

Minority Rights, Representative Government and a National Initiative Process in the United States

by
Caroline J. Tolbert

Scholars and political pundits alike continue to bemoan the decline in political participation and civic engagement in the United States,¹ especially among younger, less affluent, less educated, less partisan, and non-white citizens.² Hovering at just over 50% of registered voters in recent presidential elections, turnout rates in the United States are among the lowest of the advanced industrialized nations. Increasing citizen participation is a primary goal of those proposing Internet voting, same day voter registration, mail voting ballots, Motor Voter, nonpartisan primaries and other reforms to update our electoral system. Direct democracy may be another institutional mechanism for increasing citizen participation. As we shift into an information-technology age, worldwide trends highlight the increased use of referenda and more participatory models of governing.³ Since the late 1970s usage of the initiative process in the American states has exploded, comparable only to the Progressive era (1900-1920).⁴ If participation is preferable in a democracy, then it follows that the presence of initiative and referendum questions on the ballot should be desirable, if they indeed encourage civic engagement.

Since the Progressive Era, supporters of direct democracy have averred that the process, particularly the initiative, strengthens democracy by encouraging a more engaged and participatory citizenry.⁵ At the apex of the Progressive Era, Professor Paul Reinsch stated emphatically, "This institution [direct legislation] will assist the people, the body of the electorate, in the development of its political consciousness," as "it will make the body of the electorate more familiar with legislative programs and more interested" (pg. 158).⁶

At the turn of the twenty-first century, participation is again a dominant theme as advocates search for more democratic and collective mechanisms for sending signals to

¹ On civic engagement see R. D. Putnam. 2000. *Bowling Alone: The Collapse and Revival of American Civic Community*. New York: Simon & Schuster; and M. Baldassare. 2000. *California in the New Millennium: The Changing Social and Political Landscape*. Berkeley: University of California Press. On voter turnout see R. Wolfinger and S. J. Rosenstone. 1980. *Who votes?* New Haven: Yale University Press.

² See F. Piven and R. Cloward. 1988. *Why Americans Don't Vote*. NY: Pantheon Books; and S. Rosenstone and M. Hansen. 1993. *Mobilization, Participation, and Democracy in America*. New York: Macmillan.

³ See B. G. Peters. 1996. *The Future of Governing: Four Emerging Models*. Lawrence, KS: Kansas University Press; and M. Mendelsohn and A. Parkin (eds.). 2001. *Referendum Democracy: Citizens, Elites, and Deliberation in Referendum Campaigns*. New York: Palgrave.

⁴ See S. Bowler, T. Donovan and C. Tolbert (eds.). 1998. *Citizens as Legislators: Direct Democracy in the American States*. Columbus, OH: Ohio State University Press; D. Magleby. 1994. "Direct Legislation in the American States." In Butler and Ranney (eds.).

⁵ See J. A. Allswang. 2000. *The Initiative and Referendum in California, 1898-1998*. Palo Alto, CA: Stanford University Press; N. Cree. 1892. *Direct Legislation by the People*. Chicago: McClurg; C. Beard and B. Schultz. 1919. *Documents on the Statewide Initiative, Referendum and Recall*. NY: Macmillan; J. Barnett. 1915. *The Operation of the Initiative and Referendum in Oregon*. NY: Macmillan; G. Haynes. 1907. "The Education of Voters." *Political Science Quarterly* 22: 484-97; V. O. Key. and W. Crouch. 1939. *The Initiative and Referendum in California*. Berkeley: University of California Press; and J. Sullivan. 1983. *Legislation by the Citizens through Initiative and Referendum*. NY: True Nationalist.

⁶ P. Reinsch. 1912. "The Initiative and Referendum." *Political Science Quarterly* 27: 155-61.

government.⁷ Normative theorists argue institutional procedures allowing citizens a more active role in government decision-making should increase civic engagement and trust in government.⁸ The participatory model raises broader questions about the relationship between state and society and the opportunities for involving the mass public in decision-making. It considers the hierarchical, rule-based organization in the public sector as severe impediments to effective management and governance. The prescription for making government function better is to foster greater individual and collective participation within segments of government organizations that commonly have been excluded from decision-making and structure institutions to include mass citizen participation.⁹ While participatory government in its simplest form is plebiscitarian, with the public being asked to decide public issues by a direct vote (direct democracy), normative theorists have developed more intensive conceptions of public participation embodied in literature on “discursive democracy”¹⁰, “strong democracy”¹¹, teledemocracy¹² and “deliberative democracy.”¹³ Research finds a majority of Americans are in favor of direct democracy at the national level.¹⁴

The fundamental concept behind these definitions of participation is that government experts do not have all the information, or perhaps even the right type of information, for making policy and isolating important decisions from public involvement will generate policy errors.¹⁵ The deliberative models contain an implication that representative democracy is far from perfect in transmitting the wishes of the public into policy, and that a more direct democracy can be made to work in even complex modern society.¹⁶

Despite arguments about the positive effects of direct democracy on civic engagement, previous research has not supported this claim. Early studies failed to find evidence that election-day turnout increases in states with initiatives on the ballot.¹⁷ Recent research using more sophisticated statistical methods and longitudinal datasets, however, finds the presence of ballot initiatives has a positive, if modest, effect on turnout rates in the American states. Examining initiatives (and popular referendums) on state ballots between 1972 and 1996, Smith finds that states with “salient” initiatives and popular referendums—measured by the percent of front-page newspaper coverage devoted to ballot issues on the day following an election—tend to have higher turnout in midterm elections (by roughly 3%) than non-initiative states, but not in presidential years. Using pooled time series data for the 50 states over a twenty-six year period (1970-1996), Tolbert et al finds a positive effect of usage of the initiative process – measured by

⁷ Peters 1996.

⁸ B. Barber. 1984. *Strong Democracy*. Princeton: Princeton University Press.

⁹ Peters 1996.

¹⁰ J. S. Dryzek. 1990. *Discursive Democracy: Politics, Policy and Political Science*. Cambridge, Cambridge University Press

¹¹ Barber 1984.

¹² A. Toffler and H. Toffler. 1995. *Creating a New Civilization: A Proposal for Reshaping Society*. Turner Publishing.

¹³ J. Fishkin. 1993. *Democracy and Deliberation*. New Haven: Yale University Press

¹⁴ T. Cronin. 1989. *Direct Democracy*. Cambridge: Harvard University Press

¹⁵ G. Majone. 1989. *Evidence, Argument, and Persuasion in the Policy Process*. New Haven : Yale University Press.

¹⁶ See J. Dryzek 1990 and J. Fishkin 1993. See also D. Yankelevich. 1991. *Coming to Public Judgment: Making Democracy Work in a Complex World*. Syracuse, NY: Syracuse University Press.

¹⁷ See D. Everson. 1981. “The Effects of Initiatives on Voter Turnout: A Comparative State Analysis.” *Western Political Quarterly* 34: 415-25 and D. Magleby. 1984. *Direct Legislation: Voting on Ballot Propositions in the US*. Baltimore, MD: John Hopkins University Press.

the actual number of initiatives appearing on the statewide ballot – on voter turnout in both presidential (roughly 4%) and midterm elections (roughly 8%).¹⁸

Both studies demonstrate that higher turnout in initiative states is most pronounced in midterm elections or non-competitive presidential elections, when ballot initiatives do not compete with presidential candidates for media attention. Midterm elections are generally low information elections with few sources of mobilization, thus making the electorate more sensitive to those sources of mobilization that do exist, such as policy measures placed on the ballot. The presence of ballot initiatives on midterm ballots may provide more information about elections, leading to higher citizen participation, especially if they are controversial policy questions. Presidential elections, however, are generally high information elections in which there are multiple sources of mobilization.

Another recent study based on survey data (American National Election Survey [NES]) for 1996, 1998 and 2000 examines whether individual level exposure to statewide ballot initiatives stimulates voter turnout, campaign contributions to interest groups, and political knowledge. Multivariate regression analysis suggests that exposure to state ballot initiatives increases the probability of voting (by almost 10% after holding other factors constant), and to a more limited extent stimulates campaign contributions to interest groups and enhances political knowledge.¹⁹

In addition to voter turnout, another potentially important consequence of direct democracy is the effect it might have on citizen trust in government. Bowler and Donovan find that actual exposure to direct democracy gives citizens a greater sense that they can influence government.²⁰ Relying on American National Election Study [NES] survey data (1992) merged with the total number of initiatives that have appeared on state ballots, they find that more frequent exposure to ballot initiatives is associated with higher levels of political efficacy. Their analysis suggests that citizens living in states with more initiatives tend to have more positive views of their own political abilities (internal efficacy) and look more favorably on the responsiveness of government (external efficacy). The effect of exposure to direct democracy on internal and external political efficacy rivals the effects of formal education. A separate study conducted by different researchers collaborate their findings, indicating that citizens living in states with more initiatives on the ballot have more positive views of government responsiveness (external efficacy) over time (1988-1998).²¹ The research suggests state-level institutions providing for the initiative may contribute to American democracy by instilling a greater sense that citizens have the ability to shape what their governments do. In sum, empirical research in the American states provides evidence for a modest, yet significant positive impact of direct democracy on civic engagement and participation in American politics.

¹⁸ On turnout see M. Smith. 2001. "The Contingent Effects of Ballot Initiatives and Candidate Races on Turnout." *American Journal of Political Science* 45: 700-706; and C. Tolbert, J. Grummel and D. Smith. 2001. "The Effects of Ballot Initiatives on Voter Turnout in the American States." *American Politics Review*. 29(6) 625-48.

¹⁹ See C. Tolbert, R. McNeal and D. Smith. n.d. "Enhancing Civic Engagement: The Indirect Effects of Direct Democracy on Voter Turnout, Contributions to Interest Groups, and Political Knowledge."

²⁰ On political efficacy see, S. Bowler and T. Donovan. 2002. "Democracy, Institutions and Attitudes about Citizen Influence on Government." *British Journal of Political Science*. 31:000-000. (in press).

²¹ R. Hero and C. Tolbert. 2001 "Minority Voices and Citizen Attitudes about Government Responsiveness in the American States: Do Social and Institutional Context Matter?" Paper presented at the conference on *Minority Representative: Institutions, Behavior and Identity*, Claremont Graduate School, February 2-3.

This research, coupled with the dramatic growth in the use of citizen initiatives and legislative referendums in the states in the last twenty years, lays the groundwork for successfully introducing the initiative (and referendum) process at the national level. This paper offers constructive criticism for improving the political feasibility of the Democracy Act proposed by Philadelphia II. My greatest concern is that the legislation as it currently is written opens a Pandora's box of constitutional issues, and can be interpreted as undermining important tenets of representative government (See extended discussion under section 4E Organization and Responsibilities in this paper).²² As a political scientist, however, and not a legal scholar, my interest is in whether a majority of the electorate will support the proposed reforms, rather than the constitutionality of various provisions in the Act. At the onset, I suggest conducting a national telephone survey (opinion poll) to gauge support for the specific provisions included in the Act. If a majority of the public is not supportive of these reforms, it may be worth modifying the proposal to reflect mainstream public sentiment. My review of the Act is also based on my research on racial/ethnic minorities and direct democracy, on the empirical literature on contemporary use of direct democracy in the American states, and is also informed by research on voting and elections.

While numerous provisions in the Act may be problematic, a significant weakness is that the Act would likely result in too many initiatives placed before the voters - overwhelming their ability to make rational decisions.²³ If slim majorities, in low turnout elections, frequently approve statutory law and constitutional changes this threatens the legitimacy of direct democracy as a mechanism for public decisions and policy change. Extensive use of direct democracy also may make it more difficult for elected representatives to govern, as some suggest has already occurred in California as a result of tax and term limitations adopted by voters in initiative elections.²⁴ Refocusing the Act on establishing a federal initiative process exclusively would remedy many of these problems. National referenda have been used effectively in the past decade in the majority of western democracies, and the national initiative process has worked successfully in Switzerland.²⁵ In revising the Democracy Act, I encourage the sponsors to: 1) work within the framework of American representative democracy, with its unique system of checks and balances between the judicial, executive and legislative branches of government, and 2) model the legislation on existing national referendum and initiative processes in other

²² H. Linde. 1989. "When is Lawmaking not Republican Government." *Hastings Constitutional Law Review*. 17: 159-73

²³ On bounded rationality see J. March and H. Simon. 1958 *Organizations*. New York: John Wiley; and H. Simon. 1995. "Rationality in Political Behavior." *Political Psychology* 16: 45-61. For a recent discussion, see B. Jones, 2001. *Architecture and the Politics of Choice*. Chicago: University of Chicago Press and A. Lupia and M. McCubbins. 1998. *The Democratic Dilemma: Can Citizens Learn What They Need to Know?* New York: Cambridge University Press.

²⁴ On California politics see P. Schrag. 1998. *Paradise Lost: California's Experience, America's Future*. New York: New Press; and D. Broder. 2000. *Democracy Derailed: Initiative Campaigns and the Power of Money*. Harcourt Brace Publishers. On tax limitations in California, Colorado and Massachusetts, see Smith, Daniel A. 1998. *Tax Crusaders and the Politics of Direct Democracy*. NY: Routledge. On challenges facing state legislatures more generally see A. Rosenthal. 1997. *The Decline of Representative Democracy: Process, Participation and Power in State Legislatures*. Washington D.C.: CQ Press.

²⁵ See M. Mendelshon and A. Parkin 2001; and D. Butler and A. Ranney (eds.) 1994. *Referendums around the World: The Growing Use of Direct Democracy*. Washington, DC: AEI Press

advanced industrialized countries.²⁶ Below I discuss some opportunities for strengthening the Democracy Act.

Section 2: Scope of the National Initiative

Rather than proposing a national referendum process as currently exists in most advanced industrialized nations, the Democracy Act creates an initiative process in “every jurisdiction of the United States.” The Act would not only create an initiative process in the remaining twenty-six states without the process, but in every county, city, and municipality of the United States. The twenty-four initiative states, would have two initiative processes, but since the Democracy Act takes precedent over local, state and federal law when the two are in conflict, sponsors would be unlikely to rely on existing state initiative processes. This is unfortunate, as many observers argue state provisions for direct democracy have functioned effectively for nearly a century.²⁷ Creating an initiative process as the local and state level also raises significant constitutional issues regarding federalism and home rule of local governments.

Recommendation: Focus the Act exclusively on the creation of a federal initiative process, leaving the states, localities and municipalities to draft and adopt their own legislation. Most scholars and practitioners see the referendum as a necessary intermediary stage between no direct democracy (what we have at the federal level) and the initiative process. The initiative and referendum go hand and hand at the state level, and in many localities. I would suggest adding a federal referendum to the Democracy Act.

Section 3B: Qualification of Initiatives

While the signature threshold for qualifying statutory and constitutional initiatives is low, 2 and 5 percent of citizens voting in the last presidential election respectively, compared to even western states with relatively low signature thresholds such as California and Oregon,²⁸ there is no parallel in the contemporary process for the use of public opinion polls to qualify ballot initiatives. The Act states that initiatives shall qualify for election if at least fifty percent of the respondents in a public opinion poll express their desire that the initiative qualify for election. Not only is there no way to verify whether respondents in national telephone surveys are registered voters, but a long tradition of research indicates that public opinion is unstable, can change considerably over the course of an election, and is susceptible to changes in wording and framing of the issues.²⁹

A classic example of the instability of public opinion is when California voters decided to end affirmative action by initiative in 1996. The summary of Proposition 209 read it would prohibit local and state government entities from “discriminating against or giving preferential treatment” based on race, sex, ethnicity or national origin. Nowhere did the title, summary or text

²⁶ See M. Mendelshon and A. Parkin. 2001 and D. Butler and A. Ranney. 1994.

²⁷ See C. Tolbert, D. Lowenstein, and T. Donovan. 1998. “Election Law and Rules for Using Initiatives.” In S. Bower, T. Donovan, and C. Tolbert (eds.), *Citizens as Legislators: Direct Democracy in the United States*. Columbus, OH: Ohio State University Press.

²⁸ See C. Tolbert, D. Lowenstein, and T. Donovan. 1998.

²⁹ On characteristics of public opinion generally see W. Lippman. 1922. *Public Opinion*. MacMillian and Zaller, J. 1992. *The Nature and Origins of Mass Opinion*. Cambridge: Cambridge University Press. For evidence of opinion change over the course of an election see S. Bowler and T. Donovan. 1994. “Opinion Change on Ballot Propositions.” *Political Behavior*. 16:411-35; and D. Magleby. 1989. “Opinion Formation and Opinion Change on Ballot Proposition Campaigns.” In Margolis and Mauser (eds.) *Manipulating Public Opinion*. Pacific Grove, CA: Brooks/Cole.

inform voters that the initiative would have any impact on affirmative action programs. State and national polls clearly showed that voters wanted to ban “preferential treatment” although the same polls showed a majority actually favored affirmative action. Pre-election polls using Proposition 209’s reference to “preferences” indicated the initiative won 72 percent support, but when asked how many would vote yes because “it will end affirmative action programs that use quotas and set-asides based on a race and gender,” supported plummeted to 45 percent.³⁰

Recommendation: Eliminate the use of public opinion polls to qualify initiatives (constitutional and statutory). Eliminate provisions for constitution initiatives at the federal level, and instead use Congress as a mechanism for recommending constitutional change to the voters for a popular vote (national referendum). Consider a turnout threshold as an additional requirement for approving federal constitutional amendments. Improve the citizen petition process for qualifying federal statutory initiatives by raising the signature threshold and, possibly allowing for the use of electronic signatures on petitions.

3D: Deliberative Committee

There is also no parallel in the contemporary process for the “deliberative committee,” which would function as a “citizen jury” convened to deliberate over qualified initiatives, with the power to amend the title, summary and text of an initiative with a two-thirds vote. In American states with the initiative process, the Secretary of State assumes this administrative duty. The Act eliminates the role of elected officials in setting the title and summary of proposed initiatives. How realistic is it to convene citizen juries for each qualified initiative, and how costly?

Recommendation: Focus exclusively on establishing a federal initiative process and rely on a two-thirds vote in Congress to amend the title, summary and text of proposed national initiatives. Elected officials can provide a mediating force to the will of popular majorities and interest groups.

3F: Legislative Advisory Vote

The Act states that “the legislative body shall conduct a public vote recording the yeas and nays on the initiative within 60 days after its receipt thereof” which would serve as a non-binding advisory to the people. The passage rate for legislative referendums is considerably higher than for citizen initiatives,³¹ possibly because voters value the wisdom of their elected representatives over sponsoring interest groups.

Recommendation: If Congress is to conduct and record a public vote on all proposed federal initiatives, why not also require Congress to hold public hearings prior to advisory votes?

3L: Financial Disclosure

The Act is vague in stating that the Electoral Trust shall establish financial reporting requirements with “monetary thresholds appropriate to the affected government jurisdiction.” What size jurisdictions would trigger an increase in the monetary threshold?

³⁰ L. Chavez. 1998. *The Color Bind: California’s Battle to End Affirmative Action*. Berkeley: University of California Press.

³¹ See the website for the Initiative and Referenda Institute, Washington, D.C., Dane Waters, Director. www.iandrinstute.org

Recommendation: Create explicit monetary thresholds for campaign contributions for national initiative campaigns only.

3M: Public Information

An extensive literature documents the importance on voter information guides, campaign ads, and endorsements from elected officials, interest groups and political parties in providing cues for voters to make rational decisions in issue elections.³² In light of recent research, campaign expenditures in initiative elections are not necessary detrimental, but actually serve to increase information available to voters.³³ The circulation of voter information guides to all registered voters is consistent with the findings from this literature, but the cost of mailing such information pamphlets must be considered. Publishing voter information guides on the Internet is more cost effective, but would reach a significantly smaller segment of the population, given currently disparities in use of the Internet by age, gender, income, education and race.³⁴

4B: Board of Trustees

The Electoral Trust is to be governed by a Board of Trustees and a director, with the goal of qualifying initiatives in all government justifications of the United States. While initially the Board of Trustees would be appointed by civic organizations with four-year terms on a rotating basis, eventually membership on the Board would be an elected office, “with one member being elected by the People in each Congressional District,” with four-year terms.

Recommendation: Rather than create a separate national legislative body, have Congress perform the duties of the Board of Trustees. Unlike the Board of Trustees, members of congress are compensated for their service and must meet age, residence and citizenship requirements. Congressional representatives serve fixed two or six-year terms and are elected from geographical congressional districts. Using Congress as the critical administrative body provides an important check on the uses and misuses of direct democracy, and would allow the process to operate within institutions of representative democracy, subject to checks and balances by the executive and judiciary. A subcommittee of Congress, similar to the Conference Committee, could perform the duties of the “Executive Committee”.

4C: Director

The Act states that the director shall be appointed by the President of the United States and confirmed by a majority of the votes of the Trustees.

³² On the importance of voter knowledge of initiative sponsors, see A. Lupia. 1994. "Shortcuts versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections." *American Political Science Review*. 88:63-76. On effects of information and campaign spending, see S. Bowler and T. Donovan. 1998. *Demanding Choices: Opinion, Voting and Direct Democracy*. Ann Arbor, MI: University of Michigan Press. On the importance on political parties, see D. Smith and C. Tolbert. 2001. "The Initiative to Party: Partisanship and Ballot Initiatives in California." *Party Politics* 7: 781-799.

³³ See E. Gerber. 1999. *The Populist Paradox: Interest Group Influence and the Promise of Direct Legislation*. Princeton: Princeton University Press.

³⁴ On disparities in Internet access see U.S. Department of Commerce. National Telecommunication and Information Administration. 2000. *Falling Through the Net: Toward Digital Inclusion*. Available [Online]: <http://www.esa.doc.gov/fttn00.htm/> . On disparities in computer ownership and email access see Neu, C.R., R.H. Anderson, T.K. Bikson. 1999. *E-mail Communication Between Government and Citizens: Security, Policy Issues, and Next Steps*. Santa Monica, Calif.: Rand Corp.

Recommendation: The President of the United States could appoint the director subject to a majority vote of Congress (or the Senate), as is currently the procedure for federal government appointees, such as agency secretaries. Rather than have Philadelphia II appoint the first director, why not allow the President to appoint the first director?

4E: Organization and Responsibilities

The Act establishes the Electoral Trust as an independent fiduciary agency that may apply for and receive funds and incur debt when necessary. This agency is not subject to oversight by the President, Congress or the courts and thus operates outside the system of checks and balances of Madisonian democracy. Section 2G of the Act indicates the courts have no jurisdiction with respect to initiatives prior to enactment by the people in an election. The lack of judicial review may over-ride the Guarantee Clause of Article 4, Section 5 of the US Constitution.

Because the Electoral Trust is not subject to legislative or executive oversight like the other federal agencies—and proposed initiatives may not be reviewed by the courts before an election, as occurs in the twenty-four American states with the initiative process—there are few protections for minority groups from the will of popular majorities, whether the minority be defined by race, ethnicity, language, gender, sexual orientation, religion, economic class, profession, geographic region, etc. Open up any of the many introduction to American government textbooks currently on the market, and they begin with the logic and rationale for the organization of the United States government by discussing the constitution, Founding Fathers, and Constitutional Convention of 1787. At the heart of these introductory chapters will be the Founding Fathers' fear of majority tyranny of the minority. The organization of government that allows majority tyranny to occur is direct democracy.

To protect minority rights, the Founding Fathers created indirect elections, separated power in government between the executive (with the power to implement laws), the judiciary (with the power to review laws) and the legislative branches of government (with the power to make laws), as well as separating power between the states and federal government (federalism). Further, they built in checks, so no branch of government could operate independently of another. For example, the President may veto laws enacted by Congress and the President appoints federal judges. Congress has the power to override a presidential veto with a 2/3rd vote, impeach the President and confirm presidential judicial appointments. The courts have the power of judicial review, and can rule laws enacted by Congress or the President null and void, as well as preside over impeachment hearings. This mechanical logic of checks and balances defines our system of representative government, and is often referred to by political scientists as "Madisonian democracy." This explanation for the organization of American government is taught in virtually every high school government class and introductory political science course at the college level.

New information technology does not make political minorities any less vulnerable to majority will, so this logic holds today as much as it did over two hundred years ago. A growing body of contemporary empirical research cautions against the use of initiatives that directly affect political minorities and civil liberties/rights.³⁵ Because the Democracy Act provides even

³⁵ On racial/ethnic minorities and direct democracy, see B. Gamble. 1997. "Putting Civil Rights to a Popular Vote." *American Journal of Political Science*. 91:245-69; T. Donovan and S. Bowler. 1998. "Direct Democracy and Minority Rights: An Extension." *American Journal of Political Science*. 42:1020-1024; S. Bowler and T. Donovan.

fewer protections for minority rights than existing state initiative laws in terms of judicial review, and operates outside of structures of representative government, it is unlikely to secure majority public support. To make the national initiative consistent with representative government and build in protections for political minorities, I propose modifying the Democracy Act to make Congress administer federal initiatives.

Recommendation: An independent Electoral Trust is not necessary if Congress performs the duties of the Board of Trustees, and administers federal initiatives. This recommendation eliminates substantial constitutional questions and grounds use of direct democracy at the federal level within existing institutions of representative government. If the sponsors are intent on having the Electoral Trust and national initiative operate outside, rather than inside, existing structures of representative government, it is going to take a persuasive national political campaign (a whole new series of "Federalist papers") to sell the idea to the American public, and a clear, simple, "Perot like" logic to go with it. Protections for minority rights would still need to be addressed. I would suggest banning federal constitutional initiatives on civil liberties.

Conclusion

Despite generally low levels of citizen engagement in American politics, recent research indicates ballot initiatives are associated with modest increases in participation (voter turnout) and political trust (efficacy) in the states. These findings, coupled with global trends toward increased reliance on referenda and participatory democracy, set the stage for introducing a national initiative (and referendum) process in the United States. To be politically successful and win majority support from the public, direct democracy at the federal level must operate within the context of Madisonian democracy, subject to appropriate constitutional checks by the legislative, judicial and executive branches of government and mindful of federalism issues. The recommendations detailed in this paper serve to shed light on criticisms that will be raised by those who are sympathetic to the idea of a federal initiative and referendum process, as well as its critiques. So are we ready for a national initiative in the United States? If a more conventional proposal that build on our existing system of representative democracy, and protects political minorities, is presented to the voters, the answer, from my perspective, is "maybe." Detailed public opinion data, or data from focus groups, on attitudes toward the Democracy Act could go a long way towards answering this question.

2001. "Popular Control of Referendum Agendas: Implications for Democratic Outcomes and Minority Rights." In M. Mendelsohn and A. Parkin (eds.), *Referendum Democracy: Citizens, Elites, and Deliberation in Referendum Campaigns*, New York: Palgrave; R. Alvarez and T. Butterfield. 2000. "The Resurgence of Nativism in California? The case of Proposition 187 and Illegal Immigration." *Social Science Quarterly*. 81: 167-179; D. Bell. 1978. "The Referendum Democracy's Barrier to Racial Equality." *Washington Law Review* 54:1-29; E. Gerber and Z. Hajnal. Forthcoming. "Minorities and Direct Legislation: Evidence from California Ballot Proposition Elections." *Journal of Politics*; P. Schrag. 1998; and C. Tolbert and R. Hero. 2001. "Dealing with Diversity: Racial/Ethnic Context and Social Policy Change." *Political Research Quarterly*. 54: 571-604. On gay and lesbian minorities and direct democracy, see T. Donovan, J. Wenzel, and S. Bowler. 1999. "Direct Democracy and Gay Rights Initiatives after Romer." In C. Rimmerman, K. Wald, and C. Wilcox. *The Politics of Gay Rights*. Chicago: University of Chicago Press.