

MAKING POLICY DELIBERATIVE: THE CASE OF CITIZENS' INITIATIVE
REVIEW IN OREGON

by

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A THESIS

Presented to the Department of Political Science
and the Graduate School of the University of Oregon
in partial fulfillment of the requirements
for the degree of
Master of Science

June 2010

“Making Policy Deliberative: The Case of Citizens’ Initiative Review in Oregon,” a thesis prepared by Laura Beth Keown in partial fulfillment of the requirements for the Master of Science degree in the Department of Political Science. This thesis has been approved and accepted by:

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ACKNOWLEDGEMENTS

Thank you to all of the political elites from around the state of Oregon who agreed to be interviewed for this project. I could not have done this research without them. Each person I spoke to, at every level of government, was honest, thoughtful and welcoming. I have gained a renewed confidence in the accessibility of Oregon's leadership and their earnest efforts serve the public.

Thank you also to the members of my committee for providing me with thoughtful feedback and direction.

Finally, thank you to Sarah Cate and Loryn Cesario for being fantastic editors and listeners. You will both make fabulous teachers some day. You already have been great teachers to me.

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CHAPTER I

INTRODUCTION

On June 16th, 2009, the Oregon legislature passed a bill that would give citizen deliberation a unique role in the state's initiative process. The Citizens' Initiative Review gives deliberative citizen panels a new page in the voters' pamphlet to publish statements for and against state-wide ballot measures in the 2010 election cycle. This process is completely unique to Oregon, and aims to give voters a trustworthy and impartial source of information to consider when making their voting choices. The bill represents a huge opportunity for proponents of deliberation to demonstrate its utility in decision making. It also raises the question of why Oregon lawmakers chose to adopt this distinctive strategy for improving the initiative process.

Advocates of deliberative democracy have long tried to convince policy makers of the many desirable outcomes that could arise from promoting deliberation in broader society. Despite their efforts, policies that promote ideal-types of deliberation for the public remain rare. When they do arise, deliberative theorists have been eager to explore and publicize the fact that true deliberative policy can actually exist. Researchers have also explored the outcomes of deliberative efforts in attempts to reveal how successful these processes have been across various social and policy goals. The deliberative

literature has begun to sketch a picture of what makes deliberative acts successful, and in what terms that success can be defined. However, there is no empirical literature telling us when deliberative policy is likely to arise, or why policy makers are occasionally drawn to support deliberative strategies.

The goal of this research will be to focus on the question of why political elites choose to endorse deliberative policy. A very recent example of the Oregon State Legislature endorsing the pilot for a deliberative citizen review process on ballot initiatives (called the Citizens' Initiative Review) will serve as a case study. By exploring the reasoning of the Representatives and Senators who supported this deliberative policy, as well as the political environment surrounding the issue of initiative reform, this research will shed considerable light on the decision making procedures that lead politicians to choose deliberation in public policy. This single case is not fully representative of the many issue areas or institutional environments where deliberative policy might be proposed, but takes an initial step toward answering broader questions.

At the very least, exploring this case will reveal why policy makers came to support the Citizens' Initiative Review (CIR) process in Oregon. The issue of initiative reform is one which many state legislatures are facing as citizens become increasingly discontented with ballot measures that are confusing to voters, or public debates which are dominated by special interest groups (Ellis 2002: 194). Legislators are also weary of ballot measures that have huge impacts on state budgets, yet bypass the normal legislative process and receive very little deliberative review. The CIR process institutes citizen panels to review ballot measures and provide statements on the various measures to the voting public. Depending on its success in Oregon, this strategy of reform may spread to

other states that use ballot initiatives. This research will reveal what factors were most important and influential in the policy decision which led to the adoption of Citizens' Initiative Review.

Beyond issues of initiative reform, this research acts as a window into a broader field of deliberative policy. Although I will be dealing within the issue area of initiative reform, the reasoning and insight from this research speaks to broader questions of when deliberative policy is promoted by policy makers. This information could be invaluable to both deliberative advocates and policy makers. While the portability of this particular case is difficult to determine, the important conditions that led to the endorsement of the CIR by political elites in Oregon might be applied elsewhere. Answering this question about the CIR in Oregon also allows me to test, and examine the relative influence of possible explanations that come from deliberative and public policy literature. It is important to empirically describe this unexplored facet within what is a well developed theoretical field on deliberative democracy.

Deliberative policies have been utilized by lawmakers in the USA and throughout the world. They have been applied to a variety of subject areas and levels of government from local to national. By way of example, city governments in Eugene, Oregon, Sacramento, California, and Fort Collins, Colorado have used deliberative projects to engage citizens and create a public will to act, on issues of taxation, providing community services, and planning city development (Weeks 2000). At the state level Oregon has used deliberative "watershed councils" to govern the clean-up of its rivers for years (Smith 2009). More recently Minnesota used citizen deliberation in overseeing and making recommendations for the recount of the 2008 Franken v. Coleman Senate race

(Weiner 2009). Internationally, highly structured citizen deliberation has been used in localities across Spain (Font and Blanco 2007), and Brazil has earned a reputation for its municipal health councils that involve citizens from every class in crafting the nation's health policy (Pozzoni 2002). While there is an increasing literature on the efficacy and outcomes of deliberative projects like these, very little empirical work has been done to see what leads these policies to be endorsed in the first place.

CHAPTER OUTLINE

The following chapters will address the question of how certain political elites came to support deliberative policies. Chapter two will review the relevant literature that might be applied to the topic. After describing what deliberation is and how it is conceptualized by different theorists, the explanations for supporting deliberative policy will be divided into three broad categories: a political explanation that is based around mounting political pressures to act and a feeling of obligation or last resort from policy makers, an ideational explanation wherein political leaders will jump to the idea of deliberation, actively choosing it as a best policy, and explanations from the public policy literature will provide a final view of how deliberation might become a successfully endorsed public policy. The chapter ends with a description of the methodology used for the case study of CIR, and how I expect to use interviews with political elites to empirically explore what led to its passage.

Chapter three delves into the case study of CIR in Oregon. It will begin with a description of the CIR and what it entails as a deliberative mechanism. I will then outline a history leading up to the introduction of CIR to Oregon, and describe the actors involved in this story. The chapter will then go on to explore the importance of each of

the ideational and political explanations described in chapter two, before laying out the four explanations that my research has revealed for the success of CIR in Oregon: timing, effective advocacy, exceptionalism, and low-impact legislative strategy.

The final chapter seeks to link the literature described in Chapter two to the results of the research described in Chapter three. Chapter four will wrap-up the investigation of the causes of deliberative policy endorsement by outlining which literatures have been the most useful in reflecting the policy making processes that I observed, as well as where my empirical conclusions might fairly be applied in the future. I conclude with some thoughts on the future of CIR in Oregon and the continued challenges this deliberative policy will face in maintaining the conditions which led to its adoption.

CHAPTER II

LITERATURE REVIEW AND METHODOLOGY

DEFINING DELIBERATION

The need for greater deliberation in modern democracy has been identified by many political theorists. There is a considerable amount of overlap in definitions for deliberation, and this section will identify the essential and common characteristics authors agree on. The definition determined by this section is used to identify what constitutes ‘deliberative policy,’ and select the Citizens’ Initiative Review (CIR) as the case study I explore in Chapter 3. There will be some discussion of the areas of disagreement in the deliberative literature, including whether or not deliberative decisions should be binding, and what the role of government should be in the process. This is not intended to be a comprehensive overview of how deliberation has been defined in the literature. This review will focus on outlining the foundations, and defining characteristics of the process of deliberation.

One of the touchstone authors for deliberative theory in modern democracy, who provides a useful groundwork for identifying and defining deliberation, is Jurgen Habermas. In *The Structural Transformation of the Public Sphere* (English translation 1989), Habermas offers a historical narrative of political culture in early modern Europe.

Habermas (1995) claims that a “public sphere” emerged in seventeenth century France and Great Britain, where “the fashionable ladies, and nobles associated with sons of watchmakers and shopkeepers” as free and equal citizens (237). These inclusive public meetings took place in salons, theatres, and coffeehouses, where people would discuss society and politics. Everyone was of equal status and was given the chance to interpret and question political ideas, which the Church and the courts once maintained a monopoly on (Habermas 1995: 239). In this sphere, face-to-face discussion took place in a shared locale, where there was “no authority beside that of better argument” (Habermas 1995: 240). The participants “felt themselves at one with all,” and were completely “willing to let themselves be convinced by [others’] arguments” (Habermas 1995: 240). Each political group would also publish the opinions that emerged from their discussions, and a huge network of periodicals and journals emerged to circulate ideas and fuel further discussions¹ (Habermas 1979: 200). This public sphere became the site where public opinion was formed.

Eventually, the public sphere began to decline. With the growth of industrialization and capitalism, “large [private] organizations and interest groups became key political partners with the state, which greatly displaced the role of the public” (Dahlgren 2002: 196). The public sphere continued to weaken as it became “vulnerable to the repressive and exclusionary effects of unequally distributed social power and systematically distorted communication” (Habermas 1996: 307-308). As the public became fragmented, it lost its social coherence and was “reduced to a group of spectators” (Dahlgren 2002: 196). The power of private interests and the conglomeration

¹ According to Habermas (1979), “450 clubs and over 200 journals were established in France in 1848 between February and May alone” (200).

of media ownership have continued until today, preventing an ideal public sphere from emerging in modern society. As a result public opinion is little more than the “expression of an unmediated popular will” without the legitimacy of reasoned and informed discussion (Gutmann and Thompson 2004: 9).

It is clear to Thompson (1995) and others “that this model was regarded by Habermas as an idealization of actual historical processes” (253). In reality, the leisurely discussion of politics in seventeenth century European coffeehouses were not as inclusive or diverse as Habermas implies (Thompson 1995: 253). However, the story outlines an ideal operation for public opinion formation, and explains why it does not currently exist in society. Deliberative theory following Habermas is largely built around reimagining and describing forms of public conversation that will achieve the ideals of the public sphere.

Since Habermas, authors have gone on to clearly describe the assumptions and aims that deliberation is built around. Benhabib (1996) assumes a few social barriers that prevent ideal public opinion formation, make democratically legitimate policy decisions difficult, and that make organized citizen deliberation important to democracy. Benhabib (1996) writes that: (1) there exist conflicting social interests, (2) that there is a pluralism of values in society, (3) and finally that no modern society can organize its affairs around mass assembly (73). Each of these factors makes democratic decision making difficult, and deliberation presents a procedural solution for dealing with them. Deliberative theory describes how the requirements of deliberation can result in more legitimate and representative decisions, to overcome or offset the effects of each of the existing social limitations Benhabib (1996) outlines.

The first assumed condition that prevents a legitimate and informed public opinion from forming is that there exist conflicting interests in society (Benhabib 1996: 73). Habermas points out this challenge clearly, and agrees that conflicting social interests have contributed to the decline of the public sphere. These conflicting interests prevent coherent public opinion from emerging as each individual only promotes their personal interests. Legitimate democratic policy making becomes more difficult when coherent public opinion is replaced by competing interest groups with varying power.

Deliberation addresses this problem for democratic legitimacy by “encouraging public-spirited perspectives on public issues” (Gutmann and Thompson 2004: 10). As in Habermas’s public sphere, deliberation requires free and equal participation, where no person’s view is privileged above others or excluded outright. In this environment, participants must use reason to convince others of their viewpoint. As a result, the conversation becomes increasingly conscious of public interests and the greater good. In Benhabib’s (1996) words,

When presenting their point of view and position to others, individuals must support them by articulating good reasons in a public context to their co-deliberators. This process of *articulating good reasons in public* forces the individual to think of what would count as a good reason for all others involved (71-72).

Deliberation also includes the requirements of inclusivity and reasoned argument in order to deal with the conflicting interests that exist in society. When deliberation is ideal, the perspectives that emerge are public-minded, because they have been vetted by equal individuals with diverse interests.

A second social condition that Benhabib (1996) outlines, which may hamper democratic decision making, is that there is a pluralism of values in society (73). Separate

from people's personal interests, there are legitimate conflicts in values, stemming from moral or religious differences. Benhabib (1996) acknowledges that society can not have a "strong unified moral code" without "forsaking fundamental liberties" (73). This presents a challenge to democratic decision making because there are certain issues where consensus can not occur. Fighting, contestation, and polarization may emerge as a result.

Even in its ideal form, deliberation can not produce moral consensus, but it can help to alleviate the democratic dilemmas arising from pluralism (Elster 1998). As Gutmann and Thompson (2004) describe,

Deliberation can not make incompatible values compatible, but it can help participants recognize the moral merit of their opponents' claims when those claims have merit. It can also help deliberators distinguish those disagreements that arise from genuinely incompatible values from those that can be more resolvable than they first appear (11).

Deliberation aims to address conflicting moral values by "promoting a mutually respectful process of decision making" (Gutmann and Thompson 2004: 11). By talking and reasoning with moral opponents, opposing sides will acknowledge the merit of the other side's argument, allowing them to maintain mutual respect, and a working relationship. By promoting respect and understanding among opposing factions of society, deliberation makes policy outcomes and democratic decisions more acceptable to everyone.

A third social barrier to ideal public opinion formation, is that no modern society can organize its affairs around mass assembly, or direct democracy (Benhabib 1996: 72-73). Practical and procedural challenges prevent all citizens from being able to debate and vote on every issue which arises. Benhabib (1996) also points out that once a

deliberative body reaches some invisible size limit, the nature and quality of the reasoning process is affected (73). Already by electing representatives, the democratic will of the people is being diluted, and the legitimacy of elected officials' decisions may be questioned.

Deliberation amongst citizens whose views will inform actual decision makers, strikes a balance between representative and direct democracy. Because of its requirements of inclusivity, equality, and reason, deliberation is promoted as the most legitimate form of collective decision making. The decisions of public officials will be perceived as more democratic and acceptable when "everyone's claims have been considered on the merits, rather than on the basis of a party's bargaining power" (Gutmann and Thompson 2004: 10). Deliberation promotes legitimacy because it includes careful consideration of all opposing views (Gutmann and Thompson 2004: 10). Even those who may disagree with a decision can accept the legitimacy of the process through which it was reached. Moreover, the ideal deliberative model does not require a single general assembly of citizens because it is through pluralist interlocking "networks and associations of deliberation, contestation and argumentation" that a collective "public conversation results" (Benhabib 1996: 73-74). Similar to the public sphere, each location of deliberative interaction is limited, but they will interact and share membership to create a collective conversation.

A final aim of deliberation is to advance collective understanding in order to correct or avoid policy mistakes (Gutmann and Thompson 2004: 12). By encouraging conversation with others, deliberation advances understanding of issues and alternative viewpoints among participants. Presuming to know the best policy answer before hearing

from others leads to poorly justified choices and policy mistakes (Gutmann and Thompson 2004: 12). Gastil et al. (2007) have shown cases where polls show a discrepancy between public opinion and votes cast, because people do not understand the complexity or wording of an issue, or do not fully understand the consequences of a decision. As a result they vote haphazardly, and sometimes in opposition to their own values (Gastil et al. 2007: 1439). A major systematic finding of modern public opinion literature has been that most people do not understand any of the major issues around them, have incoherent preferences, and can be induced to vote in almost any direction by small wording changes (Converse 1964). Beierle and Cayford (2002) have done empirical studies that conclude deliberation among citizens will not only inform the public, but also improve the substantive quality of decisions made. Macedo (1999) also claims that, by virtue of being a fair process which promotes feelings of legitimacy, deliberation can promote better policy outcomes over time, because citizens who understand and accept some policy will enforce and abide by it appropriately (10). Deliberation is a procedure that claims to produce objectively better policy outcomes, as well as being thoroughly democratic in its opinion formation.

Deliberative theory has paid special attention to the importance of deliberation in the functioning of democracy, giving rise to the term 'deliberative democracy'. The two terms deliberation and deliberative democracy will both be used to describe public policies throughout this research. The distinction to keep in mind is that deliberation is a procedure which includes a diversity of citizens in a reasoned, rational and impartial face-to-face debate, and deliberative democracy is a system that uses deliberation to make the entire democratic process and all decision making procedures more legitimate. Both can

be used to promote social coherence, and deal with moral disagreement. Public policies can be designed to reflect deliberative ideals, as well as promote deliberative democracy.

The theoretical ideals of deliberation are difficult to attain and do not typically exist in broader society. However, there have been a number of deliberative projects that demonstrated these ideals can exist in carefully constructed and well mediated environments (Crosby 1995). Armour (1995) writes that “if care is taken in the structuring” and in the selection of participants, then deliberation “represents an improvement over more traditional forms of public involvement in policy making” (186). Crosby (1995) has run numerous deliberative projects at the national and state level and evaluations from participants and observers have always ranked the process’ impartiality and integrity highly (164). A number of other organizations (America Speaks, National Issues Forum, National Coalition for Dialogue and Deliberation, and others) have also organized and run local and national deliberative projects, in the USA and abroad, often focusing citizens’ conversations on a specific issue (Jefferson Center 2009b). Although many deliberative mechanisms for obtaining a more meaningful public opinion have been developed, institutionalized deliberative public policy remains rare (Reitman 2010).

For the purposes of this research, a policy should reflect the values, assumptions, and aims discussed above in order to be identified as deliberative. It is impossible for a single policy to shape the whole of society and establish a deliberative public sphere the way Habermas, and other deliberative theorists describe the ideal. However, *any policy that aims to include a diverse sample of citizens in a reasoned, rational and impartial debate over some political problem in a face-to-face environment can be called deliberative*. The process should aim to improve legitimacy of decision making, promote

the public interest, promote respect among morally opposed participants and produce better policy outcomes. Deliberative theory is called a proceduralist theory, because the success of deliberation depends on the institutionalization of the procedures and conditions of communication (Benhabib 1996: 73, Habermas 1996: 27). Thus deliberative policies are defined by the procedures that govern discussions, such as inclusivity, reasoned debate, and equality of participants.

Many government efforts to include public opinion in policy making procedures, such as town hall meetings or community forums, will be excluded from the strict definition of deliberative policies in this project. In order to be deliberative, a process must include a selection process for participants that aims to include diversity, and a discussion environment where people will listen and speak in turn to reason with one another. It can not be only an airing of views, or a series of questions aimed at an individual or group. There should be rational argument offered by and to participants, with a reasonable expectation that people's preferences will change as a result of the conversation (Elster 1998: 8). Considerable attention must also be paid to keeping interactions "free from domination (the exercise of power), strategizing by the actors involved, and (self-) deception" (Dryzek 1990: 15). In ideal deliberation, there is no authority influencing people's views, other than the authority of better argument (Dryzek 1990: 15).

DIVISION IN THE LITERATURE

The definition for deliberation previously discussed will guide and inform the remainder of this project. However, there are some aspects of deliberation where authors continue to disagree. Whether or not deliberative outcomes should be binding, what role

government should play in facilitating deliberation, and if deliberation is truly democratic are three areas of contention that will be discussed below. These different conceptions in the literature are also reflected in the different conceptions that policy makers might have of deliberation. These divisions will speak to the reasoning of why politicians will choose to support, or not to support, deliberative policies.

There is disagreement in the literature as to whether the conclusions reached from deliberation need to be legally binding in order to be an effective democratic mechanism. Gutmann and Thompson (2004) have argued yes, in deliberative democracy the decisions from deliberation must be binding for some time (5). Others agree that “the state must cede some of its power in order to give authority to a process” (Smith 2009: 22).

Empirical research has shown that the more binding influence a deliberative process stands to have on policy outcomes, the more successful the process will be (Beierle and Cayford 2002:50-51). Other authors have taken a more measured view of the influence of deliberation, and insist that the government should always retain final authorization of policy (Wright 1995, 259). In their view, deliberation should have influence through the normal democratic process, whereby the public expresses its will, and elected leaders will listen. The way that Habermas (1996) conceptualizes deliberation is about the formation of a democratic public opinion rather than final decision making (27). He would place deliberative outcomes in a non-binding category, although he warns that a legislature would be seen as illegitimate and undemocratic if it did not listen to the will of the people emanating from the public sphere. The view authors take may also be the result of how they envision the operation of public deliberation. Since Habermas’ deliberation is not a formal proceeding, and is more a nebulous and ongoing process, in which it makes sense

that decision making will continue to rely on leaders for decisions at any given time. However, if deliberation is a strictly organized undertaking that aims to serve a particular purpose, or speak to a specific problem, then its outcome should be binding for it to have the greatest effect (Beierle and Cayford 2002).

The role that the government should play in deliberation is another source of disagreement in the literature. Habermas's vision is that deliberation develops spontaneously and within the public (Habermas, 1996; 307). He admits that formally institutionalizing a public sphere through legislative endorsement can make it less vulnerable, but also warns it may become more restricted (Habermas, 1996; 307-308). For Habermas (1996), the role of the government is to listen and respond to the public opinion arising from deliberation:

The legislative branch of government would destroy the basis of its own rational functioning if it were to block up the spontaneous sources of autonomous public spheres or shut itself off from the input of free-flowing issues, contributions, information, and arguments circulating in a civil society set apart from the state (183-184).

Other authors have advocated the government take a more active role in ensuring the integrity of deliberative processes. Wright (1995) says, "the role of government is to staff the deliberation, set broad requirements of inclusion, ensure the integrity of the process, and authorize the strategy conceived" (259). Welsh (2000) insists that "legislation authorizing participatory policy dialogue" is a primary feature of ideal deliberative democracy (19). Many others agree that the role of the state in deliberation is to give some minimum governing standards to the process (Smith 2009: 22). In this view, the government must provide the oversight to maintain an ideal deliberative environment,

which does not exist independently in modern society because of conflicting social interests, and pluralism of values.

While there is a “near consensus among democratic theorists on behalf of deliberation,” there are some authors who write against deliberation (Saunders 1997). Bohman (2003) believes that the requirement of rationality in deliberation makes it intolerant and undemocratic. Bohman (2003) points out that by requiring “reason” in argument, deliberation will automatically exclude those people whose arguments are not interpreted as reasonable by a group (773). He goes on to say, “what counts as a reason and a justification has changed,” and, “we do not know in advance which claims or group perspectives count as reasons” (773). On these grounds, he worries that deliberation is inherently excluding certain views that are not currently recognized as legitimate by collective understanding, but at different points in time could be considered rational.

Sanders (1997) is also suspicious of deliberation as a democratic concept. To begin with he writes that “the wide endorsement of deliberation by democratic theorists has not emerged through a genuinely deliberative process,” meaning that “deliberation might not appeal to ordinary citizens” (347-348). Sanders (1997) argues that most citizens are not engaged and rational, and they may actually prefer to be ruled by experts, rather than being asked to deliberate. Additionally, the requirement of equality in deliberation is not realistic “because the material prerequisites for deliberation are unequally distributed” and “no matter how worthy their presentations actually are, some people are more likely to be persuasive than others, and some people are more likely to be disregarded” (Saunders 1997: 349). For these reasons, Saunders suggests, deliberation is not the “moral solution to vexing political problems” that it is often presented as (347).

The objections of Bohman and Sanders are important to consider, but they remain the minority views of democratic and deliberative theorists.

CHOOSING DELIBERATIVE POLICY

The previous section has described what deliberation is and what the goals of that process are, but it does not speak directly to the research question of why and how people come to support deliberative policies. Why do public officials occasionally make a concerted effort to include deliberative public discussions in decision making? There is virtually no empirical work directed at answering this question. The literature I will review to begin with is mostly theoretical explanations for why deliberative policies might find success. I will go on to explore public policy literature that has described in broader terms how proposed ideas find legislative success, and tie these theories into the endorsement of deliberative policies like the Citizens' Initiative Review.

The choice of deliberation might be broadly explained as either primarily a political decision that policy makers are pressured into making, or as a more ideational decision to pursue policy they believe will achieve valuable goals. The first perspective, that deliberation is used as a last resort when there are few other politically viable choices for policy-makers, will be referred to as the political explanation. The alternative view is that policy makers are independently reform-minded and wish to increase procedural legitimacy in democratic procedures. This view will be called the ideational explanation because it assumes that lawmakers are jumping to an idea rather than being forced into it. The following section will explore these explanations in the deliberative literature, and how they might be recognized empirically. Political and ideological categories of explanation are not stated as explicitly in the literature as I will describe them. I have

created these categories in order to organize the current range of answers that exist for this question. The hope is also to create a differentiation that can give structure to the interpretation of my research outcomes. These explanatory categories are ideal-type explanations for the endorsement of deliberation. They do not exist in the reality of policy making perfectly independent from one another. This section will describe and identify them both so that research can identify the relative influence of each on the decisions of political elites.

A third explanation for the choice of deliberation from the deliberative literature claims that certain cultures are more favorable for the use of deliberation than others. I will briefly describe this cultural explanation; however it is not within the scope of this research to test and make observations that pertain to this theory, as there is no cultural variation in the case study I am exploring.

Lastly, public policy literature has provided a few theories for how ideas become enacted as policy. These explanations are less focused on the decision procedures of individuals than the other explanations outlined. Instead they describe the processes in broader society, and the political environment that lead up to the adoption of some policy. These theories outline an array of forces that influence agendas in the policy making world, and which might overlay with political or ideational influences to create a better picture of exactly what led a deliberative policy to gain the support it needed to become a law.

Political Explanation

The first common kind of explanation for the use of deliberation can be called a “political explanation,” and points to political expedience as the root cause of moves in a

deliberative direction. Authors who describe this explanation see deliberation being undertaken where there is considerable political pressure to act, and more traditional forms of policy making have failed or proven too politically difficult. Weeks (2000) describes “the dysfunctional political process” as often resulting in a lack of political will for politicians to take necessary actions (363). This argument assumes that politicians will want to avoid difficult policy choices that might put their jobs at risk at election time. In this view, deliberation is turned to as a way of getting citizens to both understand the problem, and make difficult decisions viable for policy makers who face incentives that make certain policy actions difficult.

Weeks (2000) describes the actions of two city councils in Eugene, Oregon and Sacramento, California as an example of actors choosing to utilize deliberation for political reasons. In these cases, city revenues failed to meet the costs of providing municipal services. Both city councils “deferred corrective action in favor of less painful temporary fixes,” but long-term forecasting revealed an increasing gap between revenues and the cost of public services (Weeks, 2000; 363). Politicians had failed to be forthright in council elections about either raising revenues or cutting costs. City management was forced to conclude that a more lasting solution was needed, and turned to deliberative projects for strategies that would produce public input and, more importantly, public support (Weeks, 2000; 363). This account of choosing deliberation is a classic last resort scenario. Politicians, who were unwilling to make difficult political decisions, turned to citizen deliberation to inform the public of the dilemma they faced, and legitimize their eventual policy actions. For their part, citizens are engaged in deliberation are expected to

adopt more long-term, public-minded perspectives on issues than politicians facing elections would take.

One variant of a political explanation is R. Kent Weaver's (1986) theory of blame-avoidance. Weaver (1986) describes politicians as "primarily motivated by the desire to avoid blame for unpopular actions rather than by seeking to claim credit for popular ones" (371). In actions that he describes as "blame avoidance," Weaver (1986) claims that politicians will use any number of strategies to avoid upsetting an audience of voters. Among these avoidance strategies is redefining an issue so that they might create new policy options to deal with some problem (Weaver 1986: 384). If the existing solution to some issue may create a perceived loss to the public, deliberative procedures might be introduced as a policy alternative that is not costly to voters. Blame avoidance may lead policy alternatives like deliberation to be chosen when they might otherwise fail (393). Additionally, politicians may include citizen deliberation in decision making procedures as a way of "passing the buck," and shifting the site of a decision elsewhere when a policy is controversial (Weaver 1986: 384-385). Weaver's theory is especially relevant to my case study since initiative reform is an area where political forces from the both the left and right, and public opinion, has made it difficult to make meaningful changes in the past. It is possible that policy makers may have endorsed deliberation because they felt compelled to show action and thought deliberation would not upset anyone, but my case study will reveal some political actors showed a willingness to also endorse less popular initiative reform proposals, which does not reflect blame avoidance.

E. E. Schattschneider (1960) also believes that the audience has a strong bearing on political behaviors, and provides another variant of a political explanation. In

Schattschneider's (1960) explanation of political decisions, he describes the "scope of conflict," or how many outsiders are brought into some policy fight, as a strategic calculation made by the parties involved to bring power and favor to their side (7). Schattschneider asserts that "the audience of a fight has more bearing on the outcome than those involved in the fight themselves" (2). As a result, "when one side [of a conflict] is hard pressed, the impulse to redress the balance by inviting in outsiders is irresistible" (15). We can interpret the choice to use public deliberation as a way of "socializing" conflict on the part of one side who sees themselves benefitting from bringing in an audience on an issue. This possible explanation for the use of deliberation is within the political category of explanations because it describes the choice of deliberation as purely a political attempt to bring more supporters into the fray and redress the balance of power (Schattschneider 1960: 15). Unfortunately, for the case of CIR, citizen deliberation is not actually changing the site where a decision is being made since citizens' views are only being brought into bear on ballot measures. Socializing conflict in this case will not apply well.

Some authors have identified the same conditions that make political decisions particularly difficult as leading to the adoption of deliberative policies. Dryzek (1990) writes that when there are many groups with similar power who are all influencing the policy making process, this can lead politicians to seek deliberation. Fung and Wright (2003) claim that if there are few alternative solutions being discussed for a problem, this may lead to the choice of deliberation. Both facing a diversity of groups with similar power on different sides of an issue, and having few policy alternatives available, would be political explanations for the use of deliberation since the dominant reasoning for

choosing deliberation is that they are facing political pressure from diverse groups and feel unable to decide between the few policy alternatives available. When the case study is examined, it will be difficult to apply these explanations to the issue area of initiative reform, but it is clear that the legislators who endorsed the deliberative policy in question faced a wide variety of alternative solutions on the topic, not few as Fung and Wright (2003) predict.

Whenever political actors are choosing deliberation out of necessity, or a perceived political gain, this would constitute a political explanation. Under this explanation, the primary reason for implementing deliberative procedures will be the result of an opportunity to avoid blame, or gain political traction by including the public. When conditions are present that make political decisions difficult, we may interpret the endorsement of deliberation as a primarily political act that has taken place because more common forms of policy were unviable. What Weeks would describe as “political dysfunction,” results in citizens being brought into a process.

Ideational Explanation

A second kind of explanation for the support of deliberation could be called, “ideational.” According to this view, policy makers will choose deliberation because they see it as a good policy to deal with a problem they are facing, or achieve some goals they find desirable. Policy actors should perceive certain benefits arising from the use of deliberation, such as the increased legitimacy and improved quality of democracy claimed by deliberative advocates, and they will choose deliberation as a best policy without the demands of political pressure. Many authors have described the benefits of deliberation, both theoretically and empirically. If these claims are convincing to policy

makers, we should see them jumping to, and implementing, the idea of deliberation wherever those positive outcomes described by deliberative advocates are highly desirable solutions to a problem. Under this explanation, political elites will want to implement deliberative policy because they believe it will normatively add to the legitimacy of a process, and not because they think deliberative outcomes will personally benefit them or their interests.

This explanation is based in the procedures and the purported outcomes from deliberation that are described in deliberative literature. Depending on what some politician aims to achieve, they may be drawn to different benefits that deliberation can produce. Many authors have described how deliberation leads to greater democratic legitimacy since a greater diversity of viewpoints are heard and considered, and decisions will be better understood and respected by all (Kymlicka, 2002; 291). Beierle and Cayford² (2002) have shown that including public participation in a decision making process usually increases the public's trust in the "competence and fiduciary duty" of government institutions (30). In addition, the inclusivity of deliberation is said to promote public mindedness and increase the respect among competing interests (Gutmann and Thompson 2004). Deliberation also addresses perceived problems with existing political processes stemming from interest group dominance in the framing of the public discussion, the lack of accountability in a process, or the media's neglect of minority viewpoints (Healthy Democracy Oregon, 2009). Deliberation has the potential to promote greater unity and solidarity in society because people have shared a discursive experience

² Beierle and Cayford (2002) conducted an extensive empirical study on the outcomes of public participation. Their definition of public participation was fairly broad, and included both deliberation and a number of other less intensive forms of public input. A process's success on social goals was highly correlated with the quality of deliberation which took place (53).

and communicated in a non-coercive and respectful way (Kymlicka, 2002; 291). It should give decision makers a better chance to identify and incorporate public values in policies (Beierle and Cayford 2002: 23). Also, where moneyed and powerful interests dominate the public debate, deliberation presents an opportunity to challenge the existing distributions of power and influence in society (Gutmann and Thompson 2004: 16).

That is not all that deliberation claims to accomplish. The act of inclusive, objective discussion should also increase the knowledge and understanding of an issue among its participants (Welsh 2000: 19). Beierle and Cayford (2002) write that deliberative processes have a significant impact on informing and educating the public. Even when dealing with “quite technical and socially complex” issues “participants consistently learned a great deal and thus were able to provide insightful policy recommendations” (Beierle and Cayford 2002: 31). Where policy makers perceive the apathetic or uninformed public as a problem, deliberative policy may be adopted as a solution. Finally, there is the view that the fairness of deliberation will not only increase legitimacy, but will improve the quality of policy outcomes (Macedo 1999: 10). Beierle and Cayford (2002) agree that the information sharing and respect among those who may be morally opposed, which deliberation promotes, will result in substantively better quality decisions. In the ideational explanation, where a politician or political actor aims to achieve any or all of the goals described they will choose to endorse deliberative policy.

If a political actor knows about the potential benefits of deliberation, and believes that they will occur, this would give them a significant reason to support and adopt deliberative policy. In the ideational explanation, a politician should believe that at least

some of the outcomes described by deliberative advocates are true, and that they are desirable to solve some existing political problem. In this way, they adopt the idea of deliberation because they believe it will be good public policy, and not as a result of previous failures or mounting political pressures. Many of the statements collected for my case study reveal that the benefits of deliberation outlined in the literature are commonly referred to as reasons for wanting more deliberation among law makers. However, these ideational reasons are present along with other more influential factors that political elites site as determining their decisions. In this way ideational explanations are present but not sufficient for describing why deliberation is endorsed.

In the realities of policy making, neither of these two explanations exists in isolation from one another. My research is likely to reveal both political and ideational influences working at the same time and to different degrees in describing why policy makers endorse deliberation. This research will labor to explore the relative influences of both, with the ultimate goal being to describe how each influence is important, and why one is perhaps more important than the other. A thorough investigation of my case study will allow for the support and expansion of these existing explanations, as well as the possibility of observing influences the literature does not yet describe. My aim is to explain the actual reasoning for the endorsement of deliberative policies within the case I am exploring, and use this as a frame through which to view a broader story about when and why deliberation emerges in policy making.

Cultural Explanation

A third and final explanation for the use of deliberation, which I will not attempt to assess in my research, is the cultural explanation. The idea here is that there might be

something societal, rather than political or ideational, which leads to the adoption of deliberation. Some cultural attitudes may prove disastrous for deliberative outcomes, and therefore the society will neither value or desire deliberative procedures in policy (Gambetta, 1998; 20). Gambetta (1998) describes the culture in some countries as being confrontational and argument based, where “admitting to ignorance in any issue area is paramount to admitting ignorance as a whole” (23). He describes these as “behavioral conditions” that prevent ideal deliberation, because a free and equal exchange of ideas is unlikely (Gambetta, 1998; 20). Gambetta’s ideas can be expanded to cover expectations in a culture as well. If a society has a history and an expectation of public participation in government, they might demand and receive more deliberative procedures in policy making. In contrast, a society that puts a higher value on authority, and has no cultural expectation to be included in policy should experience fewer deliberative efforts.

This explanation mostly attempts to explain international discrepancies in the utilization and success of deliberative policies. There is no variation in the cultures that choose deliberative policies in my research so I will not attempt to test, or identify the influence of this explanation. However, it would be useful to keep this explanation in mind when comparing cross-cultural examples of deliberation. The reader may also note the alleged influence of history on deliberation, and the notion that if deliberation has been used successfully in the past this may make it a more likely policy choice in the future.

Theories from Public Policy

Public policy literature provides some broad theories for how ideas will rise to the attention of policy makers and sometimes become enacted as policy. Many of the modern

theories are constructed in opposition to incrementalism, which sees policy happening in small gradual steps, and rational choice theory, wherein individuals act in order to achieve clearly defined goals at the least cost (Kingdon 1984). This section will describe a few theories from policy authors including Kingdon (1984), Baumgartner and Jones (1993), Skocpol (1992) and Tarrow (1998) to explore how they describe the formation of policy and what they might contribute to our understanding of what is impacting political elites' decisions to support deliberation.

John Kingdon (1984) wrote about how policy changes, and agendas are formed. Kingdon launched his theory from the “garbage can model of organizational choice” which suggested that problems and solutions exist independently of each other and are chaotically paired together as time, participants, and opportunity allows (Cohen et al 1972). Kingdon expands on the garbage can model to describe streams of problem recognition, policy formation and political climate merging to produce new policies. Kingdon argues that policy does not happen incrementally, and that policy formation can not be described in neat and rational steps as rational choice theory describes. Rather, policy making is a dynamic system of changing problems, political climates and proposed policies. Once a problem and proposal are paired, a “policy window” must open, and “policy entrepreneurs” will have an opportunity to promote and pass their proposals (Kingdon 1984, 213). Windows might open from swings in national mood, vigorous lobbying, or some focusing event which brings an issue suddenly to the fore. According to Kingdon (1984), “advocates of pet proposals watch for developments in the political stream that they can take advantage of, or try to couple their solution to whatever problems are floating by at the moment” (213).

Kingdon (1984) also describes policy entrepreneurs as central actors in advocating for policy proposals:

They write papers, give testimony, hold hearings, try to get press coverage, and meet endlessly with important and not-so-important people. They float their ideas as trial balloons, get reactions, revise their proposals in the light of reactions, and float them again. They aim to soften up the mass public, specialized publics, and the policy community itself. The process takes years of effort (214).

This description is extremely useful for describing the efficacy of advocates for the CIR. This part of Kingdon's theory, which emphasizes the importance of devoted efforts from policy entrepreneurs features centrally in the case I will explore.

Within Kingdon's (1984) model, a deliberative Citizens' Initiative Review would be characterized as a solution floating in the "policy formation stream". In order to gain support and success, policy entrepreneurs will pair this deliberative solution to a problem present in the problem stream. If advocates invest sufficient resources into pushing for deliberation as a policy solution, and the political climate favors them, their proposal might be enacted. In Kingdon's theory, the way for deliberation to gain legislative support is for an entrepreneur, who has coupled deliberation to a problem, to effectively promote their proposal in a favorable political climate. If any one of these factors is missing, the deliberative policy will never gain sufficient support. Kingdon sees policy changes relying centrally on effective advocacy and the favorable situation of problems, solutions, and political climate, making it fall under the political category of explanation. In the case of CIR, we will see the advocacy of policy entrepreneurs being critically important for the bill. Timing also plays a considerable role in the fortunes of the legislation, which is reflective of Kingdon's policy streams and policy windows.

Baumgartner and Jones (1993) set out to explain both the stability and the occasional volatility of policy making in American politics. They agree with Kingdon that incrementalism is unable to adequately account for the periods of dramatic policy change that they observe in many issue areas. In their theory of how agendas change, they describe eras of stability, when policies do not change and the attention paid to an issue area in the media and in congress is minimal. These periods of balance will be punctuated by bursts of policy activity brought about when the popular understanding of an issue has shifted, and it suddenly rises onto the congressional agenda (6). This model of “punctuated equilibrium” (Baumgartner and Jones 1993, 1) is reflective of Kingdon (1984) in the way issues have to gather momentum before dramatic policy changes will occur in a window of opportunity. However, Baumgartner and Jones are writing about continental shifts in national policy so their theory will not apply well to the case of initiative reform in Oregon I research.

Skocpol (1992) writes about the welfare state in the USA, and has argued broadly that state structures and state capacities have a significant impact on shaping policy. Observations of deliberative policies being more or less successful in different state structures, or emerging in governing environments that have certain institutional qualities would support Skocpol’s assertion. When I describe the history of my case study, it will be clear that the CIR moved to seek out a governing structure that fit to the policy. Melnick (1994) also describes the USA as being made up of many different governing structures in different states, which serve as venues with different “opportunity points” for policies. The CIR was able to explore different venues where it might be implemented, eventually finding an opportunity point in Oregon (Melnick 1994).

Skocpol's emphasis on the importance of state structures downplays the importance of ideas, subsuming it into the political camp of explanation.

Another concept that comes from the social movement literature and will be usefully applied to the case I am researching is "political opportunity structure" (Tarrow 1998). Tarrow (1998) defines political opportunity structure as the circumstances in a political landscape that "lower the cost of collective action by revealing potential allies and triggering social networks," which can lead to the emergence of "contentious politics" (20). Political opportunities are not really structures but rather situations that "may ultimately lead to sustained interactions with authorities and social movements" (Tarrow 1998: 20). When these "external resources" exist for a group, social movements become much more likely to emerge (Tarrow 1998: 20). If Tarrow's opportunity structures are applied to deliberative policy there will be conditions arising in the area of initiative reform that provide significant opportunities for those interested in change to organize. The cost for someone to endorse a deliberative policy will be reduced, and thus support for deliberation will grow. Tarrow's political opportunities are similar to Kingdon's "policy windows," but whereas Kingdon's description focuses on a political space where problems and solutions will merge, Tarrow describes the social environment that may lead to social movements, but which may also usefully speak to how policies emerge. As we will see, both Kingdon's policy windows and Tarrow's political opportunity structures could be used to describe the social and political environment that CIR encountered in 2009. The favorable conditions, which could be broadly referred to as timing, that policy entrepreneurs found themselves in surrounding initiative reform represent a significant explanation for their bill's legislative success. This aspect of

Tarrow's theory, which focuses on the influence of social conditions which present opportunities for change, is another variant of a political explanation.

There is an additional component of political opportunity structures that Tarrow (1998) writes about concerning "collective action frames that justify, dignify and animate collective action" (21). This aspect of political opportunity involves "consensus mobilization," and Tarrow argues that the way an issue is framed produces a shared meaning in the cultural discourse that relates to "the generalization of a grievance, and defines the "us" and "them" in a movement's conflict structure" (21). As a factor contributing to the success of a particular policy, the framing of an issue area would determine the terms of debate within which legitimate arguments for and against an idea can be drawn. This is a highly ideational conceptualization of what makes political support and opposition possible. If issue areas indeed have collective meanings and ideological frameworks that limit the policies that are possible, then CIR must fit into that framework to gain support. The exceptional aims that CIR legislation adopted made the proposal fit into the collective frame surrounding initiative reform and do so in a way that galvanized supporters and made vocal opposition difficult.

This review of literature has defined deliberation and described some existing explanations for why political elites might choose deliberative policies. The foundations, assumptions and aims of deliberation were outlined, and disagreement over the binding nature of deliberative decisions and the role of government in facilitating deliberation were discussed. Understanding how deliberation is defined allows for it to be accurately placed within the policy world, and suggests reasons why policy makers might adopt it. I reviewed the literature that might be applied to answering my research question.

Explanations were organized into political and ideational categories. Theories from public policy and social movement literature were also explored. Theories from the policy literature are especially relevant to describing my case study, and will be encompassed in many of the explanations for the passage of CIR legislation that I roll out in Chapter 3. Each of these theories has also been broadly described as belonging to either a political or ideational category of explanation. Building from the existing literature, my research will empirically expand and contribute to explanations of how and why deliberative policies find legislative endorsement.

METHODOLOGY

This research will use a qualitative case study approach to explore the chain of events which lead to the use of deliberation in the initiative process in Oregon. By using a thick description of a pattern of events, as well as interviews from actors who participated, I will test existing explanations for the causes of deliberation. This project will use process tracing to look for influences that inform decisions to pursue deliberation. Semi-structured interviews with political elites who were involved in supporting a deliberative policy will be heavily relied on for insight and information. Research will also make use of newspaper accounts, web sites of the organizations involved, and other promotional materials produced by the actors who were advocating for this particular deliberative policy. The following section will explain my case selection and further describe how this research will be carried out.

I have chosen to explore a case which presents a clear effort to include deliberation in the democratic electoral process. The case involves the efforts of some deliberative advocates to implement a process of Citizens' Initiative Review for ballot

measures in Oregon. This is an especially interesting case because it is heavily informed by another attempt to have deliberation legislatively adopted in Washington State. This deliberative citizen review process found some legislative success in Oregon, and is currently being implemented in a trial form. This particular case has never been studied before and presents unique opportunities to learn about what sort of obstacles are involved in having deliberative processes implemented by a state legislature, and why advocates saw success in Oregon after a failure in Washington.

The Citizens' Initiative Review (CIR) process is a devoted attempt to create the theoretically ideal conditions that deliberative theorists describe. It also reflects the value of having deliberation endorsed and institutionalized by the government. In this case the deliberative review process was passed by the Oregon legislature only as a pilot program, with a sunset clause that sees it expire after a single electoral cycle. The case of CIR can reveal both the motivations to support, and the possible uncertainty that prompted such a tentative legislative approach.

The CIR is a relatively unique process that has only been proposed in one other state where it did not meet with success. However, CIR is aimed at addressing some very commonly perceived problems with the initiative process. The future of the idea in states across the country relies heavily on the legislative outcomes it experiences in Oregon. Deliberative advocates look closely to Oregon for strategies and lessons that they can apply to promoting this and other forms of deliberative policy. This relatively recent case is extremely important in influencing the future of CIR as a deliberative mechanism across the country. This research reveals information about the way state lawmakers

approach deliberative policies, and could have a huge effect on the approach that advocates take to promoting deliberation in legislatures beyond Oregon.

In collecting data for this project I conducted fifteen semi-structured interviews with political elites who supported the CIR in Oregon. For a summary of participants in these interviews see Table 1 (p. 32). Participants were selected because they were listed as sponsors of the CIR legislation, or they had been recommended to me by others as important actors in the story of passing the CIR legislation. These participants were predominantly elected Oregon State Representatives. Others were representatives from organizations who had been involved in supporting CIRs. These sponsors and supporters were asked similar, but not identical, open-ended questions about why they supported the CIR process, and were asked to explain what kind of factors had an influence on their decision to support the legislation at the time. Their responses will be paired with other evidence to describe what factor had the most influence on the success of CIR in the Oregon legislature.

This research will explain why political elites in Oregon came to support the CIR in large enough numbers to ensure its legislative success in 2009. These explanations will be able to identify the conditions that would cause political elites elsewhere to support similar CIR proposals for their own state's initiative process. These conclusions alone are extremely valuable because there are twenty-three states, and the District of Columbia, in the USA that have an initiative system. The CIR could potentially be a proposed reform in any of these states, and understanding what contributes to this policy's success would be valuable for deliberative advocates to understand. Ultimately, what this research hopes to be able to explain is why political elites anywhere would support any deliberative

policy. With only one case study, its power to answer this question is limited. None the less, it will speak to these broader questions of deliberative policy making and begin to contribute to the answer to this question.

Table 1: Interviews Conducted

INTERVIEWS CONDUCTED				
Oregon House of Representatives				
Name	Party	City/District	Date of interview	Role in HB 2895
Ben Cannon	D	Portland/46	02/18/10	Chief Sponsor
Chris Garrett	D	Lake Oswego/38	02/10/10	Sponsor
Mitch Greenlick	D	Portland/33	01/29/10	Sponsor
Chris Harker	D	Beaverton/34	02/18/10	Chief Sponsor
Betty Komp	D	Woodburn/22	03/08/10	Sponsor
Nancy Nathanson*	D	Eugene/13	02/05/10	Sponsor
Andy Olson	R	Albany/15	02/18/10	Sponsor
Arnie Roblan	D	Coos Bay/9	02/25/10	Sponsor, Chairman of the House Rules Committee, House Democratic Leader
Suzanne VanOrman	D	Hood River/52	02/04/10	Sponsor
Brad Witt	D	Clatskanie/31	02/10/10	Sponsor
Oregon Senate				
Richard Devlin	D	Tualatin/19	03/02/10	Sponsor, Chairman of the Senate Rules Committee, Senate Democratic Leader
Frank Morse*	R	Albany/8	03/01/10	Sponsor
State Department				
Kate Brown	D	Portland	03/05/10	Advisor to Healthy Democracy Oregon
Non-Governmental Organizations				
Name	Organization	Date of interview	Role in HB 2895	
Kappy Eaton	League of Women Voters of Oregon	01/28/10	Advisor to Healthy Democracy Oregon	
Tyrone Reitman	Healthy Democracy Oregon	02/03/10	Lobbyist	

*phone interview

CHAPTER III

THE CITIZENS' INITIATIVE REVIEW IN OREGON

This chapter will explore why certain political elites came to support the deliberative policy of Citizens' Initiative Reviews in Oregon. The chapter begins by explaining what a Citizens' Initiative Review is and how the concept made its way to Oregon. This case of deliberative policy has never been studied before and presents many opportunities to learn about what sort of obstacles are involved in having deliberative processes enacted by a state legislature and why advocates found success in Oregon after previous failures. This research draws significantly from original interviews with key Oregon political actors on the CIR. This primary research leads to the critical analysis of distinct explanations for what led to the success of CIR.

WHAT IS A CITIZENS' INITIATIVE REVIEW?

A "Citizens' Initiative Review" (CIR) is a deliberative review of a proposed state ballot measure by randomly selected citizens (Healthy Democracy Oregon 2009). This form of deliberation was invented by political scientist and deliberative advocate Ned Crosby, and relies heavily on Crosby's "Citizen Jury" process. Since Crosby's organization, "The Jefferson Center," has trademarked the term "Citizen Jury," the process in Oregon officially uses the term "citizen panels." These panels do much the

same as what a courtroom jury does. A panel of 18-24 citizens will learn about, and deliberate on, one ballot measure for five days. These randomly selected citizens are balanced by partisan affiliation, residence, gender, ethnicity, and educational attainment, and are selected from the state's database of registered voters to reflect a microcosm of the state's demographics (OPB 2008). The panelists are volunteers who are paid the state's average wage for their time, and reimbursed for any travel expenses (Healthy Democracy Oregon 2009). They hear from witnesses speaking both against and in favor of the measure, as well as witnesses giving background information on the issue at hand. The whole process is run by a neutral moderator, who is professionally trained, and paid for their services (Healthy Democracy Oregon 2010). At the end of five days the panelists produce a majority and a dissenting opinion of the measure, which are published in the state's voters' pamphlet.

The CIR attempts to remedy a perceived flaw in the initiative process by attempting to create ideal deliberative conditions that do not otherwise exist in the broader political conversation. The intent is that panelists will meet democratic and deliberative ideals by being well-informed, considering many arguments, discovering the strengths and weaknesses of each through discussion, and eventually come to well-reasoned conclusions. They may grapple with very complex issues in their five-day session, but their decisions will ultimately be to vote for, against, or remain undecided on a given ballot measure. Their conclusions will then be presented for the consideration of the voting public. This statement represents a unique source of information for the public, distinct from the rhetoric and spin of campaigns and media reports that the public usually encounters surrounding ballot measures.

HISTORY OF CIR

The creation of the CIR process was the outcome of a history of deliberative advocacy by political scientist Ned Crosby. Crosby has a PhD in political science from the University of Minnesota, but is not an academic affiliated with any university. He describes himself as “a democratic activist with a small d,” and has utilized the considerable wealth of his family, who were the founders of General Mills two generations ago, to fund his projects and organizations (Weiner 2009). Crosby has worked to develop and promote the use of deliberative procedures in policy making for more than thirty years. This section will explore the history of Crosby’s deliberative efforts, and how the CIR eventually found its way to Oregon.

In 1974, Ned Crosby, along with some civic leaders from Minnesota, founded the “Jefferson Center” in Minneapolis - a nonprofit organization that aimed to “conduct research and development on new democratic processes” (Jefferson Center 2009a). The Jefferson Center began conducting what were originally called “citizen committees” on various issues and candidates and determined these were an effective democratic method. The term “Citizen Jury” was coined and trademarked by the Jefferson Center so that they could protect the integrity of the process and prevent its commercialization. Citizen Juries would randomly select representative samples of citizens to learn and deliberate on a given public policy issue for a number of days (Jefferson Center 2009a). The CIR process is a Citizen Jury at its core, and simply has the targeted purpose of dealing with state ballot measures (Healthy Democracy Oregon 2010).

For a number of years the Jefferson Center, with Crosby at its helm, continued to promote and sponsor the use of Citizen Juries. Projects were usually funded by the

Jefferson Center, although sometimes they would share costs with city councils or other public bodies (universities, counties, school boards etc.) who had requested their help in running a citizens' jury (Jefferson Center 2009c). In conjunction with the League of Women Voters of Minnesota, they held a successful Citizen Jury examining candidates for the Minnesota gubernatorial race in 1990. Then in 1992 they teamed with the League of Women Voters in Pennsylvania to conduct a citizen jury on the U.S. Senate race between Arlen Specter and Lynn Yeakel. The Citizen Jury process began to draw praise in editorials around the country. However, in May of 1993 the Jefferson Center suffered a serious setback when the IRS determined their tax-exempt status should be revoked because some projects had evaluated candidates' stands on issues (Jefferson Center 2009b). The Center fought the IRS for three years, finally agreeing that they would no longer conduct Citizen Juries that evaluated political candidates, and in exchange the IRS would take no penalizing action against them (Jefferson Center 2009b).

The Jefferson Center continued to hold Citizen Juries on topics including the Clinton health care plan, welfare reform, and other more localized issues for counties and cities in Minnesota throughout the 1990s (Jefferson Center 2009b). By 2002 however, it had become clear that interest in the projects that the Jefferson Center offered had waned. Despite marketing and outreach efforts, it seemed the only projects that attracted follow-ups or repeat business were those on candidates facing regular elections, which the IRS had ruled they could no longer conduct (Jefferson Center 2009b). In 2002, The Jefferson Center closed its office, eliminated its permanent staff, reduced the size of its board, and limited the center's regular operations to maintaining a website (Jefferson Center 2009b).

CIR in Washington

Despite the dissolving of the Jefferson Center, Crosby continued to search for sites where the procedures of a Citizen Jury might have a significant impact. In 1997, Crosby had begun exploring the possibility of having the state sponsor Citizen Juries on candidates, in order to avoid IRS objections. While exploring this idea with former colleagues from the Jefferson Center in the state of Washington in 1999, it was suggested that Citizen Juries could be particularly useful “to assist voters with making informed decisions on statewide ballot initiatives” (Citizens’ Initiative Review 2007). The idea may have previously escaped Crosby because Minnesota, where the Jefferson Center was based, does not have an initiative or referendum process, as Washington and many other Western states do. At this point, Crosby, together with his wife Patricia Benn, began to focus their attention on instituting state-sponsored Citizen Juries to review ballot initiatives in Washington. They coined the term Citizens’ Initiative Reviews for these newly purposed Citizen Juries.

In May of 2001, the League of Women Voters of Washington paired with Crosby and Benn to conduct a Citizen Jury on the Citizens’ Initiative Review. Randomly selected citizens from across the state of Washington spent five days learning about Citizens’ Initiative Reviews, discussing how the state might run them, and eventually voting overwhelmingly (twenty-four to one) in favor of instituting CIRs in their state (Jim Rough Show 2002). This somewhat strange, self-referential process was supposed to introduce the people of Washington to a Citizen Jury and demonstrate the viability of CIRs in practice. Crosby and Benn had also founded an organization called Healthy Democracy, to finance their efforts to promote CIR (Healthy Democracy 2009).

Following the Citizen Jury on CIR, Crosby and Benn attempted to run an initiative drive, requiring them to gather signatures in order to put a CIR bill on the state ballot for a public vote (Jim Rough Show 2002). This attempt continued in earnest for years, but Crosby and Benn's intermittent advocacy from Minnesota failed to gather the signatures they would need for a statewide ballot measure on CIRs permanent implementation.

In 2005, Crosby and Benn's strategy for implementing a state-sponsored CIR seemed to have changed from one based on creating a ballot initiative, to utilizing the traditional legislative process. The CIR idea was presented to, and gained endorsements from the Washington City/County Management Association and the Association of Washington Cities. Several legislators from Washington's House of Representatives also began to express interest in the CIR process (Gastil 2006). In May of 2006 Crosby and Benn made a presentation to the House State Government Operations and Accountability Committee (TriCity Herald 2006), and in January of 2007 the CIR was introduced to the Washington legislature through HB 1696 (see Appendix A). HB 1696 is thirteen pages long and outlines the formation of a Citizens' Initiative Review Commission, with members appointed by the governor, attorney general, and secretary of state, as well as members taken from former citizen panelists, and panel moderators. The commission would oversee CIRs to ensure their quality and impartiality, and ensure the funds of the commission were spent effectively. The bill did not include a funding mechanism, and would have left that to be determined in the legislative process, but it never came to that. In spite of its many of legislative sponsors in the House, HB 1696 failed to receive a single hearing after being referred to the Committee on State Government and Tribal Affairs, and eventually died with the expiration of the 2007 regular legislative session.

There are several reasons for the failure of HB 1696. The bill encountered some institutional hurdles when the Chairman of the Committee where it would receive its first hearing changed and it was dropped from the agenda (Reitman 2010). Additionally, the legislation itself was bulky and complex, and outlined a number of tasks that the executive branch would need to undertake in forming and maintaining a CIR Commission. Finally, the bill aimed to be funded by the state, and estimates for the cost were around \$1.5 million every two years (Reitman 2010). Asking all of this for a relatively unknown citizen review process must not have seemed appealing enough to state lawmakers to support the bill through the legislative process, due to budgetary strains in the state of Washington.

CIR in Oregon

Despite the ill-fated fortune of Crosby and Benn's Washington project, their efforts did not go unnoticed or unrewarded elsewhere. In early 2006, Tyrone Reitman contacted Elliot Shuford, his former classmate from the Planning, Public Policy and Management department at the University of Oregon, to explore the idea of promoting the Citizen's Initiative Review in Oregon (Healthy Democracy Oregon 2010). Reitman and Shuford were recent graduates who had focused their graduate studies "on methods of citizen deliberation and democratic reform policies" (Healthy Democracy Oregon 2010). They were not affiliated with any political party, and had no lobbying experience. The pair approached Crosby and Benn about the possibility of collaborating on a CIR project in Oregon. Crosby and Benn were working on promoting CIR in Washington at the time, and had moved to Port Townsend, Washington. Upon multiple meetings with Reitman and Shuford they agreed to provide funding through the Jefferson Center to start

Healthy Democracy Oregon. The CIR was given two new champions, and one new arena to breathe life into the concept.

Reitman and Shuford, with the help of Representative Peter Buckley (D - Ashland), introduced a CIR bill in the Oregon legislature, in 2007's regular legislative session (see Appendix B). HB 2911 was substantively identical to the bill seen by the Washington legislature earlier that same year, and it came to meet with the same fate. After being introduced in the House of Representatives, HB 2911 was sent to the House Committee on Elections Ethics and Rules where it never received a hearing and died when the legislative session expired.

Reitman and Shuford were reassured by advisors who told them 2007 had been "an educational session for the CIR," (Healthy Democracy Oregon 2007) and who saw HB 2911 as "more of a concept piece" (Eaton 2010). Reitman and Shuford continued to grow the advisory board of Healthy Democracy Oregon to include former Secretaries of State Norma Paulus, a Republican, and Phill Keisling, a Democrat, as well as experienced representatives from Common Cause and the League of Women Voters of Oregon. They sought strategic advice from legislators who shared their enthusiasm for initiative reform, and took those recommendations into consideration. It was determined that there was demand for the CIR to be tested in Oregon, so in September of 2008, Healthy Democracy Oregon ran a full scale demonstration of the CIR process on ballot measure 58 to showcase the efficacy of the reform (Healthy Democracy Oregon 2010). Measure 58 was a proposal to limit bilingual education to two years for students whose first language was not English. The review concluded with nine panelists supporting the measure, and fourteen writing in opposition. This demonstration took place under the

observation of the League of Women Voters of Oregon and was quite successful at raising awareness of the CIR process among legislators. Participants of this first ever Initiative Review gave the process high marks for impartiality, and many participants were enthusiastic enough about their experience to lobby their representatives in support of CIRs. The 2008 demonstration also gave Healthy Democracy Oregon a great opportunity to produce informational and promotional materials about the CIR. Newspaper articles outlining on the process and its findings appeared prior to the November 2008 elections (Hammond 2008; Manning 2008). Later, videos that outlined the process and praised its potential benefits for the citizens of Oregon were posted to Healthy Democracy Oregon's website and on YouTube.

When the 2009 regular legislative session began, Reitman and Shuford had a much shorter and completely revised bill, as well as a roster of twenty-three bipartisan legislative sponsors from the House and Senate. They had made it their goal to talk to every member of the House and Senate to lobby for CIRs (Reitman 2010). With this improved legislative interest, HB 2895 (see Appendix C) received its first public hearing in the House Rules Committee on March 30, 2009, where Senator Whitsett (R - Klamath Falls), Representative Cannon (D - Portland), and Cathy Fantz, a participant from the CIR demonstration in 2008, joined Reitman and Shuford to speak in the bill's favor. HB 2895 was much shorter than previous CIR legislation had been. Language about the formation of committees to oversee CIRs had been eliminated, and instead the Secretary of State would choose a nonprofit organization to perform the CIR on behalf of the state. Amendments later clarified that the organization chosen would provide for any and all costs of running the CIR process, and they must not receive funding from political or

corporate sources. A CIR is estimated by Healthy Democracy Oregon to cost about \$150,000 per ballot measure, with some initial costs being reduced when multiple reviews are run simultaneously (Healthy Democracy Oregon 2010). The legislation would also sunset on January 2, 2011, after just one election cycle. A Citizen Review would be performed on no more than three ballot measures, and the one-page report that the Reviews produced would be given a prominent new place in the state voters' pamphlet (Healthy Democracy Oregon 2010). The bill amounted to a pilot program for the CIR, not the permanent institutionalization of the process that had been attempted in the past. Overall, the idea was designed and presented as a nonthreatening commitment for lawmakers.

Finally, the CIR process had gained the momentum and support it needed for legislative success. HB 2895 was passed in the Oregon House and Senate with substantial majorities, and was signed into law by Governor Kulingoski on June 26, 2009. The task remains for Reitman and Shuford to conduct CIRs for up to three ballot measures in the 2010 election. Another task they are undertaking, as prescribed by HB 2895, is a study into the usefulness of the Initiative Reviews for participants and voters (Healthy Democracy Oregon 2010). Healthy Democracy Oregon has secured a grant of \$218,000 from the National Science Foundation, and collected a team of university researchers from around the country to conduct this study.³ Pending the success of 2010's Reviews, and the outcomes of the research on the process's impact, legislation will be introduced

³ The CIR evaluation will include Professor John Gastil from University of Washington, Mark Henkels from Western Oregon University and Katherine Cramer Walsh from the University of Wisconsin (Healthy Democracy Oregon 2009).

in 2011 to make CIRs a permanent function of Oregon's initiative process (Reitman 2010).

This long history of efforts to promote deliberative processes and policies contributes to the story of how CIR found legislative success in Oregon. The interesting question to explore is what caused political actors to coalesce around HB 2895, and support this particular deliberative policy? The answer will speak to the prospects of many proposed deliberative policies, and especially highlight what could make CIR successful in other states that use the initiative process. Why is it that political elites emerged to support the CIR in Oregon's 2009 legislative session, while the same idea had been overlooked or not supported in the past? This research revealed four explanations for the support of HB 2895 and the legislative success of this deliberative policy. They are timing, effective advocacy, exceptionalism, and low-impact legislative strategy. This chapter explores the influences of them each, but first examines whether or not these explanations constitute ideational or political reasoning for supporting CIRs, and which of these broader categories from the deliberative literature is having the greater effect.

DRIVEN BY IDEAS?

Initiative reform has been an important topic of conversation for the Oregon legislature for several years, and the State Representatives I spoke to described a variety of reasons why they believe initiative reform is important. The most common problems brought up are that the signature-gathering and public vote constituted a poor way of making good public policy, that voters may not understand ballot measures and end up voting against their own interests, and that the process had lost its integrity and moved away from its original intent. They went on to say how they believed a CIR might

improve the initiative process. Not everyone shared the same level of optimism, but everyone generally believed that the CIR would have a positive influence. This section will describe their views and consider whether these constitute support for the ideational explanation of supporting deliberative policy. The conclusion finds that the ideational explanation was not an influential factor in earning votes and promoting legislative success in comparison to the other explanations I will describe.

Many people spoke about the limitations of initiatives to craft quality public policy. Senator Richard Devlin (D – Portland), the President of the Senate, recalled that in the first eight years he served in the Senate, the legislature had devoted a significant amount of its time to rewriting and dealing with initiatives that were poorly written and did not work (Devlin 2010). Devlin recalls that Measure 47, a property tax measure that was passed by initiative in 1996, had been “disparagingly talked about as if it had been written in crayon because it was so poorly written that people couldn’t understand from a legal standpoint what it actually did.” (Devlin 2010). The legislature was forced to create Measure 50 to take the place of 47 in order to avoid a decade of legal battles over the law’s meaning (Devlin 2010). Rep. Devlin described how “in a very real sense the initiative process is the antithesis of the legislative process” because it lacks debate, analysis, and compromise, and instead operates as “winner take all” policy making (Devlin 2010). Representative Chris Garrett (D-Lake Oswego) thought the initiative process was a particularly inappropriate way of making fiscal decisions. As Garrett explained, “the budget process is about setting priorities,” and the initiative process does not force voters to do this. Instead, “we just ask people year after year if they want a

pony. And we don't ask them, do you want a pony if it cost this much, and we won't have money to spend on healthcare?" (Garrett 2010).

Many people believed that the impacts of ballot measures have been unanticipated by voters, and that marketing campaigns had largely determined their outcomes.

Representative Andy Olson (R-Albany) said, "those that do [read the voters' pamphlet] are absolutely confused over what ballot measures are actually saying" (2010).

Representative Betty Komp (D-Woodburn) felt the same way about confusion over the outcomes of ballot measures:

What I learned from the process, and what I thought as a citizen before I ever thought about going into the legislature is, ballot measures are tricky. Sometimes they are written to warrant a yes or a no answer, which might be the actual opposite of what you think it is. So, they always have seemed to be confusing. I remember the first time I ever looked at ballot measure 37 and I thought, do people really understand what they are voting on here? The question crossed my mind because you could interpret it multiple ways (2010).

One study has suggested that citizens will vote against their own interest and intentions when ballot measures are confusing or poorly worded (Gastil et al. 2007, 1441). These can be costly mistakes. Statewide ballot measures often decide important fiscal, social and environmental policy issues that affect millions of citizens and determine the flow of billions of dollars in public funds (Gastil et al. 2007, 1436). A statistic that many people I spoke with were aware of was that nearly 50% of Oregon's discretionary budget increases since 1990 were the direct result of ballot initiatives passed by voters (Morse 2010; Roblan 2010). The belief that voters should better understand the potential impact of ballot measures was popularly shared by most of those interviewed. The ability of deliberation to improve citizen's knowledge and understanding of the issues they discuss

is a primary characteristic outlined in the deliberative literature (Gutmann and Thompson 2004; Elster 1998).

Concern over the integrity of the initiative process was also a frequent area of interest for those who had supported HB 2895. As Speaker of the House Representatives Arnie Roblan (D-Coos Bay) put it, “nobody wants to see graft, nobody wants to see manipulation, Republican or Democrat” (2010). The supporters of CIR used language that indicated they thought that initiatives had been compromised, and should be returned to their original intent. Representative Chris Harker (D-Beaverton) referred to the initiative process as having been “hijacked” (2010). Representative Brad Witt (D-Clatskanie) said that ballot measures often “hoodwink the voting public” and that “the process is out of control” (2010). There were many references to the few individuals who are believed to have had a disproportionate influence on Oregon’s initiatives including Bill Sizemore, Kevin Mannix, and Loren Parks (Brown 2010; Devlin 2010; Greenlick 2010). Representative Mitch Greenlick (D-Portland) worried that “the process has been corrupted. It is not a citizen’s process anymore but it is in the hands of people who can put a million dollars into getting something on the ballot” (2010). The ability of deliberation to challenge entrenched powers is outlined by Gutmann and Thompson (2004) and Beierle and Cayford (2002) describe its usefulness in restoring the public’s trust in governing institutions.

There is a considerable amount of “angst” among lawmakers around the role of money in the initiative process (Greenlick 2010). Bill Sizemore was mentioned as having made his living off of the initiative process, and “with Mr. Sizemore leaving the scene, people are vying to be Mr. Sizemore’s replacement” (Devlin 2010). It is clear to many

that “rich guys who don’t live in Oregon” have been able to bankroll many initiative campaigns, but there “are constitutional reasons why you can’t change that very much” (Greenlick 2010). Indeed, the U.S. Supreme Court has “made it increasingly difficult for states to craft regulations that stop wealthy individuals from purchasing a place on the ballot” (Ellis 2002: 69). The Court’s decisions in *First Bank of Boston v. Bellotti* (1978) and *Citizens Against Rent Control v. City of Berkeley* (1981) disallowed states from placing limits on initiative campaign contributions, and the *Meyer v. Grant* (1988) decision prevents them from banning paid signature gatherers (Ellis 2002: 69). There is no doubt that signature-gathering and initiative campaigns have become a business (Ellis 2020).

Another barrier to reform has been that “Oregonians love the initiative process” (Roblan 2010) and “are not about to do away with it” (Devlin 2010). Although there is evidence of an increasing dissatisfaction with the system’s problems, for the most part broad based public support has “insulated the initiative process from critical scrutiny” (Ellis 2002: 121, 194) Rep. Garrett (2010) describes the dilemma this way:

There is political pressure to avoid a perception that the legislature, the class of political elites, is trying to take power back from the people. Right? That is a dangerous place to be. And it’s a hard political conversation to have (2010).

Rep. Garrett was the only person I spoke to who openly derided initiatives as an institution of government and believed that it should be abolished, saying it had “done more harm than good for the state” and that “it is a fundamentally flawed way of making fiscal policy” (2010). However, perhaps because of the wide perception that citizens like the initiative process, Garrett described his legislative goals as wanting to “improve the quality of the decision-making process” and not to eliminate ballot initiatives.

The vast majority of those that I spoke to expressed support for the institution of initiatives, and they described their reform efforts as attempts to return the initiative process to its original intent. Rep. Greenlick expressed the sentiment succinctly:

Well, let me tell you my opinion, and I think it is probably shared by a lot of other people, probably on both sides of the aisle. I really believe in the Oregon system. I really believe in initiative, referendum and recall, which we created here as a reaction to the fact that the banks and railroads ran the legislature. I think the process is an important process. But I think the concept was intended to be a citizen process.... So, many of us would like to find reform in the initiative process that brought it back to what it was supposed to be, which is a bunch of citizens out gathering signatures (2010).

Ensuring that the initiative system works as it was originally intended, and in a way that is driven by and empowers citizens, is a popular attitude among the lawmakers interviewed.

The sponsors and supporters of HB 2895 all believed that the CIR could potentially have a positive influence on the initiative process. There were comments made about improving the quality of democracy, providing more objective information to voters, and potentially deterring out-of-state interests with less-than-pure intentions from attempting to push policy through Oregon's initiative system. Each of these reflect the theoretical outcomes of deliberation predicted by the deliberative literature.

Representative Ben Cannon (D-Portland) talked extensively about his belief in the importance of deliberation, and thought the CIR would be useful in promoting these values:

The initiative system does not lend itself well to deliberative decision making. Particularly given the complexity of the issues that voters face on the ballot, that complexity requires real thoughtful and informed participation by voters. The

Citizens' Initiative Review provided an experiment in helping voters make more informed decisions (2010).

Everyone who I spoke to thought that a deliberative process would improve the initiative process and address some of the problems they perceived, especially those having to do with informing voters. Some expressed a degree of skepticism about the influence the CIR would actually have on voters' decisions. Rep. Greenlick called the CIR a "weak solution" whose message was likely to be overwhelmed by advertising and expensive campaigns (2010). "It's like shooting a squirt-gun at a fire," he quipped, before going on to say that while its effects are marginal, they are not trivial because, "anything that makes citizens feel more engaged is a good thing" (Greenlick 2010).

The general feeling of optimism, and the belief that deliberation can improve the quality of the initiative system is reflective of the ideational explanation for endorsing deliberative policy. All of HB 2895's supporters believed that it would have a positive impact, at least to some extent. However, ideational influences did not have a strong bearing on the legislative outcome of HB 2895. Ideational support is a necessary but not sufficient condition for the endorsement of this deliberative policy. Legislatures would not have voted for a policy that they did not think would work. However, belief in the idea alone will result in very little being done to promote the bill in the legislative process. We can look to the case of CIR in Washington as an example where the idea of CIR had over twenty sponsors in the legislature who believed the process would be effective, nearly as many sponsors as HB 2895 in Oregon had, but the bill was never able to gain traction. The Washington bill had ideational sponsors, but not meaningful advocates for the policy. There are much more powerful explanations for why HB 2895 successfully endured the legislative process. The ideational explanation describes a

condition that should be present for a deliberative policy to gain endorsements, but it does not describe the mechanism which allows the policy to be successful.

One area in which an ideational explanation might be salvaged is through Tarrow's (1998) ideological frames. Reitman and Shuford were able to position the CIR within the frame that initiatives are discussed, in order to make it broadly appealing and difficult to oppose. The CIR was presented as an informational reform that aimed to give citizens more information on what they were voting on. As I will discuss later, the bill's advocates effectively positioned the CIR to be very difficult to ideologically oppose. This will be described partially as a political legislative strategy to give election minded politicians an incentive to support HB 2895. However, this positioning is equally an ideational explanation for the lack of opposition that the CIR encountered. Based on the CIR's exceptional positioning, politicians who made voting decisions based on ideas would have found HB 2895 extremely difficult to find ideological space from which they could oppose it.

IT'S ALL POLITICAL?

Political explanations assume elected officials will act based on incentives and outside influences that pressure them into the decisions they make. This approach can accurately describe the majority of the explanations that my research uncovered. For example, the legislative strategy adopted by HB 2895's advocates is a powerful explanation for success that presumes politicians will be election-focused and generally make decisions that are least controversial. Other strong explanatory factors fall under the political category as well, although they may be best described by theories from public policy and social movement literature rather than the arguments from deliberative theory

described in Chapter 2. For example, the bill's timing had an influence on its success, and the confluence of social and political factors that timing entails are captured well by Tarrow's (1998) description of political opportunity structures. The exceptionalism of the CIR and its aims also made it stand out from the rush of policy entrepreneurs who introduced initiative reform legislation in the 2009 session, much like Kingdon (1984) predicts will occur around open policy windows. The influence of the political climate at the time of CIR's emergence is a powerful political factor which led to its widespread endorsement. Kingdon (1984) has also described the importance of effective advocacy for a policy's success, which also had a considerable influence on HB 2895. The timing, advocacy, exceptionalism, and low-impact legislative strategy of HB 2895 are described well in the public policy literature and they each contain elements that are, in part, political.

Each of these four explanations will be described and supported in turn below, and their connection to the literature will be elaborated on in the concluding chapter. Certain kinds of political explanations can tell us accurate things about why people were supporting a deliberative policy in this case. Public policy and social movement literature helps to paint a more complete picture of what needed to be going on in the broader policymaking environment for this deliberative policy to succeed.

EXPLANATIONS FOR SUCCESS

In my conversations with Oregon political actors who supported HB 2895 in 2009, four explanations for their support and the bill's success emerged. To some extent the idea of CIRs benefited from timing because there was considerable attention being paid to initiative reform in the 2009 legislative session. Additionally, Reitman and

Shuford's tireless advocacy and promotional efforts undoubtedly helped promote HB 2895's progress. The bill also benefited from the exceptionalism of its aims among the multitude of initiative reforms being proposed at the time. Finally, the legislative strategy that Reitman and Shuford adopted to introduce CIR as a temporary pilot that would cost no money, allowed the idea to gain traction, despite the fact that Oregon was facing an enormous budget crisis in 2009. Each of these explanations seems to have had a critical influence on the success of HB 2895, and if any one of these factors had not been present the CIR would not have found the support that it needed in 2009.

The following section will use the comments from public figures that supported HB 2895 to describe the influence of each of these four explanations for the bill's success. Interviews, woven together with history and other information and testimony surrounding HB 2895 allows for the construction of a detailed account of why political elites supported this deliberative policy. It is important to understand that these explanations are not hermetically-sealed categories. Many actions from advocates, or characteristics of the legislation, will fit under more than one category of explanation. In this way, the explanations outlined are complementary to one another and weave together closely to complete a story of what led HB 2895 to gain support in the Oregon legislator.

It should also be clear that no single explanation will do all the work of explaining why HB 2895 found support. It was the combination of these four factors that caused meaningful support to grow, and made legislative success possible.

Timing

When Reitman and Shuford brought CIR into Oregon they happened to find themselves in an auspicious time for initiative reform proposals. What timing really

entails is the coming together of favorable circumstances that helped to prime the political climate for initiative reform proposals. There was a certain amount of luck involved in the situation that produced HB 2895, and ‘timing’ is the shorthand I will use to describe the merging of numerous factors that brought initiative reform and HB 2895 onto the agenda. By many accounts, 2009 was an exceptionally active session for the issue area of initiative reform, and this environment had clear benefits for the legislative fortunes of HB 2895. The ability of Reitman and Shuford to pair their policy proposal to a problem area that was receiving heightened attention is reflective of Kingdon’s (1984) description of merging streams in policy making. There was also a favorable climate for initiative reform outside of the legislature, in public organizations, that allowed for Reitman and Shuford to find potential allies, and build social networks, just as Tarrow (1998) describes. This section will present evidence about the advantageous environment for initiative reform in the 2007 and 2009 legislative sessions.

Oregon’s initiative process has long been an area of frustration for lawmakers. According to Rep. Devlin, “you could go back a couple of decades and probably see every proposal that has ever been thought of has been introduced at one time or another” (2010). Ten years before the CIR came to Oregon, the state had experienced a wave of reform proposals in the 1997 and 1999 legislative sessions, following an influential report from the City Club of Portland, but since then reform had been piecemeal and limited (Ellis 2002: 73). In the past, initiative reform efforts had brought out strong opposition from both the left and the right. Sen.Devlin recalled being “on legislative committees where Lloyd Marbet was on the same podium with Bill Sizemore testifying in opposition to changes. So, somebody from the left and somebody from the right” (2010). There was

also a general perception that Oregonians liked the initiative process, which made reforms a difficult sell and a low priority for the legislature.

However, by 2007 the public feeling around initiatives both inside and outside of the legislature seemed to have changed. Kate Brown (D-Portland), then President of the Senate, had made initiative reform a priority and promoted a package of reforms that year. In the mean time, the City Club of Portland was undertaking another investigation into the weaknesses of the initiative process, and their working group on the topic had heightened public concern. With powerful actors like Brown advocating for reform and influences from non-governmental groups building, the legislature created a strong enough coalition to pass the “largest initiative reform package in a decade” (Devlin 2010). Kappy Eaton, the governance coordinator for the League of Women Voters of Oregon helped to promote the reforms, and confirmed that, “it has taken quite a long time to get the reforms that were passed in 2007” (2010).

These legislative successes did not mark the end of attention for initiative reform. In January of 2008 the City Club of Portland officially published the conclusions of its working group on initiatives and suggested significant additional changes to the process (City Club of Portland 2008). This report gained the attention of both citizens and lawmakers. Some of the recommendations of that report would be proposed as legislation in the 2009 session. At the same time, Reitman and Shuford were promoting their CIR idea and gaining suggestions from politicians like Brown and political actors like Eaton. Based on the suggestions they received, and seeing an opportunity in the 2008 election cycle, Reitman and Shuford ran a trial of the CIR process in September 2008. Shortly following this project in October of 2008, the Oregon Business Association (OBA)

launched their own working group to discuss and promote initiative reforms. This “Initiative Reform Coalition” included “business and labor leaders, state legislators and the Governor's office in designing a package of statutory and constitutional changes to reform the initiative system”⁴ (Cosgrave Vergeer Kestler 2010). Reitman and Shuford became regular attendees of the working group, along with Eaton and representatives of other non-profit organizations including Common Cause. These opportunities to gain allies and build collective identities suggest that a favorable political opportunity structure existed around initiative reform (Tarrow 1998). In November of 2008, the Oregon Public Broadcasting radio show “Think Out Loud” devoted an hour to discussing how to reform the initiative process after the topic was suggested by a listener. The program featured Arden Shenker discussing the recommendations from the City Club of Portland’s report, Shuford promoting the CIR, as well as Senator Frank Morse (R-Albany) expressing his belief in the need for reform. Initiatives had continued to gather attention from non-governmental organizations, state representatives, and the public.

In the 2009 session, conversations and proposals for initiative reform in Salem swirled. Sen. Devlin described, “a tremendous amount of discussion” and Rep Harker recalled, “this was something that got talked about a lot in the house caucus” (2010). Rep. Roblan suggested that, in addition to working groups and reports, the initiative season of 2008 had been a particularly active one, “and people were rather uptight about it” (2010). A plethora of legislative proposals emerged from OBA’s work group and came through the House Rules Committee, HB 2895 being among them. Just as Kingdon (1984)

⁴ In 1996, Portland City Club proposals had resulted in the formation of a very similar bipartisan working group of the state’s political leaders called the “Oregon Initiative Committee” (Ellis 2002: 194). Seemingly, the emergence of initiative reform on the legislative agenda followed a very similar path in 1997 as in 2007.

describes, policy entrepreneurs like Reitman and Shuford had flocked to the issue area where there was a window of opportunity. For initiative reform proposals that failed, CIR became a back-up bill for politicians to support. Sen. Morse, Rep. Witt, and Rep. Harker all mentioned working on their own failed initiative reforms before adopting support for the CIR. As Rep. Harker said about his own failed proposal, “if we couldn’t get that done we wanted to get something done” (2010). HB 2895 became that something for Rep. Harker and others.

While the bill’s timing was mostly fortuitous for Reitman and Shuford, 2009 was also a year when the state of Oregon experienced a huge financial crisis (Roblan 2010). In this respect, the situation that Reitman and Shuford faced for their CIR proposal was hugely restrictive, because new programs were at the bottom of the state’s priorities, and any request for state funding would have been a complete non-starter (Nathanson 2010; Reitman 2010). Although they would have liked to ask for money from the state to help Healthy Democracy Oregon run the CIR, the timing of their proposal made this impossible. With some creative and adaptable legislative strategy, HB 2895 was able to succeed in spite of the financial challenges at the time.

Overall, its timing was a benefit to HB 2895 and the bill would have been unlikely to succeed without preexisting interest in the issue area. In Kingdon’s (1984) language, a problem stream was present for Reitman and Shuford to pair their policy solution to, and in Tarrow’s words, a political opportunity structure had emerged that lowered the cost of collective action for Reitman, Shuford and their political allies. Where as the CIR had toiled in obscurity for six years in Washington, the idea had gained

legislative success in Oregon within two regular legislative sessions. Rep. Roblan was impressed with the relative speed of the reform:

Changing the order of things in a voter's pamphlet, that's a pretty hefty lift. It had to have been. In general in this building bills take three to four sessions to generate both the interest and get it fine tuned enough that they are willing to move it to the next level. i.e. become a law. And that happens over and over and over again (2010).

Without the working groups of political elites discussing initiative reform, Reitman and Shuford would have found it extremely difficult to find interested legislatures, and build coalitions of advice and support in order to move their bill forward. Where timing favored them, they were able to take full advantage. Its timing had an invaluable influence on the progress of HB 2895, but it is only the first of four factors that, working in conjunction, explain the political support for deliberative policy in Oregon.

Effective Advocacy

A second explanation for the success of HB 2895 stems from the devoted and effective advocacy which the bill enjoyed. While nearly all legislative proposals will have advocates, the CIR enjoyed persistent support from three very effective sources. The first and most influential source of advocacy for the bill was the work of Reitman and Shuford. By all accounts the two did an extremely good job of lobbying and promoting the idea of CIR. As policy entrepreneurs, they "invested sufficient resources" to get their proposal enacted (Kingdon 1984: 213). The bill also had support from politicians in powerful positions which helped to ensure its success. Advocacy for the bill also came directly from ordinary constituents who had participated in the trial CIR in 2008, in the form of lobbying representatives and giving testimony at public hearings. Together these

supporters helped the bill to negotiate the legislative process and gather enough support to pass handily in the House and Senate.

Reitman and Shuford's advocacy for the CIR in Oregon really began in the 2007 legislative session when they first introduced CIR legislation. At the time they had support from Kappy Eaton from the League of Women Voters of Oregon, and a few other advisors including Ned Crosby, the inventor of the CIR policy and the funder of Reitman and Shuford's efforts. They had only one legislative sponsor for their bill. At the time Reitman and Shuford sought and received support and advice from important players in initiative reform, including then president of the Senate, and now Secretary of State Kate Brown (Brown 2010)⁵. Although the bill failed to receive a single Rules Committee hearing, the session had given Reitman and Shuford an opportunity to lay the groundwork for their lobbying efforts in the future by making a few connections in the House and Senate, and by obtaining experience with legislative council (which drafts the language of legislation). They also learned about the potential difficulties of the committee hearing process.

Reitman and Shuford did a huge amount of work organizing and running the trial CIR in 2008 and used this as a chance to produce promotional materials and increase public awareness for their idea. The Healthy Democracy Oregon website features extensive pictures and videos from this first CIR (Healthy Democracy Oregon 2010). They had the findings of their Citizen Panel presented on the steps of the Capital building in Salem with media present. News articles about the process and its findings appeared in

⁵ Brown gave advice to assist in Reitman and Shurford's efforts, but was not an active advocate for HB 2895 because she was busy promoting her own regulatory reforms to the initiative process in the 2009 session, HB 2005 (Brown 2010).

newspapers around Oregon and online (Hammond 2008; Steves 2008; Manning 2008).

Most people, even those in the legislature, remained unaware that the process had taken

place, but a few heard about the CIR this way including Rep. Garrett (2010), and Rep.

Roblan. Indeed, Roblan described hearing about CIR, but not devoting much thought to it

at the time:

The group that came to the legislature had actually done entirely on their own the election before, they had set up a process and had an initiative review. And so, I had heard about the process. I hadn't really watched it. I did see, I think, their voter's statement that they had made for the voters pamphlet. It wasn't really high on my radar but I knew that it had happened (2010).

Nonetheless, knowledge of the CIR was slowly growing and Reitman and Shuford gained new evidence and materials from the CIR trial to assist with their advocacy efforts in the future.

In the 2009 legislative session Reitman and Shuford set out on extensive lobbying for the bill. The majority of the sponsors of HB 2895 who I spoke to recalled first hearing about CIR through a visit from Reitman and Shuford:

Well, I first heard about it from that organization [Healthy Democracy Oregon], and it seemed like an excellent idea (Greenlick 2010).

A group of a few individuals who I believe probably came from this organization came to see me and if I would be willing to support this being introduced in the house. I told them that I would (Devlin 2010).

I think that it was, Elliot and the folks at Healthy Democracy Oregon who first mentioned the concept to me. I mean, it's very commonplace for us to get ideas for legislation from organizations or individuals who contact legislators and say, "hey is this something you'd be interested in working on?" I don't think I was aware of that mechanism before I heard about it from them (Cannon 2010).

Members recall Reitman and Shuford being very active in promoting the bill. The bill's chief sponsors recall Reitman and Shuford as the bill's driving force:

Our office got pretty involved in the bill. Elliot and Tyrone spent a fair amount of time here and I was very receptive to them as soon as they came in and we kind of helped move the thing along by getting meeting space, coordinating things. I did not personally go out and campaign hard on behalf of it, but I provided them with some vehicles, if you will, for moving it forward... Tyrone and Elliot basically did the bulk of the legwork (Harker 2010).

Rep. Roblan was particularly impressed with the ability of Reitman and Shuford to gain bipartisan support, and believed the bill owed its success to their impartiality:

The only reason this bill passed is because the two people, who you mentioned before, had done such a good job that no one can figure out whether they are Republican, Democrat, independent or whatever... Tyrone and Elliot are a big part of the story on this particular one. In fact, maybe the whole story. I don't know that it would have happened without them. And I don't think that it would have survived the first attempt if everyone hadn't believed it was totally impartial (Roblan 2010).

Secretary Brown agrees that Reitman and Shuford's advocacy was invaluable, and she highlighted the importance of convincing people to feel strongly that the CIR has value:

I have to tell you, you know, I have to be honest, I think Elliot's passion and Tyrone's enthusiasm and energy around this issue make a huge difference because not having [CIR], you don't know what the downsides are and we don't know what the upsides are (Brown 2010).

Reitman and Shuford were able to play the role of lobbyists and policy entrepreneurs extremely well. They were completely devoted to their promotional efforts, thanks to financial support from Crosby. They were able to gather many bipartisan sponsors from both houses, and educate enough legislators about the meaning and benefits of the bill to have it pass the House and Senate with large majorities.

Not only were Reitman and Shuford able to get a great number of sponsors for their legislation, but they also happened to enlist the help of the right people who were in a position to assist with the progression of the bill. These sponsors were Democrats and Republicans from both the House and Senate, and many became important advocates for HB 2895 themselves. Having supporters inside of the legislature who were able to help HB 2895 overcome the institutional obstacles of becoming a law made a valuable contribution to its success. It was the opinion of many legislators I spoke to that having support from key political players plays an important part in a bill's success (Brown 2010; Komp 2010; Harker 2010).

Two important sponsors of HB 2895's were Rep. Roblan and Sen. Devlin, who are the chair people of the House and Senate rules committees respectively. Having the attention and support of the heads of the committees that HB 2895 would receive its hearings in was helpful in getting and keeping the bill on the agenda. In the past CIR legislation had failed twice to receive a single committee hearing. The feeling in Washington in 2007 had been that a last minute change in the chairman of the committee where the CIR bill awaited its hearing had spoiled the chances of the bill getting onto the agenda (Reitman 2010) In 2009, Reitman and Shuford were sure to visit with Roblan and Devlin or their staff often to answer questions and lobby for their continued support (Reitman 2010; Roblan 2010). Once Roblan and Devlin were joint advocates of the bill they were able to ensure that it stayed on the legislative agenda and successfully maneuvered the hearing process.

The bill's chief sponsors were also active in advocating for the bill, and ensuring its success in the legislature. One chief sponsor, Rep. Harker happened to sit next to Rep.

Roblan on the House floor. He and his aid Megan Perry, were able to use this position on the floor to check in with the chairman of the House Rules Committee on the schedule of hearings and the progress of amendments to HB 2895 (Harker 2010). The bill's other chief sponsor, Rep. Cannon, had his staff working with Shuford and legislative council on the drafting of the bill and its amendments (Cannon 2010). Chief sponsors would also help to field questions from members of the legislature, especially about the funding of the bill (Harker 2010). The advocacy from legislative sponsors should not be overlooked. Through their coordinating and prodding, sponsors played an essential part in ensuring HB 2895's gathered critical support.

The final source of advocacy for HB 2895 came from the public. After the CIR trial in 2008, a few of the randomly selected citizens who had participated were enthusiastic enough about their experience to call or visit their state representatives in support of HB 2895. Representative Suzanne VanOrman (D-Hood River) recalled first hearing about CIR from one of her constituents who had been a participant in the trial. According to Rep. Roblan, "individual members mentioned to me that constituents who had been selected for the panel were really high on it, and they had come and talked to them. So, there was a word of mouth thing that happened from participants to members" (2010). Not only did citizen participants in the CIR speak to their representatives, they also attended committee hearings, published guest editorials in *The Oregonian*, and spoke on the radio in support of CIR and HB 2895 (Fantz 2009; OPB 2008).

Rep. Cannon describes the influence of these constituent efforts as significant:

I think the legislature is quite sensitive to what we hear from our constituents. In that sense the process works pretty well. We do on the whole reflect what we are hearing from constituents. One of the problems is, only a few constituents are

really meaningfully engaged in the process, or actually letting their legislators know. So, it doesn't take very many squeaky wheels to get the attention of legislators (2010).

Rep. Roblan agreed, and emphasized that what he heard from citizens in committee was particularly influential on his feelings towards CIR:

From my perspective, the hearings changed everything. I thought it was a nice idea, I'd heard about it, I liked it, but it wasn't big. But when they brought in people from Eastern Oregon who came here on their own dime to tell us how important it was for them, and how transformational it was in their life to be a jurist, I think most of the people in this building started hearing that and started believing that, wow this has hit a chord with the average person. That they are willing to spend their time effort and money, take a day off of work, whatever it took, do be over here to talk about that experience. That, I think, changed a lot of people. We like to hear real life stories of real people (2010).

Many of the bill's sponsors spoke about the importance of the relationship between the legislature and citizens, and the importance of taking cues from constituents. Although it came from only a small select group of people, who held no formal political power, citizen advocacy of HB 2895 contributed to the bill's legitimacy and helped to inspire belief in the CIR process among state representatives.

The advocacy HB 2895 received from Reitman and Shuford, its legislative sponsors in positions of influence, and from citizens were all effective at promoting CIR and ensuring the bill's passage. Secretary Brown confirmed, "there's no question it's important [for a bill] to have champions. Because of the amount of bills introduced every session, three to four-thousand get passed, it's pretty easy to get lost in the shuffle" (2010). Reitman and Shuford made effective policy entrepreneurs in many of the ways that Kingdon describes. They were completely devoted to their goals, learned quickly from experiences, and listened to good advice from advisors, sought press coverage, and

met endlessly with potential allies in the legislature (Kingdon 1984: 214). The process of developing and passing CIR legislation did “take years of effort” and Kingdon (1984) predicts, but luckily for Rietman and Shuford, the role of favorable timing made it take fewer years than policy proposals typically do (Roblan 2010). Additional advocacy came from inside the legislature, where powerful sponsors were able to help HB 2895 through institutional hurdles, and from citizens, who had participated in the trial of CIR. This strong network of allies who had emerged around the area of initiative reform contributed to an opportunity structure where HB 2895 would succeed (Tarrow 1998: 20). Good quality and sufficiently devoted advocacy is a strong explanation for HB 2895’s success.

Exceptionalism

Another factor that contributed to the success of HB 2895 was the exceptionalism of the CIR and its aims. As was previously highlighted, the 2009 session was subject to a rash of initiative reform legislation, promoted by policy entrepreneurs who wanted to take advantage of the favorable political climate in the issue area (Kingdon 1984). Although this timing helped HB 2895 in many respects, it also placed the bill in competition with numerous other bills aimed at the same subject. HB 2895 had qualities that made it unique from the plethora of initiative reform proposals that year, and gained it the sustained resources and attention to succeed. The informative aims of HB 2895 also placed in a rare category of initiative reforms that is ideologically positioned in a way that makes it difficult for politicians to vocally oppose. Based on its positioning the collective frame of initiative reform, HB 2895 dodged opposition and gained ideational support (Tarrow 1998).

By all accounts, state legislators were “very proactive” on the topic of initiative reform in the 2009 session (Brown 2010). Numerous bills on proposed initiative reforms were introduced in the House and referred to the House Rules Committee for hearings. As the CIR had experienced in the past, being referred to committee does not necessarily mean a bill will ever receive a hearing. HB 2895 was one of ten other initiative reform bills on the Committee’s agenda when it received its first hearing on March 30, 2009 (*The Oregonian* 2009). Of those ten bills receiving public hearings, only three (including HB 2895) would eventually be referred back to the House for a vote. The majority remained in committee until the legislative session expired, over seven months later in November. Facing these types of odds, HB 2895 needed to be unique enough to command the attention it needed to move it through the legislative process. HB 2895 was inherently unique because of the deliberative quality discussion it entailed, and because of its aims of providing more and better information to the voting public. This informational aim is one that is widely ideologically supported by lawmakers, and is relatively uncommon among proposed initiative reforms.

The Secretary of State, Kate Brown, has been a longtime advocate of initiative reform. She identifies initiative reforms as being in one of three categories: regulatory, structural, or informative (Brown 2010). Regulatory reforms are by far the most common, and they are aimed at making changes to the procedures of the initiative process in order to eliminate fraud and efficiently allocate state resources. Typically, reforms of this nature deal with procedures around signature-gathering, drafting ballot titles, and other procedures that initiative campaigns face. Secretary Brown informed me that regulatory reform is the area where the legislature has been able to make the most progress in the

past few sessions (2010). Rep. Harker remembers the majority of the reforms that were considered in the OBA's Initiative Reform Coalition work group were aimed at regulating or changing the initiative process (Harker 2010). This type of reform is where the greatest number of proposals are aimed, and the greatest number of bills are passed, making it the most competitive category for proposed reforms.

Structural reforms are those aimed at making constitutional changes to the structure of the initiative process. The most talked about example of this type of reform from 2009 was the "indirect initiative" proposal. The idea (HJR 17) proposed a significant change to the initiative process by requiring initiative petitions to be submitted to the legislative assembly for one session before they appeared on the ballot for voters. This structure for the initiative process was recommended by the City Club of Portland's initiative report, and sponsored by Sen. Morse, who later became a co-sponsor of HB 2895. This particular reform never left the Rules Committee, and Secretary Brown described structural constitutional changes as being the most difficult to pass. Reforms that would restrict, slow, or otherwise alter the normal initiative process often face strong political opposition. Most politicians will typically vote to protect the current process.

The final category of initiative reforms, where the CIR belongs, is informative. Informative reforms are those that aim to provide more or better information to voters on ballot measures. These reforms assume that voters could make better decisions for the state if they understood more about the impacts of the measures they are voting on. Informative reforms will not restrict, or add layers of procedures to the existing initiative process, so they are well liked by politicians, and they do not inspire opposition from initiative campaign organizers. Sen. Richard Devlin recalled that there was "no organized

opposition” to HB 2895 as it made its way through the legislature. When asked why not, he highlighted two things, “A) they probably don’t perceive it as a threat, and B) it’s probably something that is hard to come out vocally in opposition to” (Devlin 2010). Rep. Garrett went further, saying, “Why wouldn’t you support it? There’s no cost and it’s a measure that gets citizens involved and lets them weigh in. I mean, there’s all kinds of nice democratic values that this bill implicates” (2010). When Senator Vicki Walker (D – Eugene) stood to defend HB 2895 on the Senate floor she said, “this is really just information, and I think the more information the better” (Senate Floor Debate 2009). The “nice democratic values” and nonthreatening nature of this informative bill helped to make it much more politically viable than structural reforms. It also positioned the CIR in an ideological space within the initiative reform framework that made it easy for politicians to support, and difficult to oppose (Tarrow 1998). This aspect of exceptionalism suggests that there is an ideational explanation for why political elites who were minimally reached by Reitman and Shuford’s advocacy, or who were not necessarily involved in the growing networks of people interested in initiative reform at the time, may have voted for HB 2895.

Informative reforms are the least commonly proposed initiative reforms. Among the sponsors that I spoke to, HB 2895 was the only initiative reform they could remember that was directly and primarily targeted at providing more information to voters in 2009. There have been proposals in the past to include more information in measures’ ballot titles, but purely informational reforms remain rare (Eaton 2010). This unique angle on reform gave HB 2895 an exceptional quality, and earned it more attention among lawmakers than many of the other ideas put forward in 2009. The vast majority of the

reform bills proposed were regulatory. Many of these did pass into law, but having informative aims certainly helped to keep HB 2895 from being “lost in the shuffle” (Brown 2010).

Because CIRs aim to inform voters of the conclusions from deliberative citizen discussions in the voters’ pamphlet, they are firmly in the informative category of reforms. Its positioning this category made the CIR as nonthreatening to the initiative process. Its exceptionalism allowed HB 2895 to gain votes and avoid organized opposition in the legislature for ideational reasons. Some of the bill’s other qualities, like the fact that it had no cost to the state, do not make it exceptional among other initiative reforms, but they were an important aspect of the bill’s legislative strategy, which equally contributed to its success.

Low-Impact Legislative Strategy

A fourth and final explanation for the success on HB 2895 was the low-impact legislative strategy adopted by Reitman and Shuford in 2009. There were several aspects of HB 2895 that made it different from any previous CIR legislation proposed, and these aspects allowed it to gain the support it needed to be passed. Some of these characteristics also contribute to the bill’s exceptionalism, but I have separated them out to highlight their unique purpose and influence on HB 2895’s success. For one thing, HB 2895 is a physically shorter piece of legislation than those that were previously introduced in Washington and Oregon, and it excludes complex tasks for the state to undertake, such as the formation of boards to oversee CIRs. The bill also includes a sunset clause to expire in January 2011, as well as a research component to study the public impact of the CIR and its voters’ pamphlet statement. Lastly, HB 2895 had no cost

to the state. It would be completely privately funded by the nonprofit conducting the CIRs, and there were limitations put on where they could draw funding from to ensure the process was impartial. Reitman and Shuford utilized these strategies for the CIR based on political learning from past legislative failures, and good advice received from their advisors, who included state representatives, former politicians, and experienced lobbyists (Reitman 2010). The pair's strategy adapted to economic realities, predicted political behavior, and was creative with what HB 2895 would and would not include.

Before introducing their CIR legislation in 2009, Reitman and Shuford received extensive advice and guidance from Healthy Democracy Oregon's advisory committee⁶ and Board of Directors, which included Crosby and Benn among others. They also received advice in meetings with the current Secretary of State Kate Brown and other sitting State Representatives like Peter Buckley (Reitman 2010). Along with advice, they learned a great deal from the failures of CIR legislation in the past, both in Washington and in Oregon. With these influences, there were major changes made to proposed CIR legislation in 2009. One element of previous bills that was excluded in 2009 was the formation of a commission in the State Department to oversee CIRs. Rather than include the complex appointment process and outline the responsibilities of such a body, HB 2895 simplified the whole issue by asking the Secretary of State to appoint a nonprofit organization to be responsible for the whole CIR process. This approach made the bill significantly shorter, and made the procedural responsibilities of the State minimal. The assumption being made was that the Secretary of State would choose Healthy Democracy Oregon to conduct the CIRs, because they are the only group in the state with experience

⁶ Healthy Democracy Oregon's advisory board includes: Kappy Eaton, Jeff Golden, Mike Greenfield, Phil Keisling, Andi Miller, Fread Neal, Norma Paulus, and Jack Roberts (Healthy Democracy Oregon 2010).

conducting CIRs and probably one of the few who are aware the process exists.

Having Healthy Democracy Oregon take on responsibility for the running of the CIR made the bill simpler and less intimidating. The choice also made sense in conjunction with the other legislative choices that Reitman and Shuford made to make the bill temporary and privately funded.

A second change that was made to CIR's previous legislative strategy was to make the 2009 bill temporary, and to include a study of its impact. Reitman (2010) explained that the idea came from good advice they received from Kate Brown, and a perception that legislators would demand they test the idea before it would be permanently implemented. Crosby had also floated the concept in the past of making the first occurrence of CIR a pilot "under the auspices of the state," complete with a voters' pamphlet statement (Jim Rough Show 2002). HB 2895 was introduced to the House without a date for repeal, but the date was added in its first round of amendments. The bill was also amended to include a research component that mandated an evaluation of the usefulness of the Citizen Reviews and their voters' pamphlet statements. HB 2895 established a CIR pilot program for the 2010 election cycle.

For some supporters, like Rep. Cannon, it was important that the CIR be experimental:

I think it's a great opportunity to experiment in providing better information to voters... part of the value of the experiment, is to see whether there is any discernable effect. I'm not interested as much in how it affected the outcome of the measures as I am in what voters think. Whether voters conclude that these were useful tools or not (2010).

Rep. VanOrman agreed, saying:

“You know, I have no idea how the people are going to receive this. That’s why I think it’s good that they are going to do an evaluation. And that maybe we can get some idea of the effect and the benefit of what they are trying to do” (2010).

Making HB 2895 temporary, with a study on its outcomes once again made this very new idea less intimidating to lawmakers and even easier to support and vote for. There was clearly a strategy of introducing the CIR to the legislature incrementally, while giving them a chance to learn about the process and determine its value. The strategy was an astute one according to Rep. Roblan, who after pointing out the often slow nature of the legislative process mused, “I don’t know that [HB 2895] could have been anything other than incremental” (2010).

The most important strategic element of HB 2895 was that it did not cost the state any money. The bill was originally introduced without a funding mechanism, but in the hearing process it was amended to read that the organization conducting the CIRs will be responsible for all of the associated costs, including the cost of printing the voters’ pamphlet statement. In order to avoid potential bias, the organization may not receive any funding from political committees, corporations or unions. By all accounts, this move to make the CIR free to the state was very important to its success. The budget crisis that Oregon was experiencing in 2009 made funding new programs an extremely low priority for the State (Reitman 2010; Nathanson 2010). According to Rep. Roblan (2010), the State simply could not have funded the CIR in 2009. He credits Reitman and Shuford for “continuing to step forward and say, we’d be willing to do what we need to do, and go raise the money to do it” (Roblan 2010). Rep. Cannon remarked that Healthy Democracy Oregon offering to fund the project was what “made it possible to pass a bill in the [2009] session” (2010). Rep. VanOrman reflected the feelings of most when she said, “one of

the appeals of it was of course they didn't ask for any money. Because we didn't have any. If it had money attached it probably wouldn't have gotten very far" (2010).

Following the passage of HB 2895, Reitman and Shuford have elicited donations, undertaken fundraising, and sought out grants to help fund the future CIRs. The majority of the funding they have raised comes from Healthy Democracy Oregon's board of directors, including Crosby (Healthy Democracy Oregon 2010)⁷. They have also received a number of pledges from family foundations and individuals (Healthy Democracy Oregon 2010).

Secretary Brown recalls the advice she gave to Reitman and Shuford on the funding issue this way:

My usual conversation on budget stuff is you either need to have a legislator who is very committed to making this a priority and will help you find the funding and is in a powerful place to do so... Those folks are pretty few and far between, and those folks can only do that maybe once or twice a session. And so the better route was probably being able to accept nonprofit, private dollars to fund whatever project they wanted to do (2010).

Reitman and Shuford followed this advice and adapted their legislative strategy to take account for the economic climate at the time. Since state funding was unlikely, they were willing to take on the challenge of bankrolling the project for the temporary life of the bill. What the pair is counting on is that Oregonians will like the CIR, and use the voters' pamphlet statement. Following the pilot, Healthy Democracy Oregon will have research to reflect the CIR's utility to voters, and be in a strong position to re-approach the legislature in 2011 to ask that the process become a permanent function of the state. By

⁷ Healthy Democracy Oregon's Board of directors is: Ned Crosby, founder of the Jefferson Center, and his wife Patricia Benn. Tyrone Reitman, co-founder of Healthy Democracy Oregon. Scott Borduin, the vice-president of Autodesk Inc. Mick Mortlock, a consultant and futurist. And Susan Edwards (Healthy Democracy Oregon 2010).

this point they hope to have proven to lawmakers that the cost of funding CIR is justified by its benefits.

Because of the legislative strategy that HB 2895 adopted, opposition to the bill was very difficult to justify. As mentioned earlier, the CIR is already difficult to vocally oppose because it is not restrictive of the initiative process and it attempts to enact some “nice democratic values” (Garrett 2010). When Reitman and Shuford made it temporary and free to the state as well, they had nearly eliminated any reason to vote against it. While the numbers voting in favor of HB 2895 were fairly overwhelming in both the House and Senate, there were seven Republicans who chose to vote against it in each chamber. A common opposition heard from those who stood to speak in opposition to HB 2895 was that the state had no way of ensuring the CIR would be an objective process, and it would be “wrongheaded to let nonprofits make state endorsed statements in the voters’ pamphlet” (Senate Floor Debate 2009). However, Reitman, Shuford and the others working on drafting of HB 2895 had already thought of this criticism as well, and as Sen. Morse explained when he stood to defend HB 2895 in the Senate, each CIR statement in the voters’ pamphlet will include an explanation stating, “these are NOT official opinions or positions endorsed by the state of Oregon or any government agency” (Senate Floor Debate 2009). The legislative strategy that went into this short bill was extremely thorough and effective at both quelling fears and eliminating opposition.

For those who still voted against HB 2895, the explanation might lie in the view described in Chapter 2 that deliberation should not be a function of the state. Senator Ted Ferrioli (R – John Day) the Senate Republican Leader, spoke in opposition to HB 2895 saying:

People already have the tools and rights necessary for them to convene any kind of organizational group that they want to convene, to debate the issue in any way that they wish to debate, to conclude as they might one way or another, or to add or detract any information that they wish to, and to publish their recommendations and findings in the voters' pamphlet (Senate Floor Debate 2009).

Sen. Ferrioli goes on to call HB 2895 completely unnecessary. Sen. Ferrioli would likely agree with Habermas's conception that deliberation should take place outside of government institutions, so as to keep it less costly, and ensure it is unrestricted. A government run deliberative policy is unlikely to ever gain the endorsement from those who adopt this view.

Ultimately, Reitman and Shuford would like to have made the CIR a permanent and state-funded process. However, they realized that they would be unlikely to have success with that proposal when the CIR was still a little known process, and the state had no money to devote to new programs. They also learned from past failures that a long, complex and demanding bill was unlikely to attract the support it would need to succeed. Being effective policy entrepreneurs, Reitman and Shuford were adaptable and creative with their legislative strategy, and were able to craft a much more appealing bill for legislatures that would be extremely difficult to oppose and would help to strengthen their case for adoption the CIR in the future (Kingdon 1984). The fact that HB 2895 excluded the formation of boards and oversight committees, and instead positioned itself as an experiment in deliberation that had no cost to the state, is a powerful explanation for its legislative support and success. Reitman and Shuford went out of their way to develop legislation that would be easy to support for election-minded politicians who

might oppose new spending or wholesale changes to a well liked state institution, making low-impact legislative strategy a form of political explanation for HB 2895's support.

CONCLUSION

For the case of HB 2895 and CIRs in Oregon, research has given us four explanations for why this policy was able to succeed. It was a result of timing, effective advocacy, exceptionalism, and low-impact legislative strategy. There is a long history of deliberative projects and failed CIR promotions in Washington that led up to the CIR's introduction to Oregon. With clever and devoted advocates, and auspicious timing that gained it attention and exposure, HB 2895 was able to make its way into Oregon's law books. This particular bill has been a success, but the story for CIRs in Oregon is far from over. CIR's future depends in part on the pilot program and the results from its evaluation. Time will also tell if the conditions for success I have described remain in Oregon for the 2011 legislative session, when Healthy Democracy Oregon will likely reintroduce legislation to institutionalize the CIR. Along with the underlying condition of ideological support and political strength, any CIR bill in the future will likely need continued favorable timing, advocacy, exceptionalism and legislative strategy to succeed.

CHAPTER IV

CONCLUSIONS

This research revealed what led political elites to support the deliberative policy HB 2895 in Oregon was a combination of timing, effective advocacy, policy exceptionalism and low-impact legislative strategy. Each of these factors contains a version of a political explanation within them, and exceptionalism includes an ideational aspect as well. The previous chapter has described and presented evidence for each of these explanations. This final chapter will explicitly tie the explanations that exist in the literature to what was empirically observed. Examining the strengths and weaknesses of each of the various arguments made in the literature will outline where existing characterizations of deliberative policy making have worked, and where they failed to explain elements of this case. The chapter will end with a thorough examination of what conclusions can be brought away from the research I have done, as well as what questions this research cannot answer and will require further examination in the future.

IDEATIONAL

Ideational arguments for the adoption of deliberative policies purport that policy makers choose to support deliberative policies based on ideas. Supporters believe a policy's outcomes will have a positive impact on some process. The ideational view sees

policy happening as a result of a choice by decision makers to adopt deliberation because of its educational and legitimizing powers, and not as the result of any mounting political pressures to act. What this research looked for as evidence to support the ideational explanation were political elites who described the benefits of deliberation as being their express goal in supporting HB 2895, as well as the absence of political and other forces that could explain their choices more accurately.

To a large extent, the conditions of belief in the benefits of the CIR process for ideational support were expressed by supporters in interviews. Legislators hoped that the CIR would increase the public's trust in the institution of ballot initiatives, just as Beierle and Cayford (2002) claim deliberation will accomplish. They also talked about the process's ability to upset entrenched powers in the public discourse, and increase public knowledge on the issues citizens vote on, each of which Gutmann and Thompson (2004) and Welsh (2000) have identified as outcomes of deliberation. It was common to hear the bill's supporters express their belief that the CIR process can give more and better information to voters, and improve the quality of decision making (Garrett 2010; Roblan 2010).

There were some skeptics of the influence of the CIR process who were supporters anyway (Greenlick 2010; Garrett 2010). This would indicate to me that the legislative strategy that made HB 2895 temporary and experimental had a greater influence on those actors' support than their actual belief in the policy did. Alternatively, it could be that the exceptional ideological position of CIR as an informative bill caused them to support HB 2895 for ideational reasons, even though they were not enthusiastic believers in the bills efficacy. For the most part however, supporters of HB 2895

expressed a genuine belief in the benefits that deliberation could contribute to the initiative process.

In this way ideational support was clearly present among supporters of HB 2895, but it remains a weak explanation. When looking at the failed case of CIR in Washington, there are numerous legislative sponsors there who believed in the benefits of deliberation as well, but the CIR bill was not successful there. A comment from Rep. Greenlick was particularly revealing as to why this might be the case. Asked if he would support a CIR bill that had a large fiscal impact, he said, "I probably would sign on to it too, but I know it would get killed in ways and means" (Greenlick 2010). Legislators who believe in the benefits of the process may become 'supporters' of an idea with the knowledge that it will actually fail due to its legislative strategy. These people are ideational supporters of the idea, but are not real supporters of the bill in question, and make poor advocates for its progress and success. In this way, ideational support for a policy is a poor indicator of whether or not an idea's legislative support will have a meaningful effect.

The ideational explanation can be downplayed as a powerful tool for predicting success for deliberative policy. Even though it is a condition that is present in this case study, it has also been present elsewhere without much effect. It is true that policy makers will need to believe that a deliberative policy is going to work in the most basic sense in order to vote for it. It may also help if a deliberative policy is able to position itself in the framing of an issue area in a way that politicians will find ideologically difficult to oppose. However, among the factors that will lead policy makers to support and promote some deliberative policy, it is a minimally influential one.

POLITICAL

In a political explanation, policy actors will choose to support deliberative policy out of political necessity. In this view the decision to support deliberation will not be made out of any altruistic belief in its benefits, but rather out of some need to escape or negotiate a difficult political situation. The conditions that would indicate the political explanation is at work would be if there seems to be an inability to make difficult political decisions, if politicians are election-focused, or if they are acting strategically in a way they feel will benefit them. Dryzek (1990) tells us that if there are many groups with similar power competing for influence it will more likely lead to the adoption of deliberation. Fung and Wright (2003) say if there are few alternative solutions, this also makes deliberation more likely.

Many of the specific conditions of that authors have described are completely absent from this case study. Often because of the nature of the issue area that CIRs are aimed at. Weaver's (1986) conceptions of "passing the buck" did not apply to policy makers in this case because deliberation was not occupying an area where politicians are normally forced to make decisions. The CIR is designed to assist in the decisions of voters on ballot initiatives. Therefore using citizen deliberation in this case did not actually change the site of a policy decision from inside to outside of the legislature. Also, Schattschneider's (1960) description of "socializing conflicts" when politicians believed they stood to gain from involving an audience in decision making, was not present. There were never any claims made by supporters that they thought deliberation would favor either a left or right wing agenda. In fact, some supporters believed that the

CIR succeeded because of its neutrality, and that it would have failed otherwise (Roblan 2010). Such is the nature of making changes to the initiative process in Oregon.

Dryzek's (1990) suggestion that there being many groups with similar power competing for influence will lead to deliberation, also does not apply well to this case because of the initiative issue area. Since ballot initiatives could be dealing with several different topics in the same year, each one has its own opponents and proponents and their relative power over the election may be equal or unequal. Finally, Fung and Wright's (2003) claim that a lack of alternative solutions will make deliberation a more likely choice is not supported by this case. There were an abundance of alternative solutions being proposed to reform the initiative process at the time HB 2895 found support.

One aspect of the political explanation that was observed in some ways was the assertion that politicians will behave in an election focused way and may be unable to make necessary decisions if they are politically difficult. This type of behavior is the way many people characterized the inability of the Oregon legislature to pass significant initiative reform in the past. As Borwn (2010) pointed out, and many others were aware, the legislature had been unsuccessful at passing structural changes to the initiative system because of the opposition it brought out from both sides of the political spectrum, and the perception that initiatives are liked by the public. This reluctance persists, in spite of the fact that initiatives have had an enormous impact on Oregon's budget and in the view of many are an inappropriate way of setting fiscal policy (Garrett 2010; Morse 2010). This inaction on dramatic initiative reform squares with the election-minded behaviors that prevent meaningful action, which Weeks (2000) describes as political dysfunction (363).

This type of political behavior leading politicians to endorse deliberation, as a round-about way of dealing with an issue, fits well with observations of HB 2895 in Oregon.

There were also many concessions made by Healthy Democracy Oregon in the legislative strategy of HB 2895 that played to the political reasoning of state representatives as well. The fact that the CIR had to be temporary, experimental, and free in order to gain support shows that politicians were acting tentatively and avoiding costly or dramatic changes. This shows that the bill's architects had expected legislators to behave politically, and their strategy worked. Along with its positioning in the ideational framework of acceptable initiative reforms, HB 2895's legislative strategy made it difficult to oppose, and allowed the bill to pass with large majorities.

Weaver's (1986) theory of blame avoidance may also be at work here, although there are indications both for and against it. Weaver predicts that politicians will seek to avoid blame for unpopular or controversial actions above all else. Endorsing deliberation, especially in the nonthreatening and temporary form that HB 2895 took, could be interpreted as an attempt to meet a public demand for action while choosing a policy that will not incur blame. To some extent this seems to be supported by evidence. Many people reiterated that while initiative reform is usually problematic and contentious (Devlin 2010), HB 2895 was not a controversial bill, and they "found it easy to support" (Garrett 2010). The bill was certainly crafted in a way that would appeal to blame avoiders. However, a few of the political actors I spoke to had actually endorsed more dramatic and controversial regulatory and structural reforms in the 2009 session (Harker 2010; Morse 2010; Witt 2010), and it was only after these failed to succeed that they turned to sponsoring HB 2895. These particular politicians at least, demonstrated a

willingness to pursue contentious reform ideas, and did not focus primarily on avoiding blame as Weaver describes.

As I have outlined, many of the theories subsumed in the political category simply did not apply to the case of CIR because of the nature of the initiative reform issue area. When Weeks (2000) gives an example of the political explanation for choosing deliberation, he uses a case of budgetary issues for city councils. It may well be that whether or not the political explanation has a great effect on supporting deliberation is dependent on the issue area where deliberation is being implemented. The observations from this research cannot conclude whether the political reasoning described in the literature might have a greater influence on decisions to support policy outside of the issue area of initiative reform. Many other explanations that come from the public policy and social movements literature present better conceptions of why policies build support, and these also can be called variants of the political category of explanation.

EXPLANATIONS FROM PUBLIC POLICY LITERATURE

There are a few theories from public policy literature that describe the observations from my case study very well. The explanations for supporting HB 2895 that I identified in Chapter 3 seem to match with predictions from Kingdon (1984) of how agendas and policies are created, and Tarrow (1998) concerning how social environments influence an idea's success, as well as reflect other authors in different ways. This research supports the theories of political entrepreneurs, merging policy streams, and political opportunity structures. These theories were able to provide a framework that accurately outlined the kinds of factors that lead to adopting deliberative policy in the case of HB 2895. Skocpol's (1992) ideas about the influence of governing

structures, and Melnick's (1994) ideas about venues can also be usefully applied to my observations in describing how deliberative policies emerge and gain support.

Kingdon (1984) has provided an extremely useful model for characterizing how HB 2895 found success within the legislature, and Tarrow (1998) gives a useful model of how what was happening in broader society influenced the bill's support. These are closely tied to the timing and advocacy explanations for HB 2895. Kingdon (1984) writes about the merging of problem and policy streams, where problems are matched with solutions by policy entrepreneurs. Promoters of a potential policy must then find an open policy window, where the political climate presents an opportunity for their proposal to find support and success. In many ways we see this pattern played out by Crosby, Reitman and Shuford in the case of CIR. We can describe Crosby as having paired the solution of Citizen Juries to the problem of ballot initiatives. We see Crosby being unsuccessful with his policy proposal in Washington, but when Reitman and Shuford adopt the idea in Oregon where there is a policy window open in the area of initiative reform for 2007 and 2009, a CIR pilot succeeds. This reflects Kingdon's (1984) idea of merging of streams well.

Kingdon (1984) also writes about the need for policy entrepreneurs to "invest sufficient resources" in order to get their proposals enacted (213). This emphasis on the importance of policy advocates being devoted to their proposal was talked about extensively by the HB 2895 supporters who I spoke to. Many people were frank about the importance of the work Reitman and Shuford put into advancing HB 2895, as well as the influence of other advocates from outside and inside of the legislature. Kingdon (1984) also predicts that policy entrepreneurs will flock to open policy windows with their many

proposals. This aspect is relevant to the area of initiative reform in the 2009 session, when many reform proposals were introduced to the legislature. As Kingdon (1984) predicts, “the system comes to be loaded down with problems and proposals” (213). Many reform proposals were stopped in the committee hearing process, however HB 2895 was able to overcome this policy environment due to its exceptional approach to reform, and by having advocates in powerful positions to help it along its way.

Tarrow’s (1998) political opportunity structures can also be applied to the case of CIR in Oregon. When Reitman and Shuford brought CIR to Oregon they clearly benefited from a social and political environment where “networks and collective identities” around the issue of initiative reform had begun to emerge (Tarrow 1998: 20). Working groups and City Club reports on the topic of initiative reform coincided with greater legislative attention to the area. It was advantageous for Reitman and Shuford to promote the CIR in this type of atmosphere, where support for initiative reform was widespread, and a “shared meaning that inspired people to collective action” had emerged (Tarrow 1998: 21). The relative cost of sponsoring or endorsing a policy in this issue area was reduced for policy makers.

Additionally, the way in which Crosby took deliberative policies from state to state, searching for the right place in which to implement CIR is reflective of Skocpol (1992) and Melnick’s (1994) theories on the importance of structure and venues. Crosby could seemingly not fit a deliberative policy to Minnesota’s governing structure, but he did find better conditions in Washington where the initiative process presented a potential opportunity, and equally in Oregon. A period that could be described as venue shopping had clearly taken place before the CIR landed in Oregon.

This research supports the broad claims of Kingdon's and Tarrow's theories, along with a few other authors, on the conditions policy needs to encounter in order to gain critical support. By describing the explanations for HB 2895's support, my research was able to layer a detailed picture of how this deliberative policy came to pass over the theoretical framework that public policy literature provides. Describing this case provided an empirical account of how these policy theories can be applied to the realities of deliberative policy making.

THOUGHTS FOR THE FUTURE

As the CIR completes its pilot in August of 2010 and looks to the future, the results of this research will remain hugely relevant. Will the timing in Oregon's political climate continue to favor CIR and Healthy Democracy Oregon? Some signs point to no. *The Oregonian* has reported that 2010 looks to be a particularly dead year for ballot measures, with potentially as few as three measures appearing on the November ballot for voters (Mapes 2010). It may be that having fewer initiatives will gain more attention for the CIR statements appearing in the voters' pamphlet, but it is unlikely that the area of initiative reform will continue to inspire heightened attention from lawmakers without a round of contentious ballot measures (Roblan 2010; Witt 2010). The state's economic climate also remains in dire condition, which once again makes asking for state funding to run the CIR extremely difficult. Rep. Witt (2010) believed in the value of the CIR process, but was pessimistic about its future prospects, saying, "as much as we would short ourselves, in terms of the democratic process, by not funding this, I simply don't know where we'll get the money." It seems the policy window may be closing for CIR before it gets the chance to establish a more permanent role in the initiative process.

Many of CIR's supporters remain cautiously optimistic. While being well aware of the challenges CIR would face in becoming a permanent function of the state, they encouraged Reitman and Shuford to continue to be creative and adaptive (Brown 2010; Olson 2010). Rep. Roblan (2010) imagined that the CIR could be something of a joint government and privately funded venture, or become the function of a "pseudo-government" organization, as long as creators were careful to ensure the integrity of the process. Sen. Devlin (2010) thought that if the state's budget had improved by 2011, they just might be able to find \$200,000 per biennium to support the process. Unfortunately for its supporters, preliminary estimates from Crosby and Healthy Democracy Oregon see the process costing more like \$1.5 million, far more than any state legislators who I spoke to estimated (Reitman 2010; Steves 2008).

The research question of why political elites supported HB 2895 in Oregon was investigated through a detailed account of the policy making process that highlighted timing, effective advocacy, exceptionalism, and low-impact legislative strategy. Unfortunately, this project may not be able to explain support for deliberative policies in issue areas outside of initiative reform as accurately, since other political factors that were not present in this case might come into play. However this research does give a very strong idea of what led to the widespread legislative support to pass a CIR pilot in Oregon. So, for the purposes of passing CIR legislation, these results can be applied over and over again, both in Oregon and in other states that have similar institutional conditions where CIRs might be proposed.

In order to develop a more complete picture of what leads to the support of deliberative policies, future research should focus on other deliberative mechanisms

beyond the CIR, and other issue areas outside of initiative and electoral reform. It may also be valuable to research support for deliberation in other states, regions, or countries in order to observe impacts which institutional, electoral or structural factors might have, as well as what influence culture might have on explaining support for deliberation.

This research can only truly be said to answer the question of why deliberation is supported for the conditions in the case study I have examined. However, I feel it has undoubtedly made a unique empirical contribution to answering the larger question of how deliberative policy happens. This research has helped to begin to color in the lines that the literature laid out, to complete a picture of what policy making looks like in the area of deliberation.

The realities of Oregon's policy making process revealed by this research might make the reader both cringe and applaud for various reasons. It is important to remember that the bill I have examined here was a small and minimally publicized piece of legislation, as the vast majority of the thousands of bills that will be passed in a legislative session are. Most of the public in Oregon has never heard of the Citizens' Initiative Review process, and it remains to be seen whether people will notice or use the voters' pamphlet statements the Reviews produce in the 2010 election. What became absolutely essential for the success of this one small bill among thousands was that it did not cost any money or attract opposition. In the rigors of the committee hearing process, if a bill that few people are paying attention to attracts the slightest opposition, it can easily be tabled and never get onto the hearing agenda again. There are such a vast number of proposals making their way through the legislative process that hang-ups over

money or ideology can cost advocates a session, and force them to forfeit one year's worth of work.

The role of advocates is also invaluable, and the more levels and locations they come from the better. Enthusiastic citizens help, and legislators in key positions help, but lobbyists are the most influential advocates for legislation since all subsequent support is usually a result of their efforts. What was critical for Reitman and Shuford was that Crosby was able to provide them with the money to pursue the CIR legislation full time. This is a positive sign for the pet projects of the independently wealthy, but not an encouraging sign for policy entrepreneurs who are not in a financial position to maintain lobbyists.

Oregon's political process is also subject to the whims of the broader social world, and often agendas are set by the confluence of favorable conditions, or opportunity structures, that no individual can control. In the past, the area of initiatives has received heightened attention and seen significant reforms in one to two session periods of activity (in 1997 and 1999, and in 2007 and 2009). Seemingly, the best way to have legislative success with an idea is to have a movement behind you; to be in a favorable political climate that allows you to ride with a wave of support on some topic.

From a normative standpoint, the CIR brings quality and ideal deliberation to twenty-four people at a time. It is a very valuable experience for those people who participate, and will hopefully inspire further civic involvement for the rest of their lives. However, it is unlikely that the state of Oregon will ever find it valuable enough to fully fund the process. The state legislature did endorse the CIR's pilot, which shows that they support deliberation in principle. Cities around the state are also using deliberation,

including the City of Eugene, Oregon, where they are currently in the midst of a three part citizen engagement project entitled “Envision Eugene” on planning the city’s growth and development (Envision Eugene 2010). Regardless of the eventual fate of the Citizens’ Initiative Review process in Oregon, its trial in 2008 and upcoming pilot in 2010 will serve as fantastic examples of deliberation in practice, and the ability of ordinary citizens to engage in constructive policy discussions. They should also set a precedent for quality future citizen engagement in Oregon.

APPENDIX A

WASHINGTON'S HOUSE BILL 1696

HOUSE BILL 1696

State of Washington 60th Legislature 2007 Regular Session

**By Representatives McDermott, Haler, Haigh, Hunt, Jarrett, Linville,
Chase, Appleton, Moeller, Fromhold, Hasegawa, Miloscia, Dunshee,
Green, Ormsby, Strow, Sells and Kenney**

Read first time 01/25/2007.

Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to facilitating the statewide initiative and
2 referendum processes under Article II, section 1 of the state
3 Constitution; amending RCW 29A.32.070, 29A.72.250, and 29A.72.260;
4 adding a new chapter to Title 29A RCW; and creating a new section.
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
6 NEW SECTION. **Sec. 1.** LEGISLATIVE INTENT. The legislature affirms
7 the state's long-standing policy of promoting informed public
8 discussion and understanding of statewide ballot measures and declares
9 that it is in the best interests of the state to provide for an
10 independent and impartial analysis of those measures to be made
11 available to voters so that they may thoughtfully evaluate the
12 measures. In support of these declarations, the legislature makes the
13 following findings:
14 (1) In Article II, section 1 of the state Constitution, the people
15 of the state of Washington reserved the right to initiate and vote on
16 legislation through the initiative and referendum processes;
17 (2) It is the long-standing policy of the state and an underlying
18 premise of democratic government that informed public discussion will
19 enhance the direct legislation process. This is supported by recent
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1 studies and surveys, presented to the legislature, suggesting that
2 review by an impartial and independent panel of Washington voters would
3 lead to better, more informed public discussion and would thus enhance

4 the direct legislation process;

5 (3) The most effective way to make available this type of
6 independent and impartial information is for the state to convene
7 panels of voters, demographically representative of the state as a
8 whole, who will study and evaluate ballot measures through a quasi-
9 legislative hearing process, and to make the panels' findings public by
10 inclusion in the voters' pamphlet.

11 **NEW SECTION. Sec. 2. CITIZENS INITIATIVE REVIEW COMMISSION**
12 **CREATED; GOVERNING BOARD.** The citizens initiative review commission is
13 created as an independent commission within the legislative branch of
14 government. The commission's purpose is to ensure that citizens panels
15 are convened as specified in this chapter; that the activities of these
16 panels are conducted in a fair and impartial manner; that the funds of
17 the commission are spent efficiently and effectively; and that
18 appropriate training is provided to the panels, the panel moderators,
19 and commission staff. The board of commissioners shall consist of
20 twelve commissioners appointed to serve as follows:

21 (1)(a) Except as provided in (b) of this subsection, each
22 commissioner's term shall be three years. The governor, the attorney
23 general, and the secretary of state shall each appoint one
24 commissioner. Six commissioners shall be chosen by the evaluation
25 panels from among the former citizen panelists, in accordance with
26 section 7(2)(d) of this act. Three commissioners shall be chosen by
27 the panel of moderators from among former moderators in accordance with
28 section 7(3)(d) of this act. The terms of the commissioners shall be
29 staggered so that four commissioner terms expire each year.

30 (b) The commissioners appointed to the initial board shall be
31 appointed and serve in accordance with section 12 of this act.

32 (2) Commissioners must be registered voters of the state of
33 Washington and may not serve in any publicly elected office while
34 serving on the commission.

35 (3) Commissioners shall take office on January 1st of each year,
36 except in the case of the initial board appointed in accordance with
37 subsection (1)(b) of this section. Each commissioner shall serve until
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1 a successor is appointed and takes office. Vacancies shall be filled
2 by appointment in the same manner as for the commissioner so vacating.

3 If a vacancy results other than from expiration of a term, the vacancy
4 shall be filled for the unexpired term. Commissioners may not be
5 appointed to successive terms, except that if a commissioner is
6 appointed to fill an unexpired term of two years or less, or if an
7 initial commissioner is appointed to a one or two-year term, he or she
8 may also fill the next successive term.

9 (4) No commissioner may permit his or her name to be used or make
10 any campaign contribution in support of or opposition to any statewide

11 ballot measure.

12 (5) The commission shall meet at least three times per year and may
13 appoint its own chair, vice-chair, and other officers and committees as
14 it deems appropriate and make rules for orderly procedure.

15 (6) Commissioners shall be compensated for their attendance at
16 commission meetings and reimbursed for their travel expenses related to
17 attendance at those meetings, in the same manner as citizen panelists
18 under section 4(3) of this act.

19 (7) The commission shall make all rules facilitating the conduct of
20 the commission and its activities under this chapter.

21 NEW SECTION. **Sec. 3. CITIZENS INITIATIVE REVIEW COMMISSION**
22 **POWERS.** The citizens initiative review commission has the following
23 powers:

24 (1) To select and employ an executive director and such research,
25 technical, and clerical personnel and consultants as the commission
26 deems necessary, whose salaries shall be fixed by the commission, and
27 who are exempt from the provisions of the state civil service law,
28 chapter 41.06 RCW;

29 (2) To make any contracts necessary or incidental to the
30 performance of its duties and the execution of its powers, including
31 contracts with public and private agencies, organizations,
32 corporations, and individuals, and to pay for services rendered or
33 furnished;

34 (3) To make such rules as are necessary to carry out its
35 responsibilities, including, without limitation, rules to ensure that
36 each panel and its panelists are able to carry out their

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1 responsibilities under this chapter in a manner that is fair and
2 impartial and is reasonably perceived to be fair and impartial;

3 (4) To lease, purchase or otherwise contract for the use of real or
4 personal property or any interest therein, as it finds necessary to
5 carry out the activities conducted under this chapter; and

6 (5) To do other acts and things necessary or convenient to execute
7 the authority expressly granted to it.

8 NEW SECTION. **Sec. 4. CITIZENS PANELS.** Beginning in 2008, a
9 citizens panel shall be convened not more than forty-five days after
10 the citizens initiative review commission receives a certificate of
11 sufficiency from the secretary of state regarding a statewide ballot
12 measure. One panel shall be convened for each measure so certified.

13 (1) Each citizens panel shall consist of twenty-four registered
14 Washington voters. The commission shall provide for alternate
15 panelists as it deems appropriate. The commission shall adopt rules
16 for selection of panelists that: (a) Provide for the anonymous
17 selection of panelists from a representative sample of Washington
18 voters, using survey sampling methods that, to the extent practicable,

19 give every Washington voter a similar chance of being selected; and (b)
20 ensure, to the extent practicable and legally permissible, that the
21 demographic makeup of each panel fairly reflects the population of the
22 state as a whole, with respect to characteristics including but not
23 limited to age, education, and geographic location.

24 (2) The commission shall adopt such uniform rules regarding service
25 on a citizens panel as the commission deems appropriate in order to
26 keep the citizens panel process from being unduly influenced by persons
27 having special knowledge of or a special interest in the ballot measure
28 being evaluated. These rules shall provide, as an example and not by
29 way of limitation, that: (a) Persons who have made a contribution in
30 support of or in opposition to a ballot measure, or who receive
31 compensation for their efforts in support of or opposition to a ballot
32 measure, may not serve on a panel evaluating that measure; and (b)
33 persons who hold a statewide elective office or serve as a commissioner
34 on a state board or head of a state agency may not serve on any
35 citizens panel.

36 (3) Compensation shall be paid to each panelist per day served.
37 This per diem payment shall be calculated based on an eight-hour day
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1 paid at the mean hourly wage for all occupations as published in the
2 most recent Washington state occupational employment and wage estimates
3 using the occupational employment statistics data collected by the
4 United States department of labor's bureau of labor statistics. Each
5 panelist shall also be reimbursed for travel expenses in accordance
6 with reimbursement policies established by the commission.

7 (4) From the time of his or her appointment through the conclusion
8 of the citizens panel's activities, no panelist may at any time permit
9 his or her name to be used, or make any contribution, in support of or
10 opposition to any ballot measure reviewed by that panelist. Persons
11 serving on a citizens panel shall comply with the appearance of
12 fairness doctrine provisions as described in RCW 42.36.060, 42.36.080,
13 and 42.36.090 as if the panelists were members of a decision-making
14 body in proceedings subject to that statute. However, neither the
15 appearance of fairness doctrine nor chapter 42.36 RCW may form the
16 basis of any challenge to any report submitted by a citizens panel. A
17 citizens panel is not an agency of the state, the commission, or any
18 other governmental body and is exempt from chapters 42.30 and 42.56
19 RCW.

20 NEW SECTION. **Sec. 5. CITIZENS PANEL PROCESS; DISTRIBUTION OF**
21 **REPORTS.** (1) Each citizens panel shall meet for five days, during
22 which time its activities shall be moderated by two moderators, chosen
23 in accordance with section 8 of this act, and supported by citizens
24 initiative review commission staff. Each panel shall conduct its
25 activities as follows:

26 (a)(i) Each panel shall hold open public hearings, which may be
27 interspersed with the small group work sessions described under (b) of
28 this subsection. During these public hearings, a team of proponents
29 and a team of opponents, each identified pursuant to section 6(3) of
30 this act, shall be given equal time within which to present its
31 arguments and supporting information, including but not limited to
32 presentations given by persons of its choosing. The public hearings
33 shall also provide time for discussion among panelists and shall
34 provide the panelists with time to question the proponents' team, the
35 opponents' team, and any other person who has provided a presentation
36 to the panel.

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1 (ii) The office of financial management shall provide, at the
2 public hearings, an analysis of the fiscal impact of the measure
3 prepared pursuant to RCW 29A.72.025.

4 (iii) The commission shall adopt rules to permit the panelists, by
5 majority vote of the citizens panel, to request additional background
6 information or presentations to be provided in the public hearings.
7 Panelists shall be permitted to choose from sources identified by
8 commission staff, which include each person who has registered with the
9 commission as interested in providing information or a presentation,
10 and such additional persons or sources as may meet the criteria
11 established by the commission.

12 (b)(i) The panelists shall meet in small group work sessions, which
13 may be interspersed with the public hearings described under(a) of this
14 subsection. The work sessions shall be attended only by the panelists,
15 moderators, and commission staff.

16 (ii) A final report on the measure, as described in subsection (2)
17 of this section, shall be prepared in small group work sessions. A
18 report is final once each component has been submitted by its authors
19 as described in subsection (2) of this section. No final report or any
20 component is subject to revision by the panel as a whole, the
21 commission, or any other governmental body. No person has any right to
22 appeal or challenge a report or any component of a report except as
23 described in RCW 29A.32.090.

24 (c) The panel shall adjourn once the citizens panel report is final
25 and the panelists have chosen members to participate on an evaluation
26 panel as described in section 7 of this act.

27 (2) The report shall be prepared in a form provided by commission
28 staff, which includes the following:

29 (a) The ballot title and full text of the ballot measure;

30 (b) Position statements of not more than two hundred fifty words,
31 explaining the reasoning and position taken by the group of panelists
32 in favor of the measure, by those opposed to the measure, and by those
33 undecided on the measure. Each group shall author one position

34 statement representing the consensus of that group. The position
 35 statement shall identify the number of panelists taking that position,
 36 and no position statement is required for a position if no panelists
 37 take that position.

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1 (c) A panel consensus statement of not more than one hundred fifty
 2 words explaining the points, if any, upon which all panelists agree;

3 (d) The following disclaimer: "The statements and opinions
 4 expressed are those of the panel members, developed through the
 5 citizens panel process. These are NOT official opinions or positions
 6 endorsed by the state, the citizens initiative review commission, or
 7 any government agency. The state is prohibited from editing or
 8 redacting the content of these statements. A citizens panel is not a
 9 judge of the constitutionality or legality of any ballot measure, and
 10 any statements about such matters are not binding on any court of law."

11 (3) After each citizens panel report is final, the commission staff
 12 shall:

13 (a) Within two business days, transmit to the secretary of state
 14 for inclusion in the voters' pamphlet, in accordance with RCW
 15 29A.32.070, the serial number identifying the ballot measure evaluated
 16 and the information described in subsection (2)(b) through (d) of this
 17 section; and

18 (b) Within fifteen business days, make available on a commission
 19 web site the final report and such other information as the commission
 20 may by general rule require.

21 **NEW SECTION. Sec. 6. PROCEDURES FOR CITIZENS PANELS.** (1) The
 22 citizens initiative review commission shall adopt rules to ensure that
 23 citizens panels are conducted in a fair and impartial manner,
 24 including, at a minimum, provisions for the release of citizens panel
 25 reports and media relations. To facilitate the process of convening
 26 citizens panels in a timely manner, the rules may provide for panelist
 27 selection and notification to begin before ballot measures are
 28 certified. The rules must provide for instruction to panelists
 29 regarding use of information gathered outside of the panel proceedings.

30 (2) No more than one week after receiving a certification under RCW
 31 29A.72.250 or 29A.72.260, the commission must provide notice to the
 32 sponsor of the ballot measure, to every person who has requested
 33 notification of ballot title language under RCW 29A.72.070, to the
 34 persons chosen to write arguments for the voters' pamphlet pursuant to
 35 RCW 29A.32.060, and to any other person who makes written request to
 36 the commission for such notification. This notice must include the
 37 dates, time, and place of the hearings and must explain how to register
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1 to provide information or a presentation to the panel. Information
 2 regarding the persons who so register will be provided to the citizens

3 panel, and those persons may be called by the panel during the open
 4 public hearings at the discretion of the panel. The notice shall
 5 establish a deadline for registration that is two weeks prior to the
 6 date the citizens panel is scheduled to convene.

7 (3)(a) The sponsor of a ballot measure, as registered with the
 8 secretary of state, shall serve as the leader of a proponent team, who
 9 shall be charged with providing to the citizens panel information and
 10 presentations in favor of the ballot measure. In the case of a measure
 11 referred or proposed by the legislature, the proponent team leader
 12 shall be chosen from among those writing the voters' pamphlet statement
 13 in favor of the measure in the same manner as the opponent team leader
 14 is chosen in (b) of this subsection.

15 (b) The members of the committee chosen pursuant to RCW 29A.32.060
 16 to prepare a statement for the voters' pamphlet in opposition to the
 17 measure shall be notified of the opportunity to serve as leader of the
 18 opponent team. If no individual from this group volunteers to serve,
 19 or if more than one individual volunteers to serve, the commission
 20 staff shall attempt to facilitate an agreement among those individuals
 21 as to who should lead the team. If no decision can be reached among
 22 the individuals, commission staff shall choose a team leader. No
 23 person has the right to appeal or challenge the choice of team leader.

24 (4) Prior to the date that the citizens panel convenes, commission
 25 staff must prepare an agenda for the citizens panel proceedings,
 26 including the agendas or outlines submitted by each team, and send that
 27 schedule to each panelist and to each person to whom notice was sent
 28 under subsection (2) of this section.

29 **NEW SECTION. Sec. 7. EVALUATION PROCEDURES.** (1) The citizens
 30 initiative review commission shall annually evaluate the conduct of the
 31 citizens panels. To facilitate this evaluation, the commission shall,
 32 after the statewide general election each year that a citizens panel
 33 was convened:

34 (a) Conduct a statewide study of Washington voters and collect
 35 other data to determine the usefulness of the citizens panels and their
 36 reports, the results of which must be made public; and
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1 (b) Convene no later than February 1st of the following year, an
 2 evaluation panel in accordance with subsection (2) of this section, and
 3 a moderator panel in accordance with subsection (3) of this section.

4 (2)(a) Prior to convening the first citizens panel in a calendar
 5 year, the executive director, or in the absence of an executive
 6 director the commission, shall choose the number of citizen panelists
 7 that comprise the evaluation panel. The number chosen must be between
 8 eight and eighteen and must be based on the number of expected ballot
 9 measures, so that each citizens panel elects, pursuant to section
 10 5(1)(c) of this act, an equal number of its members to serve on the

11 evaluation panel.

12 (b) The evaluation panel shall meet for not more than three days to
13 conduct its review. The evaluation panel shall submit a report and may
14 make recommendations to the commission on all procedural aspects of the
15 citizens panel proceedings.

16 (c) Panelists serving on the evaluation panel shall be compensated
17 for their attendance at evaluation panel meetings and reimbursed for
18 their travel expenses in the same manner as citizen panelists under
19 section 4(3) of this act.

20 (d) The evaluation panel shall choose two of its members to serve
21 on the commission for a three-year term, in accordance with section 2
22 of this act.

23 (3) In each year in which a citizens panel is convened, the
24 commission shall convene a panel of moderators to meet no later than
25 February 1st of the following year.

26 (a) The panel of moderators shall consist of all those who served
27 as moderators of the citizens panels for the most recent election
28 cycle.

29 (b) The panel of moderators shall meet for one or two days to
30 conduct its review. They shall submit a report and may make
31 recommendations to the commission on all procedural aspects of the
32 citizens panel proceedings.

33 (c) Panelists shall be compensated for their attendance at
34 moderator panel meetings at the same daily rate they were paid as
35 moderators of the citizens panels, and reimbursed for their travel
36 expenses in the same manner as citizen panelists under section 4(3) of
37 this act.

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1 (d) The panel of moderators shall choose one of its members to
2 serve on the commission for a three-year term, in accordance with
3 section 2 of this act.

4 **NEW SECTION. Sec. 8. CITIZENS' PANEL MODERATORS.** (1) The
5 citizens initiative review commission shall establish minimum
6 qualifications for citizens panel moderators, including but not limited
7 to: (a) Minimum levels of experience in facilitation or mediation and
8 completion of at least two days of training specifically designed for
9 moderators of citizens panels under this chapter; and (b) such
10 additional qualifications as the commission deems appropriate in order
11 to ensure that the citizens panel process is conducted in a fair and
12 impartial manner.

13 (2) The commission shall request the qualifications of potential
14 moderators and shall designate a pool of moderators. The commission
15 shall contract with two moderators for each citizens panel to be
16 convened. The contract for services shall cover compensation for the
17 moderators for their services in preparation for a citizens panel,

18 moderating a citizens panel, and participating on the subsequent panel
19 of moderators.

20 (3) No moderator may at any time permit his or her name to be used,
21 or make any contribution, in support of or opposition to the ballot
22 measure reviewed by the citizens panel he or she is involved with
23 moderating.

24 **Sec. 9.** RCW 29A.32.070 and 2003 c 111 s 807 are each amended to
25 read as follows:

26 The secretary of state shall determine the format and layout of the
27 voters' pamphlet. The secretary of state shall print the pamphlet in
28 clear, readable type on a size, quality, and weight of paper that in
29 the judgment of the secretary of state best serves the voters. The
30 pamphlet must contain a table of contents. Federal and state offices
31 must appear in the pamphlet in the same sequence as they appear on the
32 ballot. Measures and arguments must be printed in the order specified
33 by RCW 29A.72.290.

34 The voters' pamphlet must provide the following information for
35 each statewide issue on the ballot:

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1 (1) The legal identification of the measure by serial designation
2 or number;

3 (2) The official ballot title of the measure;

4 (3) A statement prepared by the attorney general explaining the law
5 as it presently exists;

6 (4) A statement prepared by the attorney general explaining the
7 effect of the proposed measure if it becomes law;

8 (5) The fiscal impact statement prepared under RCW ((29.79.075))
9 29A.72.025;

10 (6) The total number of votes cast for and against the measure in
11 the senate and house of representatives, if the measure has been passed
12 by the legislature;

13 (7) An argument advocating the voters' approval of the measure
14 together with any statement in rebuttal of the opposing argument;

15 (8) An argument advocating the voters' rejection of the measure
16 together with any statement in rebuttal of the opposing argument;

17 (9) Each argument or rebuttal statement must be followed by the
18 names of the committee members who submitted them, and may be followed
19 by a telephone number that citizens may call to obtain information on
20 the ballot measure;

21 (10) The information received from the citizens initiative review
22 commission under section 5(3)(a) of this act; and

23 (11) The full text of each measure.

24 **Sec. 10.** RCW 29A.72.250 and 2003 c 111 s 1825 are each amended to
25 read as follows:

26 If a referendum or initiative petition for submission of a measure

27 to the people is found sufficient, the secretary of state shall:
28 (1) Immediately upon each such finding of sufficiency, provide to
29 the citizens initiative review commission, created under section 2 of
30 this act, the serial number and ballot title of that ballot measure;
31 and
32 (2) At the time and in the manner that he or she certifies to the
33 county auditors of the various counties the names of candidates for
34 state and district officers certify to each county auditor the serial
35 numbers and ballot titles of the several initiative and referendum
36 measures to be voted upon at the next ensuing general election or
37 special election ordered by the legislature.

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1 **Sec. 11.** RCW 29A.72.260 and 2003 c 111 s 1826 are each amended to
2 read as follows:

3 Whenever any measure proposed by initiative petition for submission
4 to the legislature is rejected by the legislature or the legislature
5 takes no action thereon before the end of the regular session at which
6 it is submitted, the secretary of state shall certify the serial number
7 and ballot title thereof to the citizens initiative review commission
8 created under section 2 of this act and to the county auditors for
9 printing on the ballots at the next ensuing general election in like
10 manner as initiative measures for submission to the people are
11 certified.

12 NEW SECTION. **Sec. 12.** APPOINTMENT OF INITIAL BOARD OF
13 COMMISSIONERS. The initial commissioners shall be appointed and serve
14 as follows:

15 (1) The governor, the secretary of state, and the attorney general
16 shall each appoint one commissioner. These commissioners shall be
17 randomly assigned to a one, two, or three-year term.

18 (2) The three initial commissioners occupying the moderators' seats
19 shall be appointed by the governor, the secretary of state, and the
20 attorney general, choosing from a list of trained moderators that has
21 been provided by a nonprofit organization registered under section
22 501(c)(3) of the internal revenue code that has conducted pilot
23 projects in Washington state using methods similar to the citizens
24 panel review process, which pilot projects have drawn together
25 microcosms of the public for meetings lasting for more than one full
26 day. If more than one organization meeting these criteria provides a
27 list, the first three commissioners shall choose which list to use.

28 The commissioners appointed pursuant to this subsection shall be
29 randomly assigned to a one, two, or three-year term.

30 (3) Of the six citizen panelist seats, only four shall be filled
31 initially. The majority and minority leaders of the house of
32 representatives and senate shall each appoint one of the commissioners
33 from a list of persons provided by the nonprofit organization described

34 in subsection (2) of this section. Each of these initial commissioners
35 shall be assigned to a two or three-year term, so that two seats expire
36 in each year. The remaining two citizen panelist seats shall be filled
37 by individuals chosen by the first evaluation panel.

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1 NEW SECTION. **Sec. 13.** CODIFICATION. Sections 1 through 8 and 12
2 of this act constitute a new chapter in Title 29A RCW.

3 NEW SECTION. **Sec. 14.** CAPTIONS. Captions used in this act are
4 not any part of the law.

5 NEW SECTION. **Sec. 15.** SEVERABILITY. If any provision of this act
6 or its application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

--- END ---

APPENDIX B

OREGON'S HOUSE BILL 2911

OR HB 2911

74th OREGON LEGISLATIVE ASSEMBLY--2007 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 3096

House Bill 2911

Sponsored by Representative BUCKLEY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Creates Citizen Initiative Review Commission to oversee review of state initiative measures by citizen review panels. Directs panels to review state initiative measures and prepare final report consisting of positions statements of members of panel who support or oppose measure and consensus statement. Directs Secretary of State to print statements in voters' pamphlet.

Specifies procedures for appointment of commission, panels and moderators of panels. Sets terms of office.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to elections; creating new provisions; amending ORS 251.185; and declaring an emergency.

The Legislative Assembly affirms this state's long-standing policy of promoting informed public discussion and understanding of state initiative measures and declares that it is in the best interests of the state that an independent and impartial analysis of those measures be made available to voters so that voters may thoughtfully evaluate the measures. In support of these declarations, the Legislative Assembly finds:

(1) Section 1, Article IV, Oregon Constitution, reserves the right of the people to propose laws and amendments to the Constitution through the initiative and referendum processes.

(2) It is the long-standing policy of this state and an underlying premise of democratic government that informed public discussion will enhance the direct legislation process. This is supported by recent studies and surveys presented to the Legislative Assembly suggesting that review by an independent and impartial panel of Oregon voters would lead to better, more informed public discussion and would enhance the direct legislation process.

(3) The most effective way to make available this type of independent and impartial information is for the state to convene panels of voters, demographically representative of the state as a whole, who will study and evaluate state initiative measures through a quasi-legislative hearing process, and to include the findings of the panels in the state voters' pamphlet.

Be It Enacted by the People of the State of Oregon:

SECTION 1. { + Sections 2 to 8 of this 2007 Act are added to and made a part of ORS chapter 250. + }

SECTION 2. { + (1) The Citizen Initiative Review Commission is created as an independent commission within the legislative branch of government. The purpose of the commission is to ensure that:

(a) Citizen panels are convened as specified in sections 2 to 8 of this 2007 Act;

(b) The activities of the citizen panels are conducted in a fair and impartial manner;

(c) The funds appropriated to the commission are spent efficiently and effectively; and

(d) Appropriate training is provided to the citizen panels, the panel moderators and commission staff.

(2) The commission shall consist of 12 commissioners appointed to serve as follows:

(a) The Governor, the Attorney General and the Secretary of

State shall each appoint one commissioner.

(b) Six commissioners shall be chosen by the evaluation panels from among the former citizen panelists, in accordance with section 7 of this 2007 Act.

(c) Three commissioners shall be chosen by the moderator panel from among former moderators in accordance with section 7 of this 2007 Act. The terms of the commissioners shall be staggered so that the terms of four commissioners expire each year.

(3) The term of office of a commissioner is three years.

(4) Each commissioner must be an elector. A commissioner may not serve in any elected public office while serving on the commission.

(5) The term of office of a commissioner begins on January 1. Each commissioner shall serve until a successor is appointed and takes office. Vacancies shall be filled by appointment in the same manner as for the commissioner whose position is vacant. A vacancy shall be filled for the unexpired term. Commissioners may not be appointed to successive terms, except that if a commissioner is appointed to fill an unexpired term of two or fewer years, the commissioner may be appointed to an additional term.

(6) A commissioner may not permit the name of the commissioner to be used, or make any campaign contribution, to support or oppose a state initiative measure.

(7) The commission shall meet at least three times per year and may appoint its own chairperson, vice chairperson and other officers and committees as determined by the commission.

(8) Commissioners shall receive compensation for attendance at commission meetings and be reimbursed for travel expenses related to attendance at those meetings in the same manner as citizen panelists under section 4 of this 2007 Act. + }

SECTION 3. { + The Citizen Initiative Review Commission has the following powers:

(1) To select and employ an executive director and any research, technical or clerical personnel and consultants as the commission considers necessary. Persons described in this subsection shall receive compensation in an amount set by the commission and are exempt from the provisions of ORS chapters 240 and 243.

(2) To make any contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, corporations and individuals, and to pay for services rendered or furnished.

(3) To adopt rules necessary to carry out its responsibilities

under sections 2 to 8 of this 2007 Act, including rules to ensure that each citizen panel is able to carry out its responsibilities under sections 2 to 8 of this 2007 Act in a manner that is fair and impartial and that is reasonably perceived to be fair and impartial.

(4) To lease, purchase or otherwise contract for the use of real or personal property or any interest in real or personal property.

(5) To perform the acts necessary to execute the authority expressly granted to it. + }

SECTION 4. { + (1) Not sooner than four months before the date of the general election and not later than the 75th day before the date of the general election, the Citizen Initiative Review Commission shall convene a citizen panel for each state initiative measure that has qualified for the general election ballot under ORS 250.105.

(2) Each citizen panel shall consist of 24 electors. The commission shall provide for alternate panelists as it deems appropriate. The commission shall adopt rules for selection of panelists that:

(a) Provide for the anonymous selection of panelists from a representative sample of electors, using survey sampling methods that, to the extent practicable, give every elector a similar chance of being selected; and

(b) Ensure, to the extent practicable and legally permissible, that the demographic makeup of each citizen panel fairly reflects the population of the state as a whole, with respect to characteristics including, but not limited to, age, education and geographic location.

(3) The commission shall adopt uniform rules regarding service on a citizen panel that the commission considers necessary to keep the citizen panel process from being unduly influenced by persons having special knowledge of or a special interest in the state initiative measure being considered by the panel. The rules may include, but are not limited to, provisions that prohibit service on a panel by a person who:

(a) Has made a contribution supporting or opposing an initiative measure, or who has received compensation for supporting or opposing an initiative measure; or

(b) Holds a statewide elected public office, serves as a commissioner on a state board or is a director of a state agency.

(4) Compensation shall be paid to each citizen panelist for each day served. This compensation shall be calculated based on an eight-hour day paid at the average hourly wage for all occupations as published in the most recent Oregon data published

by the Economic and Community Development Department. Each citizen panelist shall also be reimbursed for travel expenses in accordance with reimbursement policies established by the commission.

(5) From the time of appointment through the conclusion of the citizen panel's activities, a citizen panelist may not permit the citizen panelist's name to be used, or make any contribution, to support or oppose an initiative measure reviewed by that citizen panelist under sections 2 to 8 of this 2007 Act.

(6) A citizen panel is not subject to the public meetings requirements of ORS 192.610 to 192.690.

(7) Except for the final report of a citizen panel described in section 5 of this 2007 Act, the records of a citizen panel may not be disclosed under ORS 192.410 to 192.505. + }

SECTION 5. { + (1) Each citizen panel shall meet for five days. The activities of each panel shall be moderated by two moderators chosen in accordance with section 8 of this 2007 Act and supported by the Citizen Initiative Review Commission staff.

(2) Each citizen panel shall hold not less than three days of open public hearings. The public hearings may be interspersed with the small group work sessions described in subsection (4) of this section. During the public hearings, the citizen panel shall give equal time to a team of proponents of the state initiative measure and a team of opponents of the measure, each identified pursuant to section 6 of this 2007 Act, to present arguments and supporting information, including but not limited to presentations given by persons of each team's choice. The citizen panel shall also provide time for comments and questions by the panelists.

(3) The commission shall adopt rules to permit a citizen panel by majority vote to request that additional background information or presentations be provided in the public hearings. Citizen panelists may choose from:

(a) Sources identified by commission staff, including persons who have notified the commission that they are interested in providing information or a presentation; and

(b) Any additional persons or sources that meet criteria established by the commission.

(4) A citizen panel shall meet in private small group work sessions, which may be interspersed with the public hearings described in subsections (2) and (3) of this section. The work sessions may be attended only by the citizen panelists, moderators and commission staff.

(5) Each citizen panel shall prepare and submit to the commission a final report on the initiative measure it

considered. A report is considered final once each component of the report has been submitted as described in subsection (7) of this section. A final report or any part of a final report is not subject to revision by the citizen panel as a whole, the commission or any other public body as defined in ORS 174.109. A person may not appeal or challenge a final report or any part of a final report.

(6) A citizen panel shall adjourn after the panel:

(a) Prepares a final report; and

(b) Chooses members to participate on an evaluation panel as described in section 7 of this 2007 Act.

(7) The final report of a citizen panel shall be prepared in a form set by commission staff. The final report shall include:

(a) The ballot title and full text of the initiative measure reviewed by the citizen panel.

(b) Position statements of not more than 250 words explaining the reasoning and position taken by the group of citizen panelists in favor of the measure, by those opposed to the measure and by those undecided on the measure. Each group shall draft one position statement representing the consensus of that group. Each position statement shall identify the number of citizen panelists taking that position. A position statement is not required for a position that is not supported by any member of the citizen panel.

(c) A citizen panel consensus statement of not more than 150 words explaining the points, if any, upon which all panelists agree.

(d) The following disclaimer: + }

{ + The statements and opinions expressed are those of the citizen panel members and were developed through the citizen panel process. These are NOT official opinions or positions endorsed by the State of Oregon, the Citizen Initiative Review Commission or any government agency. The state is prohibited from editing the content of these statements. A citizen panel is not a judge of the constitutionality or legality of any ballot measure and any statements about such matters are not binding on any court of law. + }

{ + (8) After a citizen panel report is final, the commission staff shall:

(a) Within two business days, and not later than the 70th day before the election, transmit the report to the Secretary of State for inclusion in the voters' pamphlet. The voters' pamphlet shall include those elements of the report described in subsection (7)(b), (c) and (d) of this section; and

(b) Not later than the 60th day before the election, make available on the commission website the final report and any other information the commission considers necessary. + }

SECTION 6. { + (1) The Citizen Initiative Review Commission shall adopt rules to ensure that the activities of the citizen panels are conducted in a fair and impartial manner. The rules shall include:

(a) Provisions for the release of citizen panel reports and media relations;

(b) Provisions allowing citizen panelist selection and notification to begin before initiative measures are certified to the ballot by the Secretary of State; and

(c) Provisions for instruction to citizen panelists regarding use of information gathered outside of the citizen panels' proceedings.

(2)(a) The Secretary of State shall notify the commission upon receiving an initiative petition for signature verification. The commission shall provide notice to any person who makes written request to the commission for the notice and shall provide reasonable statewide notice of the establishment of a citizen panel.

(b) Each notice given by the commission under this section must include the date, time and place of each citizen panel hearing and must explain how to register to provide information or a presentation to the citizen panel. The commission shall provide to the citizen panel any information regarding the persons who register. Each notice shall establish a deadline for registration that is at least two weeks prior to the date the citizen panel is scheduled to convene.

(3)(a) The chief petitioners of an initiative measure shall select two persons to a team to provide information and presentations in favor of the measure to the citizen panel. If the proponents fail to timely select two team leaders, the commission, by procedures established by rule, may designate the team in favor of the measure.

(b) The commission shall establish by rule procedures for selecting opponents of the measure to a team to provide information and presentations in opposition to the measure. The commission shall notify each member of the committee chosen under ORS 251.205 as an opponent of the measure of the opportunity to

serve as leader of the opponent team. If no individual from the opponents selected under ORS 251.205 volunteers to serve, or if more than one individual volunteers to serve, the commission staff shall attempt to facilitate an agreement among those individuals as to who should lead the team. If no decision can be reached among the individuals, commission staff shall choose a team leader.

(4) A person may not appeal or challenge the choice of team leader.

(5) Prior to the date that the citizen panel convenes, commission staff shall prepare an agenda for the citizen panel proceedings, including the agendas or outlines submitted by each team, and send that schedule to each citizen panelist and to each person to whom notice was sent under subsection (2) of this section. + }

SECTION 7. { + (1) The Citizen Initiative Review Commission shall evaluate the conduct of the citizen panels. After the general election in each year that a citizen panel was convened, the commission shall:

(a) Conduct a statewide study of electors and collect other data to determine the usefulness of the citizen panels and their reports;

(b) Make the results of the study available to the public; and

(c) Convene, not later than February 1 of the following year, an evaluation panel in accordance with subsection (2) of this section and a moderator panel in accordance with subsection (3) of this section.

(2)(a) Prior to convening the first citizen panel in a calendar year, the executive director of the commission or, in the absence of an executive director, the commission shall select the number of citizen panelists who will constitute the evaluation panel. The number appointed must be no fewer than eight and no more than 18 and must be based on the number of expected state initiative measures, so that each citizen panel elects an equal number of its members to serve on the evaluation panel.

(b) The evaluation panel shall meet for not more than three days to conduct its review. The evaluation panel shall submit a written report and may make recommendations to the commission on all procedural aspects of the citizen panel proceedings.

(c) Panelists serving on the evaluation panel shall be compensated for their attendance at evaluation panel meetings and reimbursed for their travel expenses in the same manner as citizen panelists under section 4 of this 2007 Act.

(d) The evaluation panel shall choose two of its members to serve on the commission for a three-year term, in accordance with

section 2 of this 2007 Act.

(3)(a) In each year in which a citizen panel is convened, the commission shall convene a moderator panel to meet no later than February 1 of the following year.

(b) The moderator panel shall consist of all persons who served as moderators of the citizen panels for the most recent election cycle.

(c) The moderator panel shall meet for not more than two days to conduct its review. The moderator panel shall submit a written report and may make recommendations to the commission on all procedural aspects of the citizen panel proceedings.

(d) Panelists serving on the moderator panel shall be compensated for their attendance at moderator panel meetings at the same daily rate they were paid as moderators of the citizen panels and reimbursed for their travel expenses in the same manner as citizen panelists under section 4 of this 2007 Act.

(e) The moderator panel shall choose one of its members to serve on the commission for a three-year term, in accordance with section 2 of this 2007 Act. + }

SECTION 8. { + (1) The Citizen Initiative Review Commission shall establish minimum qualifications for citizen panel moderators, including but not limited to:

(a) Minimum levels of experience in facilitation or mediation and completion of at least two days of training specifically designed for moderators of citizen panels under this chapter; and

(b) Any additional qualifications the commission considers appropriate in order to ensure that the citizen panel process is conducted in a fair and impartial manner.

(2) The commission shall request and evaluate the qualifications of potential moderators and shall designate a pool of moderators. The commission shall contract with two moderators for each citizen panel to be convened. Each contract for services shall provide for the compensation of the moderator for services in preparation for a citizen panel, moderating a citizen panel, and participating on the subsequent moderator panel.

(3) A moderator may not at any time permit the name of the moderator to be used, or make any contribution, in supporting or opposing the state initiative measure reviewed by the citizen panel served by the moderator. + }

SECTION 9. ORS 251.185 is amended to read:

251.185. (1) The Secretary of State shall have printed in the voters' pamphlet for a general election or any special election a copy of the title and text of each state measure to be submitted to the people at the election for which the pamphlet was prepared. Each measure shall be printed in the pamphlet with:

- (a) The number and ballot title of the measure;
- (b) The financial estimates and any statement prepared for the measure under ORS 250.125;
- (c) The explanatory statement prepared for the measure { + under ORS 251.215, 251.225 or 251.235 + }; { - and - }
 { + (d) The information received from the Citizen Initiative Review Commission under section 5 of this 2007 Act; and + }
 { - (d) - } { + (e) + } Arguments relating to the measure and filed with the Secretary of State.

(2) A county measure or measure of a metropolitan service district organized under ORS chapter 268, and ballot title, explanatory statement and arguments relating to the measure, filed by the county or metropolitan service district under ORS 251.285 shall be included in the voters' pamphlet described in subsection (1) of this section if required under ORS 251.067.

SECTION 10. { + Notwithstanding section 2 of this 2007 Act, the first members appointed to the Citizen Initiative Review Commission shall be appointed and serve as follows:

(1) The Governor, the Secretary of State and the Attorney General shall each appoint one commissioner. The Governor, the secretary and the Attorney General shall determine at random which member serves for a term of one year, a term of two years and a term of three years.

(2) The Governor, the Secretary of State and the Attorney General shall appoint the three initial commissioners occupying the moderator positions on the commission. The appointing authorities shall choose from a list of trained moderators suggested to the appointing authorities by any nonprofit organization registered under section 501 (c)(3) of the Internal Revenue Code that has conducted pilot projects in this state using methods similar to the citizen panel review process. If more than one organization meeting these criteria provides a list, the commissioners appointed under subsection (1) of this section shall choose which list to use. The Governor, the secretary and the Attorney General shall determine at random which member serves for a term of one year, a term of two years and a term of three years.

(3) For purposes of the first appointment of members of the commission, only four of the six citizen panelist positions shall be filled. The majority and minority leaders of the Senate and the House of Representatives shall each appoint one of the commissioners from a list of persons provided by the nonprofit organization described in subsection (2) of this section. Each of these initial commissioners shall be assigned to a two or three-year term, so that two seats expire in each year. The

remaining two citizen panelist seats shall be filled by individuals chosen by the first evaluation panel. + }

SECTION 11. { + This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage. + }

APPENDIX C

OREGON'S HOUSE BILL 2895

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

Enrolled**House Bill 2895**

Sponsored by Representatives CANNON, HARKER, Senator WHITSETT; Representatives BAILEY, BUCKLEY, CLEM, D EDWARDS, GARRARD, GARRETT, GREENLICK, KOMP, NATHANSON, OLSON, SCHAUFLER, SHIELDS, J SMITH, VANORMAN, WITT, Senators BURDICK, DEVLIN, DINGFELDER, MONNES ANDERSON, MONROE, MORRISSETTE, MORSE, WALKER
CHAPTER

AN ACT

Relating to state measures; and declaring an emergency.

Whereas the people of Oregon support the initiative process as a means for Oregon residents to propose laws and enact or reject the laws at an election independent of the Legislative Assembly; and

Whereas informed public discussion and exercise of the initiative power will be enhanced by review of statewide measures by an independent panel of Oregon voters who will then report to the electorate in the voters' pamphlet; and

Whereas a provisional Citizen Initiative Review took place in September 2008 and demonstrated the review process to be fair; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) The Secretary of State shall designate one or more organizations to work cooperatively to establish citizen panels to review not more than three initiated state measures and file with the secretary Citizen Statements on each measure reviewed to be included in the voters' pamphlet. An organization is eligible to be designated under this section if the organization ensures all of the following:

(a) The selection of citizens for each panel from a representative sample of anonymous electors, using survey sampling methods that, to the extent practicable, give every elector a similar chance of being selected.

(b) To the extent practicable and legally permissible, that the demographic makeup of each panel fairly reflects the population of the electorate of this state as a whole, with respect to the following characteristics, prioritized in the following order:

(A) The location of the elector's residence.

(B) The elector's party affiliation, if any.

(C) The elector's voting history.

(D) The elector's age.

(c) That the organization will:

(A) Compensate each elector for each day served on a panel in an amount calculated using the average weekly wage as defined in ORS 656.211;

(B) Reimburse each elector who serves on a panel for travel expenses in accordance with the reimbursement policies of the organization; and

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(C) Provide for any and all other costs required to convene and conduct a citizen panel and for any costs associated with printing the statements in the voters' pamphlet.

(d) That a study will be conducted to evaluate the usefulness of the panels established

by the organization and that the results will be made available to the public.

(e) That the organization has staff with prior experience in conducting substantially similar reviews.

(f) That the organization does not and will not receive any funds, directly or indirectly, from a political committee, as defined in ORS 260.005, or corporate or union treasuries.

(g) That each panel is moderated by two professional mediators or facilitators who have been trained to conduct citizen review panels.

(2) An organization designated under this section shall convene a separate citizen panel of not less than 18 and not more than 24 electors for each measure to be reviewed. A panel shall meet to review the measure on five consecutive days for a total of not less than 25 hours. The organization shall make reasonable efforts to provide each panel with any complaints filed regarding the measure reviewed by the panel not later than the fourth day the panel convenes.

(3)(a) Notwithstanding ORS 251.185, a citizen panel may prepare and file with the Secretary of State, and the secretary shall have printed in the voters' pamphlet, not more than four Citizen Statements for each initiated state measure considered by the panel. The panel may submit the following statements of not more than 150 words each:

(A) A Citizen Statement in favor of the measure.

(B) A Citizen Statement opposed to the measure.

(C) A Citizen Statement that is neither in favor of nor opposed to the measure.

(D) A Citizen Statement that reflects the views regarding the measure of more than a majority of the panel.

(b) A citizen panel must file with the Secretary of State any Citizen Statements prepared under this section not later than 70 days before the date of the election for which the voters' pamphlet is being prepared.

(c) If a Citizen Statement on a measure is included in the voters' pamphlet, the secretary shall provide with the statement a description of not more than 150 words of the citizen panel process described in this section and the following explanation:

The opinions expressed in this statement are those of the members of a citizen panel and were developed through the citizen review process. They are NOT official opinions or positions endorsed by the State of Oregon or any government agency. A citizen panel is not a judge of the constitutionality or legality of any ballot measure, and any statements about such matters are not binding on a court of law.

SECTION 2. This 2009 Act is repealed on January 2, 2011.

SECTION 3. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Enrolled House Bill 2895 (HB 2895-A)

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