which may also

include analyses by nonpartisan public officials. The presence of reasons is intended to allow voters to determine whether they should support or oppose a particular bond measure based on their understanding of the merits of the arguments.

For voters to make a reasoned choice that can improve their welfare, however, they must have *correct* beliefs about the consequences of their vote.⁶ Occasionally, voters may be able to identify the consequences of their vote on the basis of personal knowledge and experience, but they usually lack such information. In that case, voters must be able to learn from someone else – a knowledgeable, trustworthy endorser. They can then cast a reasoned vote, not depending on their own encyclopedic knowledge of a policy or their independent assessment of the merits of the argument, but using reliable cues provided by a knowledgeable, trusted endorser. If both personal knowledge and reliable endorsers are absent, however, then it is unlikely that voters can consistently make welfare-improving choices.⁷ In a series of case studies from Los Angeles and San Francisco, we find very mixed information environments for local bond measures, some which may allow voters to learn about the consequences of their decisions through trustworthy endorsements from ballot pamphlets or newspaper articles and editorials, and others where those important voting cues are few or nonexistent. Although these case studies provide only anecdotal evidence of the robustness of the information environment for bond measures generally, they suggest that we cannot be confident that voters are

⁶ Following ARTHUR LUPIA & MATHEW D. MCCUBBINS, *THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW?* (1998), we analyze whether the information environment enables voters to make decisions that improve their individual welfare. We do not consider the effect of these bond propositions on social welfare because that is a notoriously tricky subject that is difficult to investigate.

⁷ In evaluating the information environment that confronts voters, we are mostly concerned with the focus on statements by a knowledgeable, trusted speaker. Calvert argues that the basic nature of any speaker's advice is a "distillation of complex reality into a simple recommendation." Randall Calvert, *The Value of Biased Information: A Rational Choice Model of Political Advice*, 47 J. OF POL. 530, 534 (1985).

equipped to make decisions consistent with their interests. On the other hand, some of the examples give rise to guarded optimism that sometimes people do have access to sufficient information to cast informed votes.

Our aim in this paper is mainly a descriptive one. We seek to understand these three problems in the context of local bond measures. They are not unique to the local context; indeed, all of them affect state-level initiatives and referendums, although we identify some aspects of the challenges that may be particularly acute at the local level. With a better understanding of the local dynamics of direct democracy, scholars can then begin to craft reform proposals to ameliorate these pathologies or to ensure that voters have better access to necessary information such as trustworthy endorsements. In other work,⁸ we have proposed reforms directed to these problems at the state level; we are not convinced, however, that the same reforms would succeed at the city, county or special district levels. Thus, we view this article as only a beginning; we hope it will be followed first by more descriptive work and then by suggestions to improve the process through which local bond measures are considered and adopted.

The paper proceeds as follows. In Section 1, we examine how bond initiatives can present voters with take-it-or-leave-it options and the consequences of such offers. In Section 2, we look at the presence of sequential elimination agendas within the context of multiple jurisdictions seeking to finance infrastructure. In Section 3, we demonstrate why a faith in reason and argument is misplaced and elucidate the conditions that allow voters to learn about the effects of an initiative from trustworthy endorsers. In section 4,

⁸ See, e.g., Elizabeth Garrett & Mathew D. McCubbins, *The Dual Path Initiative Framework*, 80 S. CAL. L. REV. 299 (2007); Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Disclosure Laws in Direct Democracy*, 4 ELECTION L.J. 295 (2005).

we examine voter learning about bond propositions in Los Angeles, California at two different time periods. Section 5 studies the information environment surrounding campaigns for modern infrastructure measures in San Francisco. Finally, in Section 6, we conclude.

1. A Hobson's Choice for Voters

Although previous scholarship has found that direct democracy leads to outcomes preferred by the median voter, these models rely on the ability of multiple agenda setters to put forward competing proposals for voters to consider.⁹ However, in the local bond measure environment, the typical scenario is one in which there is a single agenda setter (school board, city council, etc.), and interested parties or voters lack the ability to amend or change the agenda setter's proposal, because in most cases a government actor must choose to place a bond proposal on the ballot measure. As such, this closely resembles the Romer and Rosenthal take-it-or-leave-it offers.¹⁰ They find that monopoly agenda control confers power on an agenda setter to move policy outcomes in his preferred direction and away from the preferences of the pivotal voter.¹¹

To illustrate the point more clearly, consider the following figures. In each figure, the pivotal voter's preference is indicated by V ; the status quo if the bond does not pass is indicated by Q ; and the agency's ideal point is presented by A . The left side of the figure represents smaller government and lower taxes while the right side of the figure represents larger government and higher taxes. The pivotal voter, V , will support policy change that is as close, or closer, to his ideal point as the status quo. So in Figure 1 the

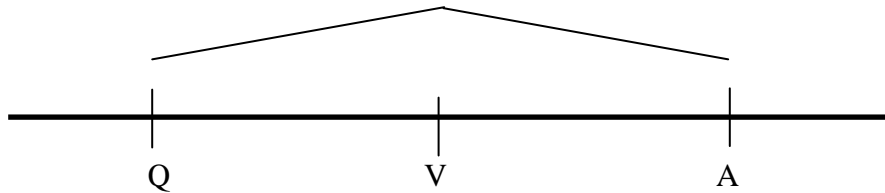
⁹ See GERBER, *supra* note 1, at 21-36; MATSUSAKA, *supra* note 1, at 128-45.

¹⁰ Romer & Rosenthal, *supra* note 3.

¹¹ We focus on the pivotal voter because bond proposals in California require approval by a 2/3 majority to pass, except in the case of schools bonds where 55% approval is required for passage. See KIM S. RUEBEN & PEDRO CERDAN,

voter will vote for any policy that is at least as close to his ideal point as Q , regardless of whether the new policy is to his left or right.

Figure 1: Water Policy



In Figure 1 we present a hypothetical case of a water policy agency that could propose a bond. In this case the agency's ideal point, A , lies at the edge of the area where the pivotal voter will approve policy. Therefore, the agency can propose its ideal point, and the policy will pass with the pivotal voter's support even though it does not move policy any closer to the pivotal voter's ideal point. However, the bond will move policy exactly to the agency's ideal point.

Figure 2: School Policy

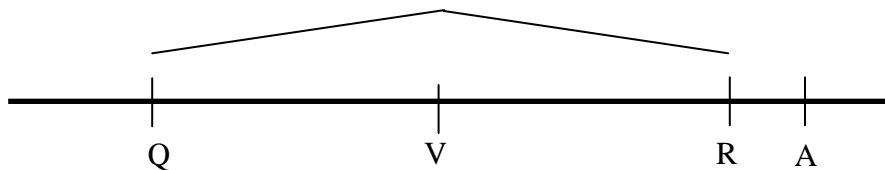


Figure 2 presents another hypothetical case in which the school district, represented by A , prefers a school bond far from the pivotal voter's ideal point, V . Here the agency cannot propose its own ideal point because the pivotal voter would not

support a position farther from his preferred policy than the status quo. However, the school district can propose R , at the limit of the voter's preferences.

This example shows how the ability to make a take-it-or-leave-it offer allows the agency to move policy much closer to its preferred point than the status quo and also how making a take-it-or-leave-it offer empowers the agenda setter relative to the pivotal voter. One consequence of the ability to control the agenda is that government size may be greater than that preferred by the pivotal voter. In the examples above, the additional size of government relative to the pivotal voter's preference is represented by $(V1-A1)$ and $(V2-A2)$. If we aggregate these $(V1-A1) + (V2-A2)$, then we see that the combined size of government may be much larger than the pivotal voter prefers.

Local governments have another advantage that allows them a better chance of success at the polls. Strategic political actors can wait to propose ballot measures until they will appear in an election where turnout is likely to result in an outcome that the proponents desire. The timing of elections can be manipulated by political officials to increase their chances of success, even when supermajority votes are required to pass bonds. Voter turnout differs significantly – both in size and character – depending on whether the local election occurs simultaneously with a national or state election and depending on which candidates and other ballot questions are on the same ballot. In addition, participation on all matters presented at one election may fall off when the ballot is full of dozens of bond and other ballot measures; government officials can manipulate this aspect of elections to their benefit as well. Although turnout is a concern in all issue elections no matter the level of government, it may be more problematic in the

purely local context where turnout can be extremely low even by U.S. standards.¹² For example, if the bond is submitted to the people in a special election with few other issues on the ballot, then only those with intense preferences are likely to take the time to vote. Similarly, only those with a special interest in a bond proposal may make the effort to find it among a list of dozens on a long ballot. Supporters of the bond can work to minimize opposition so that participation in an election largely consists of those citizens who strongly support the bond. Thus, two characteristics of some bond elections – supermajority voting requirements and skewed turnout – draw into question how accurately such votes reflect the views of the median voter or even the pivotal voter in a representative sample of all citizens.

Take-it-or-leave-it offers are not simply a theoretical concern in local bond propositions; the contemporary context of infrastructure bonds offers many real world examples. Consider the circumstances surrounding several recent bond propositions in San Diego County.¹³ In November 2004, voters in seven communities of Northeast San Diego County approved Proposition BB, a general obligation bond of up to \$496 million for hospital, emergency care, and trauma center improvements for the Palomar Pomerado Health System. Proposition BB paid for most of a \$753 million building plan by increasing property taxes over the next thirty years by about \$17.75 a year for every \$100,000 in assessed valuation. Not two years later, in June 2006, the Tri City Medical District (in Northwest San Diego County) proposed Proposition F, hiring the same political consultant who had handled the campaign for Proposition BB. This ballot

¹² Zoltan L. Hajnal & Paul G. Lewis, *Municipal Institutions and Voter Turnout in Local Elections*, 38 URBAN AFFAIRS REV. 645 (2003).

¹³ Information about San Diego elections can be found at <http://www.smartvoter.org/ca/sd/>.

measure would have authorized up to \$596 million in general obligation bonds to repair and improve its medical facilities. However, Proposition F failed, and in 2006 a similar proposition in the same medical district, Proposition T, also failed. Meanwhile, in the southeast corner of the county, the Grossmont Healthcare District won approval for Proposition G, which authorized a \$247 million bond for hospital improvements.

The justifications for these bond measures were the same: to accommodate population increases, to expand emergency services, and to retrofit facilities for earthquake safety. Voters faced a difficult policy choice influenced by many complex economic and social considerations in the context of simultaneous or closely related votes in other districts about funding similar health infrastructure. For example, San Diego has the fewest number of emergency room beds per capita of any county in California.¹⁴ Emergency room bed capacity in San Diego County, however, increased six percent in the 1990s, and these beds experienced only “moderate visits per bed,” perhaps “due to the use of military medical facilities.”¹⁵ Moreover, every emergency room in San Diego County lost money in 1999-2000, with county-wide losses totaling nearly \$22 million.¹⁶ As a result, three San Diego emergency rooms closed in the 1990s, and more hospitals recommended closing their emergency rooms in 2005 and 2006. The simultaneous expansion of hospitals and emergency rooms in one district and the closure of emergency rooms in other districts demonstrate the complexity of financing healthcare facilities and locating them near populations that need them.

¹⁴ CAL. HEALTHCARE FOUND., EMERGENCY DEPARTMENTS IN THE HEALTH CARE SYSTEM: USE OF SERVICES IN CALIFORNIA COUNTIES (2003).

¹⁵ *Id.* at 7.

¹⁶ OFFICE OF STATEWIDE HEALTH PLANNING & DEV., HOSPITAL FINANCIAL DATA DISCLOSURE REPORT (1999-2000).

The San Diego hospital bond measures were justified by several different reasons; one of them was the need to retrofit buildings to comply with state-mandated seismic rules. According to an article in the *North County Times*, “In San Diego County three public district hospitals — Tri-City, Grossmont and Palomar Pomerado Health, which has hospitals in Escondido and Poway — have floated large general obligation bonds to help rebuild their facilities in the name of compliance with new statewide seismic rules.”¹⁷ In fact, in the campaign for Proposition F in the Tri City Medical District, the proponents of the bond depicted the area’s hospitals as in danger of collapse and therefore needing new funds for repairs.¹⁸ The CEO of the Tri-City Medical Center claimed that the medical center had to update 70 percent of its buildings by 2013 to meet new earthquake standards.¹⁹ The campaigns run by the hospitals in support of the new bonds implied that without new financing the hospitals would be forced to close for noncompliance with regulatory standards. If these statements were true, the voters were faced with the choice either to raise taxes or to face a future without nearby hospitals.

The hospital bonds are a clear example of take-it-or-leave-it offers as described by Romer and Rosenthal, who find that the ability to make such an offer confers tremendous power upon the person or group who presents the initial policy offer. In this example, the reversion point, according to the bond supporters, was future closure of the hospital. Romer and Rosenthal find that the ability to make take-it-or-leave-it offers, such as the hospital boards did, can move policy away from the pivotal voter’s policy preference and towards the agenda setter’s preference. In these examples, voters could not amend the

¹⁷ Paul Sisson, *Tri-City’s Prop. F Failed for Myriad of Reasons*, N. COUNTY TIMES, June 24, 2006.

¹⁸ Paul Sisson, *Tri-City’s Proposition F Campaign Nears the \$1 Million Mark*, N. COUNTY TIMES, June 2, 2006.

¹⁹ *Id.*

bond proposal to ensure that it reflects the pivotal voter's preferences. Instead they were forced to choose between 1) the precise bond they were offered and hospitals that would withstand earthquakes, and 2) no bond and (allegedly) no local hospitals. It is possible that they preferred neither of these two options to an alternative state of the world, but they lacked the power to propose and consider other alternatives.

2. Sequential Votes and the Rush to the Polls

Like take-it-or-leave-it offers, the problem of sequential elimination agendas occurs in direct democracy at all levels of government, but it can be exacerbated in local bond measure elections because of the existence of multiple, overlapping taxing authorities combined with some limit (regardless of its source) on taxes. The consequences can include severe misallocation of tax resources in local infrastructure decisions. We begin by demonstrating how sequential elimination agendas can arise, providing a case study of bond measures proposed in Austin, Texas, and then we explore how a budget constraint can lead to a race to the polls by bonding agencies and to outcomes no one prefers.

2.1. Sequential Elimination Agendas and Bond Propositions: Theory and Reality

In Figure 3 we present a theoretical community of five voters. Each voter has preferences over five different policy areas (school, traffic, water, police, and fire) that are ranked from first to fifth. We assume that each bond project costs \$100 million and that voters will support \$200 million of bonds (i.e., voters have a budget constraint and will only support two projects). Consistent with bond elections in California and many other jurisdictions, we assume that these bonds need a two-thirds majority to pass. We also assume that bond measures are governed by fairly strict single-subject rules so that

each individual bond must be presented to voters as a separate proposition.²⁰

Government officials cannot bundle bonds to offer voters different combinations; instead, each is voted on separately and simultaneously. In the table, S=School, T=Traffic, W=Water, P= Police, F=Fire.

Figure 3: Voter Preferences over different policy areas

	Voter 1	Voter 2	Voter 3	Voter 4	Voter 5
1st	S	T	W	P	F
2nd	T	W	F	F	S
3rd	W	P	P	S	T
4th	P	F	S	T	W
5th	F	S	T	W	P

We now consider the outcome for a number of different possible ballot configurations.

- A ballot featuring S, T and W leads to the passage of S and T with four votes and defeat of W with only two votes.
- A ballot featuring S, T and F leads to the passage of S and F with four votes and the defeat of T with two votes.
- A ballot featuring S, P and F leads to the passage of P and F with four votes and the defeat of S with two votes.

²⁰ For details about the legal requirements concerning local initiatives and referendums in California, including the single-subject requirement, see USC/Caltech Center for the Study of Law and Politics, Local Government and Direct Democracy Project, <http://mylaw.usc.edu/haynes/report.cfm> (last visited Dec. 3, 2007). The text of California's single-subject rule as it applies to state initiatives can be found in the California Constitution Art. II, §8(d). For a detailed discussion of how single-subject rules can create consider problems with sequential elimination agendas and block

- Simultaneous consideration of all five bonds leads to none of them receiving the required two-thirds majority.

These examples demonstrate that ballot composition will significantly affect what policies are passed. As Ordeshook and Schwartz emphasize, “[A]s soon as the feasible agendas are allowed to include...sequential elimination agendas...sincere voting can lead practically anywhere [in the policy space].”²¹ Furthermore, if voters will only support two projects, then agencies will want to ensure that their proposals are included among the first two approved, which creates a race to the polls for fear that two other agencies would have their proposals approved. Before we focus on the effect of multiple jurisdictions on the race to the polls, we will describe a series of bond measures that faced voters in Austin, Texas, in the 1980s and 1990s to concretely show the existence of sequential elimination agendas at the local level. Austin is noteworthy because it is a city with robust direct democracy in a state that does not have a statewide initiative process, although constitutional amendments placed on the ballot by the legislature are submitted to a vote of the people.²²

On the September 11, 1982 ballot, Austin voters were faced with a bond election that featured 25 different bond propositions.²³ They involved authorizing the issuance of bonds for infrastructure improvements, such as sewer system, libraries, and parks. The bonds totaled \$422,400,000. As in many other localities, the single-subject requirement that applies in Austin to local initiatives, including bond proposals, requires that each

voters from making tradeoffs between ballot questions, see Kousser & McCubbins, *supra* note 4, at 964-66.

²¹ See Ordeshook & Schwartz, *supra* note 5, at 192.

²² M. DANE WATERS, INITIATIVE AND REFERENDUM ALMANAC 399-400 (2003).

²³ Information about Austin election history can be obtained at Austin City Connection, Office of the City Clerk, *Election History*, <http://www.ci.austin.tx.us/election/search.cfm> (last visited Aug. 28, 2007).

specific project be voted on as a separate measure.²⁴ The utility system propositions were often highly specific and clearly described the intended use of the money and the geographic area that the new infrastructure would serve. In the election, only 22 percent (38,216) of 173,607 voters actually cast ballots. All the propositions passed, most with more than 70 percent of voters approving. One lesson of this case study, in addition to the likelihood of decision making pathologies caused by sequential elimination agendas, is that voter turnout is often very low in such elections, raising questions whether the result is skewed rather than representative of the entire citizenry.

Two years later in September 1984, the ballot was filled with 28 propositions, proposing to spend a total of \$954,935,000. Again, each involved authorizing the issuance of bonds for a local infrastructure project, and the authorizations specifically identified a particular project and often a geographic area that would presumably benefit from the expenditure. As in 1982, all of the propositions passed. Just four months later in January 1985, voters were presented with another 19 propositions on the ballot. However, only two of the measures involved bonds for infrastructure – an art museum and a new thoroughfare. The bond for the art museum, totaling just over \$20 million, passed, and the bond for the new road, totaling \$47 million, failed.

Elections that feature dozens of propositions and hundreds of millions of dollars of bonds continue to characterize local direct democracy in Austin. In August 1992, the Austin ballot included 22 bond-related measures. Sixteen of the 22 were for new infrastructure and totaled almost \$364 million in authorized spending. The targets for the

²⁴ Information about the rules and regulations governing Austin's initiative process can be found at USC/Caltech Center for the Study of Law and Politics, Local Government and Direct Democracy Project, <http://mylaw.usc.edu/haynes/index.html> (last visited Aug. 28, 2007).

spending included street improvements, land acquisition for parks and recreation, and improving or extending the city's waterworks and wastewater system. At the same time that voters were asked to approve new spending, they were being asked to revoke bonding authority they had granted the utility system in 1984 and 1985. For this General Municipal Election, held in the middle of summer, 73,308 out of 265,903 (27.57 percent) of voters came to the polls. Of the 16 requests for additional spending authority, all but three passed. The three bond issues that failed included two related to a cultural arts center and one concerning reimbursement for a building the city already bought.

In November 1998, Austin voters were asked to decide on the fate of ten infrastructure propositions totaling more than \$670 million in new bond obligations. Turnout in this election was 35%, and at least one commentator raised questions about the competence of the voters to make these financing decisions, a concern to which we will return in subsequent sections of this article. A November 5, 1998 *Austin American Statesman* article asked, "So how many of the 127,000 or so Austinites who voted on the propositions could describe even 25 of the projects? 15? 5? City officials and political consultants agree that, in an election with little money for advertising on most of the propositions, many voters probably entered the ballot booth with some mixture of specific knowledge, general recollection and cluelessness."²⁵

It is clear from the description of these elections in Austin than any decisions made through the votes are likely to be suboptimal. Voters cannot make tradeoffs among the bond propositions in one election, let alone across elections, even those held relatively closely in time. Instead, they must vote "yes" or "no" on each bond, without

²⁵ Ben Wear, *Leaders: Bonds Won on Fine Times, Popular Mayor*, AUSTIN AMERICAN-STATESMAN, Nov. 5, 1998.

the ability to tailor their response or to package particular bonds as a group. Moreover, they must make decisions on each bond measure in a particular election without knowing whether the other bonds on the same ballot will pass or fail. This may deprive voters of important information; for example, a voter may be willing to support a cultural arts building but only if other bonds on the ballot are not simultaneously approved.

Although Austin's citizens considered dozens of bonds in these two decades, government officials were presumably limited in the number of bonds they could issue by the bond market and the voters' willingness to continue to pass infrastructure propositions. In this case study, only one jurisdiction faces such a limit, and it could manage its aggregate exposure by revoking some bond authority when officials believed they needed to, as occurred in August 1992. Coordination is possible, and past decisions can be revisited. How is the situation changed when more than one governmental entity seeks to levy bonds, asking the voters to finance them? Then we may see a race to the polls as jurisdictions seek to get their projects funded before any *de jure* or *de facto* limit is reached.

2.2. The Race to the Polls: The Example of Community Facilities Districts

The incentives for bonding authorities faced with sequential elimination agendas and the reality of some limit on the ability to issue bonds seem likely to lead to policy outcomes in which money is spent on the projects that are approved first and other, perhaps more beneficial projects are rejected as the taxing and bonding limit of a given jurisdiction has been reached. This can only coincidentally lead to an efficient use of resources. Although all states have overlapping tax jurisdictions (city, county, fire, hospital, school, etc.) and therefore could suffer from exacerbated sequential elimination

agendas, many Californians are subject to an additional authority, the so-called Mello-Roos Community Facilities Districts. We provide a brief overview of these districts because few scholars, and probably even fewer voters, are aware of them. They provide an extreme example of the challenges that characterize local direct democracy.

In 1982 the California legislature passed the Mello-Roos Community Facilities Act,²⁶ which allows local governments to establish Mello-Roos tax assessment districts, also called Community Facilities Districts (CFDs), to finance public services and facilities in that area. A petition to create a CFD can take one of several forms: 1) a written request signed by two members of the legislative body (i.e., a local government or school district); 2) a petition signed by 10% of the eligible voters in the area; or 3) a petition signed by the landowners of 10% of the area in the proposed district. Following certain procedures, the governing body then adopts a resolution to establish a CFD and, if two-thirds of voters within the CFD area approve, the CFD is established.²⁷ A Mello-Roos district has bonding and taxing authority and can raise infrastructure funds for essentially any use that is neither an existing facility nor service. Landowners within a CFD have the power to make the first move on setting the tax rate and infrastructure plans for the area included in the CFD, thereby allowing the current residents or landowners to affect the infrastructure and tax rates that all the future residents of the area will pay. Future residents may be able to add further bond obligations subject to bond capacity limits, and they may rescind any bond that has been authorized but not issued, but they cannot stop paying once the CFD has entered into an authorized obligation.

²⁶ CAL. GOVT. CODE., CHPT. 2.5 THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982, ART. 1, GENERAL PROVISIONS, §53311.

²⁷ Details of forming a Mello-Roos district can be found in CAL. GOVT. CODE., CHPT. 2.5 THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982, ART. 2, PROCEEDINGS TO CREATE A COMMUNITY FACILITIES DISTRICT, §53318-

CFDs are only one aspect of the challenge facing localities in financing infrastructure in an environment characterized by multiple, overlapping jurisdictions.

The California Debt Advisory Commission pointed out that failed coordination among jurisdiction can cause considerable problems with planning infrastructure build outs:

Mello-Roos financing also exposes an organizational weakness in the *collective response* of local governments serving developing areas; namely, there is often no coordination of the financial decisions of different local governments supported by the same group of taxpayers. In the absence of coordinated planning, taxpayers are vulnerable to onerous overlapping tax burden. This is especially problematic given the ease with which CFDs can be formed. Developing areas are typically served by the city or county government, one or more school districts, and often one or more special districts. Each of these local government units has the authority to approve the formation of CFDs and to levy special taxes on the same group of taxpayers. Though each special tax may be imposed in good faith and dedicated to worthwhile projects, the cumulative burden of the special taxes could prove excessive to the taxpayers.²⁸

This passage also acknowledges that taxpayers may eventually impose a *de facto* or *de jure* limit on taxation. The imposition of such a limit implies that once taxes reach a certain level, new infrastructure funds will not be approved. Anticipating that reaction, each taxing authority has an incentive to be the first mover in raising taxes so that it can ensure its projects are approved before any tax limit is reached. When bond proposals are considered one by one across jurisdictions, the outcomes reached may not be those not preferred by the pivotal voter of a given political area. Moreover, the competition for debt financing may also result in low-priority projects securing financing in advance of higher-priority projects, with the consequence that infrastructure development does not

53329.5.

²⁸ KATHLEEN BROWN, CAL. DEBT ADVISORY COMM'N, GUIDELINES FOR MELLO-ROOS FINANCING 2 (1991) (emphasis in original).

occur efficiently. Precisely this problem is recognized by the Debt Advisory

Commission in its recommendation for an aggregate limit on tax burden:

We recommend in the project evaluation guidelines to follow that the total tax burden in developing areas should not exceed two percent of the appraised fair market value of the property upon completion of all public and private improvements. It should be recognized, however, that such limitations can produce an unhealthy competition between local governments for available debt capacity, as each local government may be tempted to grab some of the debt capacity while it is still available. . . . The danger is that available debt capacity will be squandered on lower priority facilities which can be phased-in later, leaving the developing area without the resources to address immediate needs.²⁹

With limits on tax capacity, not only can policy end up far from where the pivotal voter would prefer, but it may be impossible to reverse course because the tax capacity is already being fully used.

The influence of CFDs in certain areas is demonstrated by the Poway School District. At its January 17, 2006 school board meeting, school board members had six new items on their agenda, four involving a CFD. The members approved resolutions to form CFD No. 14, to study the need for bonded indebtedness in CFD No. 14, to declare the results of an election in CFD No. 14, and to authorize the levy of special taxes in CFD No. 14. During the meeting, the board took time for public comment, but no one took advantage of this opportunity. Essentially, all of the actions at this school board meeting involved making real estate and taxation decisions for a geographic area, not the work voters typically associate with school boards. This CFD is actually only one of the more than 20 different tax charges (mostly CFDs or improvement areas within a CFD) that the Poway District manages.³⁰ In newly developing areas of California where the initial

²⁹ *Id.* at 2.

³⁰ The different tax charges within the Poway School District can be found at

infrastructure build out has not been completed school districts, through CFDs, are an important player in the development of infrastructure.

CFDs associated with school districts have used their power to annex new areas and thereby apply their existing tax rates to the newly annexed territory. This allows the CFD to increase its revenue base, which will eventually support infrastructure development. Take, for example, Santa Cruz County in California. In June 2001 there were two elections by CFDs to allow different school districts within this county to annex adjoining territory. In one election eight voters participated, and in the other eleven people voted – in a county that had more than 145,000 registered voters in November 2000.³¹ As far as we can determine, these elections occur without much fanfare or aggressive campaigning, and it seems unlikely that they offer the conditions for learning to voters, conditions that we will describe in Section 3.

3. The Information Environment Surrounding Local Initiatives

The success of the initiative and referendum process in producing policy that reflects voters' preferences relies heavily on a citizen's capacity to discover and use information that allows her to determine how to vote consistently with her interests. One challenge facing voters, particularly in the local context, is that bond and other ballot measure campaigns can be relatively low information environments, without the cues available in candidate elections like party affiliation and incumbency. Voter guides, produced at public expense and sent to all voters before an election in most localities, provide a list of reasons for and against each initiative and corresponding rebuttals. The existence of

<http://www.californiataxdata.com/gov/taxcharges/index.asp?agencyid=10696>.

³¹ See County Clerk Gail L. Pellerin, *Statement of Vote for the July 26, 2005 Special Election Submitted to the Santa Cruz County Board of Supervisors* (July 27, 2005), available at http://sccounty01.co.santa-cruz.ca.us/bds/GovStream/BDSvData/non_legacy/Minutes/2005/20050802/PDF/018-1.pdf.

these guides, with the presentation of arguments, reflects a faith in reason that is widely shared by reform-minded citizens dating back to the Progressive movement. The give-and-take of reasons is believed to produce voter enlightenment and the ability to make welfare-enhancing decisions through the ballot box.

Merely providing reasons, however, is not sufficient for informed decision making, as modern advertising vividly illustrates. Marketers may offer reasons for consumers to purchase their products, but people need more information to decide competently. The Federal Trade Commission found that nearly 55 percent of ads about weight loss products contained false statements. The advertisement for the “Fat Trapper,” for example, claims that the product, extracted from the shell of crustaceans, prevents the absorption of fat.³² This fallacious claim shows that just having reasons for an action is not enough: people also need to know that those who make statements are informed and trustworthy for a reasoned choice to occur.³³

Just as with the “Fat Trapper,” a faith in reason alone as a mechanism to ensure sound policy emerges from direct democracy is misplaced. Merely providing reasons in a voter pamphlet is neither necessary nor sufficient for informed decision making. Reasons are not sufficient because they may simply be lies and provide no useful information to voters. Likewise, the presence of reasons is not necessary for informed choice because voters may be able make a reasoned decision from a statement by a trusted endorser without independently assessing the merits of the reasons. In our view,

³² FED. TRADE COMM’N, STAFF REPORT, DECEPTION IN WEIGHT-LOSS ADVERTISING WORKSHOP: SEIZING OPPORTUNITIES AND BUILDING PARTNERSHIPS TO STOP WEIGHT-LOSS FRAUD (2003).

³³ LUPIA & MCCUBBINS, *supra* note 6, at 71.

the ability of voters to decide which way to vote comes down to the presence of a trusted endorser who can provide information about their electoral choices.

3.1. Voter Guides: Providing Reasons and Endorsements

Voter guides, as well as other sources of information in a ballot campaign,³⁴ may provide voters with trustworthy endorsements to supplement the reasons provided for each side.³⁵ The rules and regulations governing who may submit arguments to be included in a voter pamphlet differ depending on the municipal jurisdiction. In the city of San Diego, for instance, only one argument for and one argument against any measure/proposition is included in the voter pamphlet. In the event that multiple measures are submitted the city clerk determines which statement is included in the pamphlet using criteria established in the municipal code.³⁶ In Los Angeles, ballot arguments are limited to 300 words unless the measure involves the reorganization of a school or community college district.³⁷ The author(s) of the ballot arguments must state that they believe their argument is true and correct to “the best of his/her knowledge and belief.” Also, there does not appear to be a limit to the number of arguments for or against a measure in Los Angeles. San Francisco also does not limit the number of arguments for or against a ballot proposition. The Director of Elections follows a set of rules to choose one statement to serve as the opponent’s statement and another to serve as

³⁴ We will assess one of these additional sources of information in Section 3.3 *infra* in our analysis of newspaper articles and editorials.

³⁵ Of course, not all voters read the pamphlets and so may not be directly exposed to these arguments. However, such pamphlets make it more likely that voters will encounter some of the arguments or learn the identities of groups active on one or both sides of a measure. And, as “convenience voting” becomes more commonplace and more voters take advantage of the ability to vote at home with absentee ballots, they may more frequently consult voter guides and other informational sources as they vote.

³⁶ See SAN DIEGO MUNICIPAL CODE, CHPT 2: GOVERNMENT, ART. 7: ELECTIONS, CAMPAIGN FINANCE AND LOBBYING, DIVISION 5: BALLOTS AND MEASURES, available at: <http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division05.pdf>.

³⁷ This information is drawn from ELECTION CODE OF THE CITY OF LOS ANGELES, CHPT IV: ART. B VOTER INFORMATION PAMPHLET, § 402 CONTENTS OF THE VOTER INFORMATION PAMPHLET, available at

the proponent's statement for each ballot measure.³⁸ If a person or group submits a statement that is not chosen as the official proponent's or opponent's statement then having the statement published requires paying a fee of \$200 plus \$2 per word, up to a limit of 300 words.³⁹ According to California Elections Code, all material submitted to a voter pamphlet must undergo a 10 day public examination period during which any voter or the election official in the district can examine the material; if he believes material to be false, he can submit a request to preempt publication of the questionable statement.⁴⁰ The election official then determines whether or not the statement will be published.

Although the rules differ depending on the municipality all of the voter pamphlets we examine include at least one statement for and against a proposition. Guides identify the authors of the arguments supporting and opposing the measure, and this information may provide voters the cues they need, depending on whether or not readers are familiar with the people or groups and understand what viewpoints they represent.⁴¹ Indeed, depending on the conditions, just knowing which groups support or oppose a particular bond measure may be sufficient to enable a voter to vote competently in her own interest without any further assessment of the merits of the arguments made in the pamphlet.

Consider the information provided in the voter pamphlet in November 2001 regarding the Alpine Fire Protection District. Only a statement supporting the bond measure appeared; apparently, the proposition did not garner enough attention to motivate opponents of the bond to reply:

<http://www.lacity.org/clk/urldoc2832.pdf>.

³⁸ The rules are described in: CITY AND COUNTY OF SAN FRANCISCO MUNICIPAL ELECTIONS CODE, ARTICLE V: ELECTION MATERIAL MAILED TO THE VOTERS, §§ 540, 545 & 550.

³⁹ Information on San Francisco voter pamphlets is drawn from: CITY AND COUNTY OF SAN FRANCISCO MUNICIPAL ELECTIONS CODE, ARTICLE V: ELECTION MATERIAL MAILED TO THE VOTERS, §§ 500-595.

⁴⁰ CAL. ELEC. CODE, DIVISION 9, CHAPTER 3, ARTICLE 6, § 9295.

The current fire station built over 50 years ago has leaky roofs and an overloaded electrical system. There is insufficient space for modern firefighting apparatus, new paramedic equipment and facilities for female firefighters. It fails to meet earthquake standards and does not allow for decontamination after hazardous calls.

Funds set aside for a new fire station are not adequate.

Every penny from Proposition A will stay in Alpine and may only be used for fire safety and paramedic programs.⁴²

Unless a reader had knowledge about these matters, it would be hard for her to verify the validity of the assertions. How would the typical voter know the physical condition of the fire station? Even if she traveled to the building to check for leaks, she could not determine whether the construction was seismically sound. The voter guide provided the identities of the sponsors of this statement, however, and this might have provided essential information. Advocates included a publisher of a local newspaper, the president of the firefighters association, the president of the chamber of commerce and a board member of the local fire protection district. As we will discuss below, under certain conditions, this information might be sufficient to allow citizens to decide which vote served their interests.

Voter pamphlets throughout California provide similar information. In 2000, voters in Cajon Valley in San Diego County were asked to decide whether to support a \$75 million bond for school infrastructure.⁴³ The voter pamphlet included a statement by the County Counsel providing basic details about the use of the money and the likely interest rates on the bonds. There was also a statement in favor of the proposition by a

⁴¹ Cf. Garrett & Smith, *supra* note 8, at 296-99 (discussing importance of such cues in statewide elections).

⁴² Information from SmartVoter.org, <http://www.smartvoter.org/2001/11/06/ca/sd/meas/A/> (last visited July 10, 2006).

group explaining more about the projects that the bond would support (i.e., upgraded libraries, new books, new school construction, etc). The authors of the statement included the President of the East County Latino Association, the past President of the Mother Goose Parade, a real estate broker, a businessman and the past President of the El Cajon Historical Society. Finally, there is a county prepared tax rate statement that described the likely tax changes to property owners in the district.

This Cajon Valley voter guide illustrates that some jurisdictions require that nonpartisan professional government officials provide certain kinds of highly relevant information to voters in the ballot pamphlet. In Cajon Valley, voters were provided a statement about the predicted effect on property taxes, as well as a description of the bond and the likely interest rate. All the San Francisco voter pamphlets that we examined from after 1975 also contain supposedly neutral information provided by officials that is intended to increase the possibility of learning. First, each measure includes an “Analysis By Ballot Simplification Committee,”⁴⁴ which is an abstract of the purpose of the initiatives and its likely effects. The simplification statement contains information about the status quo, how the proposal will change the status quo, and a short statement describing the effect of a “yes” vote and of a “no” vote. The second feature, the city controller’s statement, provides voters with information about the tax rates they will face

⁴³ Information from SmartVoter.org, <http://www.smartvoter.org/2000/11/07/ca/sd/meas/X/> (last visited Aug. 23, 2007).

⁴⁴ The City of San Francisco’s website provides a description of the Ballot Simplification Committee: Of the five voting members, the Board of Supervisors appoints three and the Mayor appoints two. Two of the three members appointed by the Board of Supervisors must be nominated by either the Northern California Chapter of the National Academy of Television Arts and Sciences or the Northern California Broadcasters Association. The League of Women Voters of San Francisco must nominate the third member. Of the two members appointed by the Mayor, the Northern California Newspaper Guild must nominate one member, and the other member must be an educational reading specialist recommended by the Superintendent of Schools of the San Francisco Unified School District. Each of the appointive members must be a resident and registered voter of the City and County.

City of San Francisco, Ballot Simplification Committee, http://www.sfgov.org/site/elections_index.asp?id=21619 (last visited Feb. 28, 2007).

before and after a bond passes and what construction will occur as a result of the bond. These kinds of statements do not tell voters which action to take and so they do not constitute an endorsement. Nevertheless, the reasons may help some voters who already have some knowledge and can assess the merits of the analysis or use this discussion to analyze the merits of the arguments provided for and against the ballot measure. In addition, information about any change in taxes or property values may be helpful shortcuts for voters, although without ways to assess this cost against the benefits of a bond that might not be fully reflected in property values, it may not be enough information to ensure voter competence.

Some advocates of a faith in reason claim that the process of providing reasons fosters deliberation among citizens, which equips them to make competent choices concerning ballot measures. The factual statements by government officials provide information prepared by those with expertise, and the statements by opponents and proponents are designed to elicit discussion and critical analysis by the citizenry. However, the provision of reasons is simply cheap talk in standard models of communication unless people receiving the reason can verify that the reasons are true or there are institutions in place to induce truthful statements by a speaker.⁴⁵

A corollary to the belief in the importance of reasons and reasoning is the assumption that competition between speakers and their reasons will improve voters' ability to make a welfare-enhancing decision. Of course, as the voter pamphlet from the Alpine Fire Protection District demonstrates, there are not always two active sides in local ballot proposition campaigns. Even when competition exists, however, Boudreau

⁴⁵ See LUIA & MCCUBBINS, *supra* note 6, at Chapters 2-8.

and McCubbins show that adversarial competition does not guarantee that learning will occur.⁴⁶ Instead, other conditions for learning must be met, and the existence of those conditions must be common knowledge between all participants for enlightenment to occur. Unless the conditions for learning exist and they are known to all, having multiple speakers only increases the amount of noise in the environment because no speaker's statements can be considered credible; therefore, listeners cannot necessarily learn. There is a positive consequence relating to the presence of multiple endorsers in a competitive, however. It increases the probability that a given voter will encounter a trusted endorser. Determining when an endorsement is credible and trustworthy – and therefore when learning is possible – is the issue to which we turn next.

3.2. Learning from Endorsements

One of the common findings in models of voter decision making is that, in complete information settings, the majority (represented by the median voter) is made better off through the existence of an initiative process.⁴⁷ However, as we have demonstrated above, voters often do not have complete information even when institutions provide them with reasons relating to a particular decision.⁴⁸ In the absence of complete information, voters must find substitutes that allow them to make decisions as if they were fully informed. Frequently, the substitutes for information take the form of endorsements that replace detailed factual knowledge and can provide voters with information about which way to vote on an issue. Not all endorsements facilitate

⁴⁶ Cheryl Boudreau & Mathew D. McCubbins, *From Competition to Competence? Theory and Experiments Regarding Deliberation and Citizen Learning* (June 28, 2007) (working paper), available at <http://ssrn.com/abstract=997199>.

⁴⁷ See, e.g., MATSUSAKA, *supra* note 1, at 70-72.

⁴⁸ See Lupia & Matsusaka, *supra* note 1, at 477.

learning, however; the key is to identify the conditions under which they can increase voter competence.

Lupia demonstrates that voters can learn from campaigns in his study of the 1988 California insurance initiatives.⁴⁹ His argument outlines, in concrete terms, the conditions under which endorsements can replace complete information and serve as effective voting cues to promote voter competence. First, Lupia points out that the policy positions of endorsers must be widely known to voters. Total spending for the insurance campaigns in 1988 was more than \$82 million, demonstrating an aggressive campaign to publicize positions. Second, the various interest groups and campaigners were identifiable as members of one of three main groups: the insurance industry, trial lawyers or consumer activists. For Lupia, the key is that a voter can identify which groups support or oppose a particular initiative and then also identify the group with whom the voter has common interests. Determining common interests is made easier when voters know an information provider's (speaker's) reputation for supporting certain types of policy, which in turn is made easier when voters can identify the source of the information, and the source has a well-known policy preference. In 1988 voters in California faced multiple, likely confusing, insurance initiatives, but the presence of well-funded campaigns and known endorsers with publicly recognizable reputations enabled uninformed voters to use information shortcuts to vote as if they were informed. This example provides a general sense of the actual conditions in the political environment that lead voters to learn from the statements of endorsers.

⁴⁹ Arthur Lupia, *Shortcuts versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88 AM. POL. SCI. REV. 63 (1994).

The general conditions under which voters can learn from endorsements are derived and tested experimentally by Lupia and McCubbins.⁵⁰ Lupia and McCubbins show that external forces can generate trust, persuasion, and the possibility of learning in contexts where these outcomes would not otherwise occur.⁵¹ Specifically, this work details what conditions must exist for a voter to learn from the statements of an endorser, even if that endorser is not speaking to the specific voter. Lupia and McCubbins demonstrate that for a voter (“receiver” in their model) to learn from the statements of an endorser, the voter must believe that an endorser is both knowledgeable and trustworthy. The knowledge condition is met only if the listener/voter believes that an endorser has knowledge or expertise about the issue. The trust condition can be met only if a person believes that the endorser is trustworthy. Trust requires one of four additional conditions: 1) the listener and endorser must have common interests; 2) there must be a threat of verification imposed upon the endorser; 3) the endorser must face penalties for lying; or 4) there must be observable, costly effort on the part of the endorser. In the absence of the conditions for trust and learning, Lupia and McCubbins demonstrate that learning will not happen.

The conditions for trust must be established between a speaker and a specific audience, which need not be the voter who is observing the interaction. For learning to occur for the voter/observer, it is critical that she understands the relationship between an endorser and the audience to whom he is speaking. If a speaker makes a statement to an audience that regards him as trusted endorser, then all listeners can be “flies on the wall” and learn from that statement as long as they are aware of the relationship between

⁵⁰ See LUPIA & MCCUBBINS, *supra* note 6, at Chapters 2-8.

speaker and audience.⁵² If either the observed relationship does not meet the conditions for trust or the observer does not know if the conditions for trust are met, then the observer cannot be a successful fly on the wall.⁵³ Notice that the presence of the conditions for trust is a separate requirement from whether an observer knows the conditions are met; both are necessary, and the presence of the conditions for trust does not guarantee that the observer knows about the conditions.

Let us provide a few concrete examples to flesh out the theoretical work. Observers may be able to figure out the trustworthiness of a statement about gun control by the President of the National Rifle Association (“NRA”) when he is speaking to a gun club (as long as they know that the audience consists of gun aficionados), but observers may not know how to interpret a similar statement when he is speaking to a gardening club. Thus, they may not be able learn from the NRA president’s statements in the latter context. The reason for the difference is that the first situation involves both an alignment of interests and likely penalties for lying, whereas the second situation does not clearly have either common interests or its institutional substitutes. The NRA president may make the exact same statement to both audiences to avoid sending conflicting signals that could affect the organization’s reputation, but if a voter is only aware of the statement made to the gardening club, it is difficult, perhaps impossible, for her to learn from this statement, because the conditions for trust are absent in the speech made to the gardening club. However, if the gardening club includes people who are also NRA

⁵¹ See *id.* at Chapters 6-8.

⁵² See Cheryl Boudreau, Arthur Lupia, Mathew D. McCubbins & Daniel B. Rodriguez, *The Judge as a Fly on the Wall: Interpretive Lessons from the Positive Political Theory of Legislation* (2005) (working paper prepared for April 30, 2005 Northwestern University School of Law conference on “Positive Political Theory”).

⁵³ Arthur Lupia & Mathew McCubbins, *Learning from Oversight: Police Patrols and Fire Alarms Reconsidered*, 10 J. L., ECON. & ORG. 96 (1994).

members or who are likely members, there may be penalties for lying even in this context. Only if the observers have some knowledge about both the speaker and the listeners can they learn enough to use the statements as a voting cue.

One challenge for learning in local ballot measure elections is that there are likely few endorsers or speakers, which means that it is particularly challenging for individuals to witness an endorsement that meets the conditions for learning. One possible source of voting cues is endorsements by local government officials. In the context of local bond measures, most of these propositions are placed on the ballot for popular consideration by public officials. Often voters will know enough about a public official to know whether they have shared interests. Does knowing only that elected officials supported placing a bond measure on the ballot allow a voter to learn how to vote on the proposed initiative? In some cases, council member's vote is a credible signal to constituents about her views of the worthiness of a proposal, but the official's vote could represent something else as well – public-regarding intentions do not underlie every vote. For instance, the decision to refer the bond proposal to the voters could result from a variety of situations such as: blame shirking,⁵⁴ a legal requirement, a decision to fight out the proposal's merits during a campaign, or a logroll across various proposals. To fully understand the audience and the message being conveyed by a legislative vote or other statement by an elected official requires analyzing each situation independently; no blanket decision can be made. Thus, knowing that an official supported sending the measure to the people may not be an effective voting cue. Note that a vote to send the measure to the ballot is very different from an official taking a public position endorsing a bond measure. Often officials will

⁵⁴ Morris Fiorina, *Legislative Choice of Regulatory Forms: Legal Process or Administrative Process*, 39 PUB. CHOICE

endorse or oppose a bond measure either in the voter pamphlet or in newspaper stories and advertisements. Such an endorsement may well provide an effective voting cue, particularly if the official faces penalties for strategic behavior from her constituents.

Even when officials take a public position on a bond measure, not all observers can learn because it may be difficult for them to ascertain whether they share interests with the official. A recent survey reveals that many voters are largely unaware of the people and issues in local politics, which may make it difficult for voters to assess the credibility of endorsers. In a survey of suburban voters across the country, about 46 percent reported that they had “a lot” or a “fair” amount of knowledge about local politics.⁵⁵ Approximately 34 percent of voters in the survey knew a city councilor. In both cases, the level of knowledge decreased as the size of the suburb increases. In the absence of knowledge about local politicians or issues, it will be difficult for voters to determine the interests of politicians, which makes it particularly important that voters know whether or not the conditions for trust are present and are common knowledge. Voter ignorance may be particularly acute in cities where officials are elected in nonpartisan campaigns; then, even the helpful voting cue of party affiliation may be missing or hard to discover.⁵⁶

Public officials are not the only possible endorsers from whom voters can learn. Consider voters who are faced with a bond to provide money to build more schools in their district. Often the president of the teacher’s union will endorse the bond measure,

33 (1982).

⁵⁵ J. Eric Oliver & Shang E. Ha, *Vote Choice in Suburban Elections* (2006) (working paper) available at http://harrisschool.uchicago.edu/Academic/workshops/ampolpapers/Oliver_Workshop.pdf.

⁵⁶ For discussions of the interplay between partisan cues from candidate endorsements and ballot measures at the state level, see Elizabeth Garrett, *Hybrid Democracy*, 73 GEO. WASH. L. REV. 1096 (2005); Richard L. Hasen, *Parties Take the Initiative (and Vice Versa)*, 100 COLUM. L. REV. 731 (2000).

and many voters will know of that endorsement. Will voters be able to learn from this statement? First, does the union president share common interests with voters? For a voter to know that her interests are shared by the union president, the voter must know the union's interests. However, there are multiple interests a union president could represent: her own, the union's, the school district's, or the teachers'. These interests may coincide, or they may be different. However, institutional devices may make learning possible for the voters hearing the union president's statements. For example, the union president likely faces a penalty for deviating from the union members' interests because the members can refuse to reelect the president if he is not their faithful agent. If the president faces such a penalty, and a voter is aware of the penalty's existence, then she may be able to learn from the statement. Importantly, even a voter who does not share common interests with the union may be able to learn from statement, because she may know that her interests are opposed to the union's interests. The fact that endorsers with known opposing interests may provide voting cues to citizens expands the universe of credible endorsements that can facilitate learning.⁵⁷

Many of these endorsements may appear in voters pamphlets, along with other endorsements that do not provide much opportunity for learning. The cost of placing a statement in a voter pamphlet is relatively low so often statements will appear on behalf of citizens without a widely-known reputation. However, those active in ballot measure campaigns know that endorsements can change behavior so they work to find public officials and leaders of businesses or other groups who can provide credible statements in

⁵⁷ If voters know that their interests conflict with the speaker's, but there are no institutions in place to induce truthful statements, then the voter cannot learn from the statement. Lupia and McCubbins demonstrate why statements in this context devolve into a babbling equilibrium in which speaker's statements are uninformative. LUPIA & MCCUBBINS, *supra* note 6, at 39-67.

the pamphlets or in the press. In the local context, these people can be surprising.

Remember the ballot proposition from Cajon Valley. Although the President of the Latino Association is not a surprising choice as a supporter, the past President of the Mother Goose Parade may well seem an odd selection. Yet, in that community, this leader may have a certain reputation and notoriety that could allow his statement to increase the chance that voters can make competent choices on Election Day.

Before we provide several case studies from California that provide more examples of learning by endorsements (as well as environments where learning was unlikely), a discussion of newspapers as a source of information will provide a more complete view of the information environment.

3.3. Learning from newspapers

Much information in local elections comes from newspapers. Although there are other sources of political information even in local campaigns, this Article focuses on newspaper reporting for three reasons. First, historical newspaper records are easily available, and they are virtually the only source of information in the ballot measures we study from Los Angeles in the early 1900s. Second, we are not aware of significant internet or broadcast coverage about many local bond issues, although there are some radio and even television ads in large cities for high stakes initiatives, and we anticipate that internet will play an increasingly influential role in future campaigns. Third, the focus on newspapers will bias our analysis only if newspaper coverage is significantly different from or less or more common than other forms of media coverage, and we have no reason to believe that is the case, at least with respect to broadcast advertisements.

Internet is too new a medium to play a large role in our case studies, but it will need to be considered in future analyses.

Experimental evidence illuminates how a newspaper source's credibility affects learning, and therefore allows us to draw conclusions about the conditions in which speakers in a newspaper story are likely to be credible and therefore able to facilitate competent choices. In a typical newspaper story, two of the key aspects that affect learning are the credibility of the speaker quoted in the story and the reputation of the newspaper that published the story.⁵⁸ Druckman demonstrates how a speaker's credibility affects learning by studying how statements from either Colin Powell (credible) or Jerry Springer (not credible) affect subjects' beliefs and how stories published in the *New York Times* (credible) have a different effect than stories published in the *National Enquirer* (not credible). He finds that statements coming from the non-credible speaker and the non-credible source have little or no effect on beliefs, but that statements from credible sources can influence beliefs. These results imply that observer's perceptions of a statement's credibility will affect whether or not learning occurs as a result of their statements. This result is consistent with the prior description about the conditions for learning because the voter must believe that Colin Powell and the *New York Times* would suffer some cost if they lied – a reputation cost – whereas, Springer and the *National Enquirer* have little reputation to protect. In practice, the conditions for learning (especially for trust) may not work like an on/off switch. Rather, they may exist with some probability. In that event, the receiver or observer has to

⁵⁸ James Druckman, *On The Limits Of Framing Effects: Who Can Frame?*, 63 J. OF POL. 1041 (2001).

decide if the conditions are sufficiently likely to exist so that they induce truthful statements from a speaker to his audience.

The experiment used speakers who had widely known reputations; therefore, subjects were likely to have pre-existing beliefs about each speaker's credibility. However, in local elections the credibility of speakers may not be as broadly known as it was in Druckman's experiment. The probability of learning will be higher if the speaker quoted in a newspaper story is known to the audience and has a professional or political affiliation that can help audience members to determine the speaker's interests and determine whether or not they have common or conflicting interests. Of course, it may be difficult for an outsider to know whether a local speaker has widely-known reputation for credibility. Remember the endorsers included in the voter pamphlet in the 2000 Cajon Valley election, a group which included the past president of the Mother Goose parade. At first glance, that seems an obscure source designed to amuse; but it may well be a civic leader known to many in the community and with a concern about his reputation. Determining whether a particular information environment is conducive to voter learning is a context-specific inquiry that depends on the identities of the listeners, the speakers and the institutions that shape that dialogue.

If newspaper readers cannot determine a speaker's interests, then Lupia and McCubbins show that other institutional features can create the conditions for trust. The key is whether or not the newspaper has these institutions, such as costly action, a penalty for lying, or a threat of verification, in place. Costly action is often not present in the newspaper context; indeed, the incentives of reporters to cover both sides of a story and

to feature conflict⁵⁹ may actually lower the costs associated with making a statement because the newspaper seeks out speakers on all sides, which then lowers the costs associated with speaking. A large advertisement in the paper may demonstrate a group's willingness to spend money to communicate its endorsement of a particular side, although relatively low advertising rates in some local papers may not provide a strong signal of preferences.

It is possible that newspapers can impose, with some probability, a penalty for lying if the newspaper refuses to solicit statements from speakers known to lie. Similarly, the newspaper may have some mechanisms for imposing a threat of verification. For example, the newspaper could employ a fact checker for speakers' statements. Furthermore, the presence of multiple speakers in a newspaper could induce truth telling because another speaker, who is trustworthy because of common interests, may act to verify the statements of an otherwise untrustworthy speaker. Druckman's finding that voters perceived some papers as more or less credible depended in part on the likelihood that editors employ mechanisms of verification. None of these institutions is required of a newspaper, and therefore the key to a paper's ability to inform voters depends on the voters' perceptions of whether or not the newspaper has created the conditions for trust to exist and whether the presence of these institutions is common knowledge among both speakers and readers/audience. Local papers may have very different reputations that are known to those living in the jurisdiction but would be difficult for an outsider to assess. Knowing just the name of a paper, for example, does not reveal whether it is a reputable local paper with credibility and with institutions to

⁵⁹ Matthew Baum & Tim Groeling, *Crossing the Water's Edge: Elite Rhetoric, Media Coverage and the Rally-Round-*

verify statements, or a neighborhood rag full of gossip and rumor. In some cases, those living in a jurisdiction may not be confident that a particular local paper has in place institutions designed to ensure that the information provided in news stories is trustworthy.

One important issue affecting the credibility of information contained in newspaper stories is whether the conditions for trust exist for the people quoted in the story. An individual quoted in the newspaper may not simply be speaking to the newspaper's average reader. Rather, her statement may be directed at a very specific person or group that is a subset of the entire newspaper readership. The existence of multiple audiences to whom a quoted person may be speaking can make it difficult for readers to know if the conditions for trust are met by a statement in the newspaper. Are they speaking to all the newspaper's readers, some of the newspaper's readers, their own group of supporters, or an entirely different audience? On the other hand, if a reader knows that some in the audience can impose penalties for lying – say, for example, in the case of a union president quoted in a paper that will be read closely by union members—then the reader can be more confident that the conditions for learning are present even if she is uncertain whether the newspaper verifies the accuracy of quotes. The speaker cannot engage in “cheap talk” under these circumstances without paying a price exacted by key members in the audience. Again, generalizations are difficult here, but under some conditions, learning will occur.

In addition to news stories, readers may be exposed to editorials or opinion columns, and they can attempt to learn by reading them. In these cases, the speaker is

either the author of the column, or, if it is an unsigned newspaper editorial, the identity of the speaker depends on the composition of the editorial board and its policies for writing editorials. If the writer of the opinion/editorial is well known and has easily identified interests (which are often provided when the author is identified), then voters may be able to learn from these writings. However, if the writer or her organizational interests are unknown, then voters can only learn from the editorial if the conditions for trust are present in the newspaper. This will be different for each newspaper, and Druckman demonstrates that readers will have prior views about the truthfulness of statements in particular newspapers.

This discussion demonstrates that learning may occur as a result of reading stories in a newspaper, but it is by no means guaranteed, and it will depend on the characteristics of both the speaker and the newspaper. In this way, learning from information in the news media is like learning from other endorsers, including public officials. Learning will not occur automatically, but it is a function of the characteristics of the information environment and the institutions shaping the way information is provided. With this understanding of the theory of learning in politics, we can now consider the information environment in Los Angeles and San Francisco during particular campaigns for local infrastructure bonds and assess whether or not voters were likely to be able to make welfare-enhancing decisions in each environment.

4. Bond Referendums Build Los Angeles

The city of Los Angeles used ballot propositions extensively in the 1920s and 1930s as the city built its infrastructure, particularly water and power infrastructure.⁶⁰

⁶⁰ STEVE ERIE, *GLOBALIZING L.A.*, Chapter 3 (2004).

The city has continued to issue bonds for infrastructure, although over the century the information environment has changed to include, among other things, voter pamphlets. In this section, we examine the information environment surrounding the elections of early and modern Los Angeles to determine how likely voters were to learn and make informed decisions. We discover a mixed picture, with a few campaigns offering trustworthy endorsements, but with others providing an anemic information environment unlikely to result in competent voters. We also see examples of problems we discussed earlier in this article, including take-it-or-leave-it offers and sequential elimination agendas in campaigns with skewed voter turnout.

4.1. Infrastructure Bonds in Early Twentieth Century Los Angeles

In his book *Globalizing L.A.*, Erie recounts how different municipal authorities used bond propositions to generate funds for infrastructure projects in Los Angeles. For example, the Port of Los Angeles was extremely successful in its ballot campaigns between 1910 and 1924. The Port put six different bonds on the ballot, and all six of them passed, usually with more than 80 percent of voters voting “yes.” The turnout for the elections that featured these propositions ranged from 14.8 percent in 1910 to 52.1 percent in 1924.⁶¹ The Port combined active campaigns with low levels of opposition to generate this record of electoral success.

Lacking in-house precinct workers, the port relied instead on interest-group supporters, and their well-financed campaign advertising to win elections. Save for the SP (Southern Pacific), which the port began to court assiduously, the department, in stark contrast to the DWP (Dept. of Water and Power), had few potential adversaries. ... The city’s leading newspapers and commercial organizations enthusiastically backed the department’s electoral campaigns.⁶²

⁶¹ See ERIE, *supra* note 60, at 56.

⁶² See *id.* at 55-56.

As the city was building infrastructure through the use of bond propositions, those seeking to ensure the passage of bonds often manipulated the process to stack the odds in their favor. A major objective of this strategy was to ensure that friendly voters came to the polls on Election Day, where they could have decisive impact because of generally low voter turnout. Erie writes:

The city council frequently colluded with departments to call special elections in which the electoral leverage of municipal employees could be maximized. Of the harbor-bond, charter, and ordinance referenda, over 75 percent were in municipal elections; over half of these involved special elections. Turnout in municipal elections was low; generally, fewer than one-third of Los Angeles's registered voters bothered to go to the polls. Turnout was even lower in special elections. City employees (numbering 13,000 on average between 1912 and 1932) could be a power force both in municipal-bon (72,000 average turnout) and in nonbond elections (107,000 average turnout) from 1906-1932.⁶³

The circumstances that Erie outlines regarding the bond elections for harbor infrastructure suggests that the information environment was unlikely to be conducive to voter learning. Let us assess the accuracy of this conclusion by delving deeper into some infrastructure campaigns during the last century and the current one.

In the June 5, 1923 election, L.A. voters faced six bond propositions totaling \$61,500,000. A harbor bond for \$15,000,000 and a power bond for \$35,000,000 appeared on the ballot, as well as four smaller bond propositions. The power bond appears to have generated campaigns on both sides of the issue, which, all else equal, should increase the opportunity for learning because there are more opportunities for an observer to witness a speaker's statement that meets the conditions for trust.

Interestingly, one of the city councilors, Mushet, voted to put the bond on the June ballot and allow the voters to decide whether or not to pass it, even though he opposed the

bond's passage. This is a concrete example of the difficulty in interpreting a vote by a city council member to place a bond on the ballot as an endorsement of that bond. The *Los Angeles Times* described opposition to the costly power bond by the Los Angeles Taxpayers Association.⁶⁴ These opponents claimed that the city was already near its debt limit and that the bonds were unnecessary because \$25 million was to be used for the non-existent Boulder Canyon Dam. The article also listed prominent groups and people associated with the opposition campaign, including the Chamber of Commerce, the Los Angeles Realty Board, and the President of the University of Southern California. Many newspaper readers would have known the economic and political interests of at least some of these groups, and together with the knowledge of the context of their endorsements (in a public forum like the *Times* with certain institutional constraints to deter lying), they could accurately determine the relationship between the speaker and the audience and learn from this information.

In the June 1923 election, the power bond failed, but the other five bonds, totaling \$26.5 million, passed. A review of the *Los Angeles Times* archives in the month leading up to the election reveals that the only proposition to generate any discussion was the power bond; therefore, it seems that only the power bond may have met the conditions for learning. In November 1935's special election, a \$7.7 million bond was proposed for expansion of the Los Angeles Harbor. According to a November 22, 1935 *Los Angeles Times* article, the bond was endorsed by six of the county's eight congressional representatives, and it was opposed by the California Taxpayer's Association.⁶⁵ This

⁶³ See *id.* at 57.

⁶⁴ *Voters to Pass on Power Issue*, L.A. TIMES, May 15, 1923.

⁶⁵ *Port Bonds Win Favor*, L.A. TIMES, Nov. 22, 1935.

story appeared in the paper four days before the election. Readers of the paper might have been able to recognize the interests of these speakers and determine if they shared interests, which would have allowed them to learn from some of the statements. The endorsements by congressional representatives might also have provided voters partisan cues to use in their decision making. The bond proposition ultimately failed. It did garner more than a majority of the votes cast, but it did not achieve the two-thirds majority required.⁶⁶

The story of these early Los Angeles elections clearly suggests that political actors manipulated the election process to give bond proposals the best chance of passage, and it demonstrates that our concerns about take-it-or-leave-it offers and sequential elimination agendas are more than just theoretical worries. Our review of the information environment of historical L.A. bond elections suggests that some elections may have met the conditions for learning, while others appear not to have met the relevant conditions. This suggests that we cannot make a blanket statement about the information environment surrounding local infrastructure initiatives; each campaign must be assessed in its full context. Further, it may be that all of these infrastructure projects were beneficial to society even though they may not have met the conditions for voter learning. However, if voters are unable to make reasoned choices about policy, then the outcome of direct democracy is not a result of reasoned deliberation and decision making, but of chance.

4.2 Infrastructure Bonds in Today's Los Angeles: Has the Information Environment Changed?

⁶⁶ *Port Bonds in Doubt on Close Vote*, L.A. TIMES, Nov. 27, 1935.

The Los Angeles story does not end in the early twentieth century; voters continue to face important infrastructure decisions at the polls. In the first five years of the twenty-first century, Los Angeles voters have made significant decisions about funding infrastructure projects through ballot propositions. Between 2000 and 2006, there were eight infrastructure bond measures in the City of Los Angeles, including Los Angeles Unified School District (LAUSD) and Los Angeles Community College District (LACCD). Of the eight measures, three were for non-school infrastructure. Measure F in 2000 and Measure Q in 2002, both of which passed, raised money for agencies concerned with public safety, including paramedics, police, and fire. Measure O in 2004 also passed and funded clean water and ocean, river, beach, and bay storm water cleanup. The other five bond propositions were all for education-related concerns, and all passed. Three benefited the Los Angeles Unified School District, and the other two provided infrastructure for the Los Angeles Community College District.

The information environment for these eight propositions appears to vary, although there are some common elements. For instance, in all eight cases, both the *Los Angeles Times* and the *Los Angeles Weekly* wrote editorials that either supported or opposed the measures. For voters who knew the interests of each paper's editorial board and who had a sense of the reputation of the papers, this was useful information. Furthermore, there were multiple news stories addressing each of the measures. These stories and editorials undoubtedly provided reasons why voters might vote for or against a proposition, as did the voter pamphlets, but the existence of reasons is neither necessary nor sufficient for reasoned decision making. Instead, we survey who offered

endorsements either in the voter pamphlets or newspaper articles and evaluate whether they met the conditions for trust and learning.

In general, we found that *Los Angeles Times* newspaper articles and voter pamphlets during this time period often featured statements by credible endorsers such as well-known politicians and interest groups. The Los Angeles mayor and city councilors usually took public positions on the bond measures, and these individuals may meet the conditions for trust among at least some voters. Additionally, for the bonds in 2002 there was opposition to the bond measures by the Howard Jarvis Taxpayer's Association and a group advocating the division of Los Angeles into multiple smaller political jurisdictions. Both of these groups were well-known at the time, and voters may well have been able to learn from their statements. In each election a variety of newspapers also offered their endorsements either for or against a given bond. Taken together, it seems that during this time period voters had a reasonable opportunity to learn from trustworthy speakers.

One of the particularly interesting aspects of the bond measures passed in Los Angeles is the relationship between Proposition A and AA. The LACCD sponsored Proposition A to raise money for the construction of new buildings, and voters passed the proposition in 2001. A few years later in 2003, the community college district proposed, and the voters passed, Proposition AA to complete the projects originally funded by Proposition A. Of course, the money spent from Proposition A would have been wasted if buildings were simply left half completed, so voters were in a bind when presented with Proposition AA. Voters faced a classic example of a take-it-or-leave-it offer, discussed above in Part 1, in both the first and second bond election. The reversion point in the second election was very unattractive, and passing a second bond measure may

well have been the only way to get any value from the original ballot measure. Voters had the option of approving the bond measure and incurring further indebtedness, or not passing the bond and leaving many of the promised construction projects unfinished. The iterated process of funding these infrastructure bonds, determined through a binary choice often along with other decisions on bond measures on the same ballot, appears remarkably similar to the sequential elimination agenda problem we discussed in Section 2.⁶⁷

5. San Francisco, California

The modern information environment in San Francisco is similar to that in Los Angeles, and this city provides our final case study to reveal whether voters can learn when they need to in order to vote competently on local infrastructure ballot measures. We will focus on ballot pamphlets and the information they provide about groups and individuals supporting or opposing a measure. We find that sometimes sufficient trustworthy endorsers are present, sometimes they are not. Moreover, the ballot pamphlets are often dauntingly long and dense, running to more than 1,000 pages, leading to a concern of information overload. It may be that while the necessary information is available, it is not provided in a format that makes voting cues accessible and salient to voters.

In November 1966, voters in San Francisco rejected a bond proposition to spend \$95 million for airport construction.⁶⁸ The bond failed because it only garnered 66.1 percent of the vote, falling short of the two-thirds vote requirement. The 1966 voter

⁶⁷ See Kousser & McCubbins, *supra* note 4, at 963-65.

⁶⁸ Past voter pamphlets can be found at San Francisco Public Library, *San Francisco Voter Pamphlets and Propositions*, <http://www.sfpl.org/librarylocations/main/gic/voterpamp/votepamp.htm> (last visited Aug. 28, 2007).

pamphlet contained two arguments for the proposition, and a slew of public entities, including the local Democratic Party, endorsed its passage. One of the statements in favor of the bond was submitted by the members of the Board of Supervisors, which is the nonpartisan governing body for the city and county of San Francisco. This statement provides important information to voters, in contrast to the list provided in the ballot pamphlet of the votes of the supervisors in determining whether to submit the bond to a popular vote. As we have observed previously, public officials may vote to refer a bond to voters even if they do not support it. It is unclear how to interpret votes of this nature, but the actual endorsement by one or more of the supervisor is likely to impart a valuable and credible voting cue. The only opposition statement comes from the president of the “Home Owners and Tenants Protective Committee.” This statement is unlikely to meet the conditions for trust: what institutions to verify and/or punish the speaker for lying are in place for the leader of this group with no established reputation and little likelihood of repeat play in the political process? The proponents, who come from established groups and involve the cue of partisans affiliation in some cases, are likely to have met the conditions for trust, however, so it is possible that people could have learned from those endorsements.

In November 1967, essentially the same issue was placed before the voters; this time the proposition passed with 68.6 percent of the vote. There were actually fewer people voting in favor of the proposal in 1967, but with lower overall turnout, the 2/3 majority was met. It is unclear what, if any, changes in the conditions for knowledge or trust occurred between these two elections, and we suspect that differences in turnout, not in learning, are mainly responsible for the change in outcome. The arguments for and

against the proposition in the voter pamphlet are both made by largely the same groups and include the same endorsers.

A particularly interesting election for our purposes occurred in November 1977; it featured three different configurations of speakers and therefore three different learning environments for voters. In one case, there were known speakers on one side of the bond and an unknown speaker on the other. In another case, only one side was represented but by speakers who would likely be known. In the third case, there were known speakers on both sides of the bond proposition.

First, arguments were presented both for and against Proposition A, which was to provide over \$9 million for city parks. A variety of publicly-known individuals such as the mayor, county supervisors, and city planners provided arguments supporting Proposition A. These individuals are usually knowledgeable about bond measures and may also meet the conditions for trust because voters would recognize them and know if they had common interests and faced a penalty for lying or other institutional constraints to ensure truthfulness. However, much like the airport bond in 1966, the only statement opposing Proposition A was made by an unaffiliated person, and there was no widely-available information about him that would allow voters to determine if he met the conditions for trust and/or knowledge. The primary difficulty was that a voter could not accurately assess common interests; there was no way to determine what interests this unknown speaker represented. In this case, learning relied entirely on a faith in reason, a faith that we believe is usually misplaced. Furthermore, this speaker did not face a threat of verification or a penalty for lying, and the cost of placing a statement in the voter pamphlet is insufficient to generate conditions for trust. In San Francisco, statements

submitted to the voter pamphlet are not checked for accuracy and are simply the opinion of the person or group that pays to submit the statement.⁶⁹ The proponents' statement in the voter pamphlet may have been sufficient to generate learning, however, because voters may have known that they either shared common (or dissimilar) interests with them, and they therefore could have determined whether the conditions for trust were present.

The voter pamphlet for a 1977 fire protection bond, Proposition B, featured no arguments opposing it and only one favoring it. The argument in favor was from individuals who may have met the conditions for knowledge and trust (county supervisor and chief of the fire department). The councilor no doubt knew there were constituents in the audience for his statements, and he might be penalized by them for lying, which could induce him to make truthful statements. Voters might also have been able to recognize if they shared common interests with the councilor (or if he had conflicting interest, perhaps because he was from a different political party) and therefore could learn from the statement. The fire chief was also likely to face institutional constraints imposed by other fire fighters that could help voters determine the chief's interests and induce the chief to make trustworthy statements. Thus, this information environment was similar to the previous one; the presence of a statement from an unknown speaker in the first example is the equivalent to having no speaker for that side at all. Any learning had to come from the endorsements provided by known speakers who faced institutional constraints leading to truthfulness. We believe that it was possible for voters to cast their ballots

⁶⁹ A description of the submission rules for 2006 can be found on page 65 of the November 2006 pamphlet, available at http://sfpl4.sfpl.org/pdf/files/November7_2006.pdf.

competently, although the presence of known speakers on both sides is preferable because it increases the chance that a particular voter will be able to learn from someone.

Finally, Proposition C, asked for authorization for a bond of \$90 million to fund airport renovations, the largest amount of spending for any measure in the 1977 election. Unlike the other two propositions, publicly known people and groups appeared on both sides of the proposition. The proponents of the measure were publicly identifiable individuals who appear likely to have been knowledgeable given their roles as political officials such as supervisors or mayor. Some of the opponents came from groups which had well-known positions and interests, such as the San Francisco Black Political Caucus and the San Francisco Federated Young Democrats. We should note that some of the voter pamphlet arguments opposing Proposition C were written by people who were unaffiliated with any groups, and so their interests might be unknown to most voters. Because some of the endorsers on both sides of the bond were publicly-known, there was a greater possibility that a voter could have determined with whom he shared common interests, and the endorsers also faced a greater threat of verification with respect to statements in the voter pamphlet.

In short, the three propositions in 1977 met the conditions for learning to different degrees. The campaigns that surrounded other bond measures during this period in San Francisco also provided environments that are conducive to voter learning. Just as in 1977, the conditions for learning are enhanced by the institution of the voter pamphlet, which allows well known groups and individuals to present arguments. A few voters may learn from the arguments themselves, but most are more likely to learn from the identity of those making the statements. Voter pamphlets are no panacea, however; they

can present challenges for voters by providing too much information, including some that is not as helpful as an endorsement from a trustworthy source. For example, in November 1992's general presidential election, San Francisco voters were also asked to decide the fate of eleven different propositions, as well as a multitude of local and national political officials. There were three propositions about local infrastructure, Propositions A, B and C. Proposition A sought permission to issue \$350 million in bonds to provide loans for the reinforcement of private masonry buildings. Proposition B involved the issuance of \$158 million in bonds for the San Bruno Jail, and Proposition C requested \$40 million for the San Francisco Fire Department. The voter pamphlet for all of these issues and offices was 1094 pages long, and it contained information that could provide helpful voting cues (e.g., endorsements by public officials) as well as worthless information (e.g., endorsements from private individuals unknown to virtually all voters). A pamphlet of this length may overwhelm voters, not allowing them to draw out the information most helpful to them.⁷⁰

Voter pamphlets are not the only source of information and endorsements in the political environment, of course, although they provide a flavor of the information that is likely available through other outlets. There were also a few news stories in the *San Francisco Chronicle* about Proposition A leading up to the election. In the *Chronicle* articles, the primary opposition came from churches concerned that they could not afford the repairs even if the bond passed because they would have to pay market rates on any loans they received.⁷¹ Although voters could likely have determined whether they had

⁷⁰ These voter pamphlets also contained information from nonpartisan officials, such as simplified ballot measure explanations and controller's analyses, which played some role in the length of the pamphlets. We discuss the value of such statements in Section 3.1, *supra*.

⁷¹ L.A. Chung, *S.F. Ballot Propositions*, S.F. CHRONICLE, Nov. 1, 1992, at 15/Z1.

common interests with the religious institutions, it is not clear whether the statements were credible. That depends on the presence of institutional constraints facing the churches (penalties from members if they discovered that the churches had not provided accurate information?) or imposed by the newspaper.

These examples are only a few bond measures from a universe of dozens more that have faced voters in San Francisco recently. Thus, drawing general conclusions about the information environment and the voting cues it provides is impossible. These examples suggest, however, that voters sometimes have access to credible endorsements that can help them cast their ballots competently. They do not suggest that is uniformly the case, and the examples raise the question of whether this information is provided in a way that allows voters to focus on the helpful and trustworthy information and ignore the other noise in the system.

6. Conclusion

Although the use of referendums is quite common across the country to finance infrastructure projects, there are at least three reasons why we should be concerned with the welfare effects from these propositions. First, the structure of direct democracy allows bonding authorities to offer voters a Hobson's choice that can move policy toward the preference of the proposer and not necessarily closer to the preference of the pivotal voter. Over time, this may lead to a situation where the size of government is far away from the voters' preferences as decisions are made one-by-one, in a binary fashion. Moreover, government officials will act strategically to take advantage of the size or shape of expected voter turnout in a particular election to obtain an outcome that they strongly favor and that most voters may not support.

Second, the problem of overlapping local jurisdictions with bonding authority, together with the natural properties of the sequential nature of bond elections, creates a rush to the ballot by the myriad bonding and tax authorities. The outcome of this process may lead to a highly inefficient allocation of resources, where money is borrowed and spent not on the projects with the greatest need, but on those that got on the ballot first. In addition, the aggregate effect of decisions made separately and through a “yes” or “no” vote between the status quo and a proposal may be far from optimal.

Third, voters in some, but certainly not all, local bond elections have limited ability to make reasoned decisions because there are few credible endorsers from whom they can learn. Each of these problems alone would be cause for concern, and taken together they seem especially problematic for the outcomes of local bond elections. We believe more empirical work is necessary, using the theoretical work we have described here as a framework, to provide a foundation for policy makers to propose reforms of the local initiative and referendum processes to better ensure welfare-maximizing decisions are made by voters armed with effective voting cues.

If infrastructure decisions are not made by the initiative process, they must be made some other way, usually by some sort of legislative body, such as a city council, board of supervisors or school board. Therefore, as we think about the outcomes reached at the ballot box, we must compare them not with the results that might occur in some ideal world, but to the decisions that actual legislative institutions on the local level are likely to reach. A great deal of political science literature suggests legislatures are far from perfect, and the challenges that face local bodies may be greater than those faced by state or national legislatures. Moreover, legislative decision making may be subject to

some of the pathologies we have identified here, such as the control of the agenda setter and deficiencies of credible information.

In general, however, the legislative process seems better equipped to deal with the three primary problems we identify in the direct democracy process. First, political parties and individual politicians are potentially accountable if they move policy far away from the preferences of their supporters. Second, there are a variety of legislative institutions, such as political parties and committees, that control the legislative agenda and thereby help to reduce the sequential elimination agenda problems. Third, legislators are likely to have access to relevant information or trustworthy substitutes to facilitate making welfare-enhancing decisions when they cast their votes. On the other hand, legislators are subject to pressure by well-funded and organized interest groups, and the vetogates in any legislative process may stand in the way of beneficial change that is opposed by minorities with intense preferences. We suspect that local governments face very different realities than those characterizing the better-studied counterparts at the state and federal level.

We do not believe that elimination of direct democracy in this realm is a realistic proposal because of the voters' tendency to favor some form of direct democracy in state (and presumably local) decision making.⁷² Practically, it is very difficult to eliminate the initiative and referendum process once established, although we think reform of local direct democracy is possible, even if the voters must approve any change. We are confident that the current process can be improved, perhaps by changing the way in

⁷² See, e.g., MARK BALDASSARE, PPIC STATEWIDE SURVEY: CALIFORNIANS AND THEIR GOVERNMENT 17 (Aug. 2004); Jack Citrin & Jonathan Cohen, *Viewing the Recall from Above and Below*, in *ESSAYS ON THE CALIFORNIA RECALL* 68, 74-82 (Shaun Bowler & Bruce E. Cain eds., 2006).

which voters are presented with choices, coordinating infrastructure decisions among jurisdictions, providing relevant and salient information about credible endorsements so that voters have the cues they need, and involving the legislative body throughout the decision making, not just at the proposal stage. However, we do not propose reforms here because they would be premature at this point in the study of local bond measures. We urge that any recommendations take careful account of the local environment in which most infrastructure and bonding decisions are made.