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Written by Anne Gettelman Campbell
Has been approved for the Department of Political Science

Rodney E. Hero
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Date July 1, 1998

The final copy of this thesis has been examined by the signators, and we find that both the content and the form meet acceptable presentation standards of scholarly work in the above mentioned discipline.

**SETTING THE INITIATIVE AGENDA: THE NOT-SO-SILENT
MAJORITY**

by

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Campbell, Anne G. (Ph.D., Political Science)

Setting the Initiative Agenda: the Not-So-Silent Majority

Thesis directed by Professor Rodney Hero

This research examines how the initiative agenda is set in Colorado and why groups and individuals turn to the initiative process. The mobilization of bias of the initiative process favors well-organized groups that seek policies that are likely to command the support of the majority of the voting public, not “special interests.” The ballot initiative is used for both the horizontal and vertical escalation of conflict. Policy entrepreneurs use the initiative to *threaten* the vertical escalation of conflict when state legislators or other groups whose interests are currently favored within the legislature neglect to consider their interests. However, the initiative process is primarily used to facilitate the vertical escalation of conflict to the public. Unlike the agenda setting process associated with representative government, policy entrepreneurs, the public, and interest groups exercise the greatest influence over the initiative agenda. If there is an “ultimate guardian” of the initiative agenda, it is the voting public. Because the public determines the success of initiatives, initiative sponsors do compromise when framing their ballot measures, appealing to existing public opinion, while anticipating potential weaknesses that organized opposition could use to turn the public against their measures. Legislators and initiative sponsors note that the initiative process permits the political system to deal with “conflict of interest” and “hot potato” issues that the legislators are reluctant to deal with, due to legislators concerns for their institutional power and political careers.

DEDICATION

I dedicate this research to all the sponsors of initiatives who seek to use direct democracy in order to promote the public interest, and to my wonderful husband and two sons who have kept me going through the past few years.

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Chapter 1

An Examination of How the Initiative Agenda is Set

This research addresses several related questions about the initiative agenda setting process through the examination of initiative politics in the state of Colorado. The fundamental goals of this study are to determine how the initiative agenda is set in Colorado and to determine why certain individuals and groups turn to this institution of direct democracy. An understanding of the initiative agenda setting process permits an assessment of the influence that various political actors exercise through this institution, and the significance of this institution of direct democracy to the political system.

The goals of this research are achieved through an examination of the roles played by the various types of political actors--institutional elites, interest groups, the media, policy entrepreneurs, and the public--in setting the initiative agenda. The roles of these actors are examined in terms of three key aspects of the agenda setting process--conflict escalation, timing, and issue framing--in order to determine what factors influence the decision to attempt this process, what is the ultimate goal of those who turn to the initiative, what factors determine when particular issues appear on the initiative agenda, and what factors determine the specific form and substance of proposed initiatives. And finally, given the answers to these questions, this research examines what role the initiative process might play in the broader processes of political change at the state and national levels of government.

This author's hypothesis is that the initiative process, as an institution of *direct* democracy, will have a different mobilization of bias than the institutions of representative democracy, and that, as a result, the initiative process is conducive to the representation of different interests than those that prevail in the representative institutions of government. In other words, the initiative provides an alternative agenda that is used by alternative interests.

The initiative process allows citizens to propose changes to their state's constitution or statutes to be voted on directly by the electorate. Twenty-four states allow some form of the initiative; 18 states permit constitutional initiatives and 21 states permit statutory initiatives (League of Women Voters 1994). There has been renewed academic interest in this process over the past two decades, interest that coincides with an increasing number of ballot issues about controversial issues ranging from tax limitations to bans on clear-cutting of forests, from "no special rights" for homosexuals to doctor-assisted suicide. It is common to hear about the "proliferation" of initiatives, and indeed the number of statewide measures has increased in recent years, with a recent record of 89 initiated measures appearing on state ballots in the 1996 election.¹ Still, the agenda of statewide issues that the citizens are called to vote upon is quite limited when compared to the hundreds of public policy issues dealt with by the state legislatures each year.

¹The record for the number of statewide initiatives appearing on the ballot in the United States in a single election is 90, set in 1914 (Schmidt 1989, 21).

In line with a central question that underlies a great deal of research in American politics, "Who governs?" much of the literature on the initiative process examines who controls policy making through this form of "direct democracy." However, a review of the literature on the initiative reveals that the emphasis is overwhelmingly on the campaign stage of the initiative process. It focuses on the influence of money, the media, interest groups, and the public in determining electoral *outcomes*. The question of who sets the initiative *agenda* is only indirectly and incompletely addressed. The important question, "Why are *these* particular issues on the ballot?" remains unanswered. The initiative literature has failed to address an essential stage of this policy making process, the stage in which the initiative agenda is set.

At the same time, the body of literature that addresses the agenda setting process has focused on the normal legislative and bureaucratic channels of policy making; policy making through the channels of direct democracy is not addressed. Kingdon (1984, 5) explains that the agenda setting research focuses on the list of subjects that are getting attention within the government, as well as the "alternatives for government action [that are] seriously considered by government officials and those closely associated with them." The emphasis on the "normal," representative policy making channels is understandable. After all, in a republican democracy most public policies are promulgated through these channels. Yet, the initiative process provides for *direct* democracy in close to one half of the states. Many of the measures they are voting on--affirmative action,

term limits, legalization of marijuana for medicinal use, and many others--have significant impacts on political agendas at all levels of government. However, we do not know whether the agenda setting literature's conclusions regarding "normal" representative institutions of government hold true for the initiative process, an institution of *direct* democracy. Is the *initiative* agenda set in a "top-down" fashion like the formal, governmental agendas (Baumgartner and Jones 1993; Kingdon 1984)? Are key decision makers in the formal institutions of government and political party elites the "ultimate guardians" of the *initiative* agenda, as they are for the institutional agendas (Cobb and Elder 1981; Carmines and Stimson 1989)? Does the public play more than a minor, relatively passive role in setting the *initiative* agenda (Cobb and Elder 1981; Kingdon 1984; Carmines and Stimson 1989; Baumgartner and Jones 1993)?

The following section of this introductory chapter discusses the significance of agenda setting to the determination of "Who governs?" and to theories of political change. This discussion, coupled with an examination of the initiative's agenda setting role from a historical perspective, provides a clearer understanding of the *potential* impact of the initiative process on the distribution of political power and on the processes of political change. I then explain the research design that this paper employs to determine how the initiative agenda is set in Colorado and the impact that the initiative has on the formal, governmental agenda in Colorado. Finally, I provide a preview of the chapters that will take us from the questions "How is the initiative agenda set in Colorado?" and "Why do

individuals and groups turn to the initiative process?" to some conclusions about how this institution might affect the processes of political change, by facilitating the representation of different types of interests than the representative institutions of democratic government.

I. The Significance of Agenda Setting

A. Agenda Setting and Power

The agenda setting literature developed out of critiques of the pluralist theory that has been predominant in the field of American politics since the 1960s. Pluralists such as David Truman and Robert Dahl postulate that democracy in the United States is based upon and organized around the interaction of groups, that government policy is determined by a process of bargaining and compromise amongst groups affected by a particular issue. The government agenda is set as a result of the "inevitable gravitation toward government" of groups seeking to press their interests (Truman 1951). In contrast to the elite theorists that preceded them, the pluralists argue that there is no *single* elite, but rather there are different *groups of elites* that compete on different issues. Democracy is achieved, albeit only in a hybrid form in which "all the active and legitimate groups in the population can make themselves heard at some crucial stage in the process of decision" (Dahl 1956, 137). Dahl acknowledges that "...on matters of specific policy the majority rarely rules...." (124) and "specific policies tend to be products of 'minorities rule'" (133). According to pluralists, while American government is generally *not* responsive to a majority of the public on any given issue, it is

responsive to those citizens who care enough about an issue to organize for or against it. The essential characteristic of modern democracy is the freedom of citizens to organize into groups so that they may be heard on different issues.

However, critics of pluralist theory (Schattschneider 1960; Lowi 1967, 1979; Berry 1984; Walker 1991) argue that the freedom to organize for or against a proposed public policy is insufficient to ensure democratic government is responsive to *all* the people, and that pluralist theory serves as a justification for a less than democratic government. Schattschneider (1960) observes that in practice most people can not get into the pluralist "pressure system," therefore "the flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper class accent"(35). Lowi (1967, 1979) discusses how the pluralists' "interest group liberalism" leads to the atrophy of institutions of *popular* control, the maintenance and creation of structures of privilege, and status quo politics, because groups not organized around narrow interests are shut out of the political process. Walker (1991) also cautions that without external support the types of "public interest" groups that have made headway on majoritarian issues in the 1970s and 1980s will be no competition for the "special interest" groups that naturally proliferate in a pluralist system. Dahl's own definition of "pluralist" democracy indicates that participation in American politics is limited to "legitimate" groups; pluralist democracy will tend to shut out "illegitimate" groups and interests. In summary, the critics say that a pluralist interest group-based democracy is biased against the representation of the interests of those potential groups who are less likely to

organize, such as the poor, the uneducated, and those who seek to serve the broader public interest. It is also biased against interests that challenge the status quo in ways that some judge to be “illegitimate.”

The agenda setting literature proceeds from this critique. It emphasizes that the ability of individuals or groups to control the list of issues that are even up for consideration is a power at least as important as the ability to control the outcome of those discussions. Bachrach and Baratz (1962) propose that there are “two faces of power.” There is power in the pluralist sense of participating in decision-making, but there is also power that is “exercised by confining the scope of decision-making to relatively ‘safe’ issues...when A devotes his energies to creating or reinforcing social and political values and institutional practices that limit the scope of the political process to public consideration of only those issues which are comparatively innocuous to A” (948). The agenda-setting literature examines the ways in which “[s]ome issues are organized into politics while others are organized out” (Schattschneider, 71). To understand how the agenda is set is to understand who has the power to determine which issues are even up for discussion, an essential part of the answer to the question “Who governs?”

Because those who control the government agenda have the power to preserve the status quo or to promote change in government policies, agenda setting research is also an investigation into the dynamics of politics, into the process of political change. As the review of the agenda setting literature in Chapter 2 discusses, the existing agenda setting literature focuses on how various

political actors and factors such as timing and problem definition lead to change in the public policy agenda. It examines how change or the status quo is promoted under our republican political institutions.

B. Agenda Setting and Political Change

The centrality of agenda setting to theories of change in American politics is evident in the works of several influential Americanists. Theories of critical elections and realignment (Burnham 1970; Sundquist 1983; Carmines and Stimson 1989; Carmines 1994) see significant changes in the American political system as the result of changes in political agendas. New issues emerge and cut across the lines of political parties organized around issues that prevailed in earlier eras, resulting in the realignment of political parties and the political system around the new issues. Institutionalists emphasize that "Institutions, by definition, tend to resist change" (Rockman 1994, 144). The rational choice perspective explains that institutions tend to persist despite the fact that they are not "optimally suited to the tastes of participants and the present environment," because the participants don't want to bear the transaction costs of making new arrangements (Shepsle 1989, 144). That is, although the environment changes and the issues that government needs to deal with change, a "structure-induced equilibrium" often persists, preventing optimal institutional responses to new challenges. Dodd's (1986) assessment of the consequence of this equilibrium for Congress echoes the concerns of the critics of pluralist theory:

The design of a congressional structure to facilitate a particular agenda, and the use of extraordinary majority procedures to protect

the structure, incorporates into Congress a conservative bias, a tendency to adapt slowly to the rise of new societal problems and new policy agendas (19).

These theories point to a complex interaction of institutions and agendas in the process of political change. New agendas may lead to the creation of new institutions, but once created, institutions may be slow to deal with issues that arise in the future. Dodd (1994) argues that it is particularly difficult for gradual political change in American society, because of the heterogeneity of interests and the cumbersome decision processes under our federalist and republican system of government. The American constitutional system with its separation of powers and checks and balances lends itself to intervals of great, transformational change—such as that which occurred in the U.S. in the mid-1800s and the 1960s, rather than to gradual, incremental adaptation in response to social and economic changes in the environment. Fragmented institutions are slow to respond, although as “system destruction” approaches the experimentation and deliberation encouraged by this fragmentation ultimately provides a means of adapting. Dodd warns, however:

It is, in fact, a very chancy politics, one that takes the nation into severe conflict, even to the verge of destruction, and then trusts to collective metarationality and the discovery of a deep mutuality in order for participants to use institutional arrangements for collective good. Along the way there are long periods of policy unresponsiveness and considerable suffering on the part of the disadvantaged. Ideally one would hope that the nation could find ways to lessen its tendency to magnify metacrises and move towards a more self-regulating and gradualist model of political development (347).

To survive, political systems must adapt to changes in the environment and changes to the problems confronted by society (Parsons 1951; Almond and Powell 1978). Dodd concludes that the American political system is ill-suited to gradual change and, therefore, tends to experience less frequent, but more significant periods of political transformation.

To summarize, the agenda setting literature's critique of pluralist democracy is based on the insufficient representation of certain sectors of society and certain types of issues in an interest group-based democracy. It notes that a great deal of the power in our American "democracy" is controlled by those who set the government agenda; the individuals or groups who control the government agenda have the power to preserve their own influence and interests. Many theories of change in the American politics literature echo the importance of agenda setting. From theories of critical alignments and institutionalist theories, to rational choice theories and cybernetics-based theories of learning, a great deal of research concludes that the political institutions and processes of American government tend to be resistant to change. The inevitable result is that government usually lags behind the times. It is generally slow to adapt to and deal with new issues and new (or merely non-institutionalized) interests.

The following discussion illustrates how the right to petition was intended to serve as a means of political adaptation by increasing the responsiveness of the government and assisting those politically disadvantaged in the representative institutions of government. The right to petition was intended to afford citizens

the opportunity to set the agenda and promote change when the *formal* institutions of government are resistant to change. The right to petition the government and the right to petition the people through the initiative were instituted to make the government adapt when it lagged too far behind the times and the will of the people.

II. The Right to Petition

Much of the literature on the citizens initiative process in the states begins with a discussion of the Populists' and Progressives' championing the initiative, the referendum, and the recall devices of direct democracy at the turn of the 20th century (Sheldon and Weaver 1980; Lee 1981; Magleby 1984; Schmidt 1989). It often describes the initiative as an "innovation" derived from the Swiss example. However, looking at the broader historical context the initiative can be seen as a variation of the right to petition government for "redress of grievances." An examination of the Anglo-American tradition of the citizen's right to petition demonstrates that both forms of petitioning--petitions to the legislature and petitions directly to the citizenry--increase the *potential* for non-institutionalized interests to set the public policy agenda. A review of the long-historied right to petition presents a fuller portrayal of the various agenda setting functions that the right to petition has served, and that the initiative process might serve.

A. The Right to Petition the Government

The right to petition has drawn the attention of legal scholars who have emphasized the value of the right to petition government as a supplement to

representative government (Higginson 1986; Smith 1986; Calhoun 1995). Smith (1986) describes the right to petition the government for redress of grievances as “the cornerstone of the Anglo-American constitutional system” (1153). Officially recognized in the Magna Carta of 1215, “[c]ommon and frequent petition, without the threat of force, took the place of prolonged discontent and abrupt presentation of a complex cahier of grievances at the point of the sword” (William 1967). The use of the petition by the British parliament as well as by the people promoted government consideration of the concerns and the views of the citizenry (Smith 1986, 1156). When the parliament sought to curtail the use of the petition in 1702, after the public inconveniently presented it with a petition that supported the king against the parliament itself, it was met with a petition signed by two thousand citizens and the thinly veiled threat, “Our name is Legion, and we are Many” (Defoe 1903). While the increasingly powerful parliament was willing to restrict the right to petition when it no longer served its purposes, its efforts do so were thwarted by the public.

Higginson (1986) describes how the right to petition was also cherished in the New World. In the American colonies the right of citizens to petition their legislatures “was an affirmative, remedial right which required governmental hearing and response. Because each petition commanded legislative consideration, citizens, in large part, controlled legislative agendas” (142). While there were many occasions on which the right to petition was unpopular with both the monarch and the British parliament, the relatively impotent American colonial

assemblies welcomed petitions from all inhabitants, including those without the right to vote, and were especially attentive to citizens' grievances. They saw in the petition process a means of extending their jurisdiction over affairs in the colonies. In addition, by entertaining the petitions of all groups--including women, felons, Indians, and slaves--the citizen legislators were able to keep abreast of conditions in constituent communities and ensure that every group had some minimum amount of political power.

Given the long English and colonial tradition of recognizing the citizens' right to petition government for redress of grievances, and the Founding Fathers' employment of the petition in their protests to King George, it was not surprising that the Bill of Rights identified the right to petition as a fundamental political right of Americans. While the members of the 1st Congress voted down "the people's right to 'instruct their Representatives,'" they expressly affirmed the duty of Congress to receive *and consider* citizens' petitions (Schwartz 1971).

However, after 50 years the Congress backed away from this "duty" when the House applied a "gag rule" to all petitions or resolutions dealing with slavery (Higginson 1986, 158). The traditional view of the right to petition that implied the duties to hear, consider, debate, and decide on each petition lost out to the politics of institutional power.

The gag rule demonstrated how, once again, a legislative body sought to restrict the citizens' right to petition when it suited its purposes. John Quincy Adams, backed by the abolitionists, argued that Congress had to protect the

citizenry's two constitutional mechanisms to control their government: periodic election and continual instruction through petitioning (Higginson 1986, 162). On the other side John Calhoun argued that the duty to consider each petition violated the constitutional right of each house of Congress to determine the rules of its proceedings (159). Calhoun, backed by his fellow Southern legislators, won. With that decision and later decisions of the US Supreme Court, the right to petition was reduced in practice to the right of free speech (Higginson, 1986; Smith 1986; Calhoun 1994). The people could petition, but the government did not have to listen, much less act. It was only with some states' adoption of the initiative and other instruments of direct democracy 60 years later that many citizens were again given the power to use the petition to set the public policy agenda.

While the US Supreme Court has agreed with Congress' more restrictive view of its duties relative to the right of citizens to petition the Congress, the Court has recognized this right serves several important functions in our democracy. Legal scholar Emily Calhoun (1995, 443) summarizes the functions of the 1st Amendment's "petitions clause" that have been articulated in Supreme Court decisions, several of which are supported by the historical record recounted above:

-- It provides a means for the people to make their will known to the government so that the government can be responsive to that will.

--It provides a means of ensuring that changed conditions of society will not be neglected by government.

--It serves as a check on a government that might otherwise seek to limit the search for knowledge or to become the dogmatic guardian of the public mind.

--It protects the assertion of minority views as a vehicle for peaceful change.

--It serves as a means of kindling public interest in new issues.

All of these functions relate to the ability of the citizenry to set the political agenda and promote peaceful political change. The Court sees the right to petition the government for redress of grievances as ensuring that all of the people can have a voice in setting the government and the public agenda. However, the power associated with the right to petition the government is certainly limited by the lack of any correspondent duty of the government to attend to any petition. Those who would petition the government do have the right to speak, but not the right to be heard.

B. The Initiative: the Right to Petition the People

The impulse behind the Populists', the Socialists' and the Progressives' promotion of the initiative (as well as the referendum, the recall, and other electoral reforms) around the turn of the 20th century was the belief that government was corrupt. The legislatures, courts, and political parties were perceived as being "captured" by wealthy special interests, rather than as being responsive to the people or the public interest (Beard and Schultz 1912; Hofstadter 1955; Schmidt 1989). The initiative, referendum, and recall were proposed as a means of making sure the people, the common citizens, were heard.

There was considerable debate in the early 1900s regarding the proposed reforms, particularly regarding the desirability of incorporating the “direct democracy” of the citizen’s initiative (Beard and Schultz 1912; Wilcox 1912; Wilson 1913). Much of this debate revolved around the issue of whose interests would, in fact, be served by the initiative process. Few of the initiative’s opponents based their opposition to the device on the rationale that is most often voiced today--that the initiative provides the greatest opportunities for well-funded special interests to use direct democracy for their benefit at the expense of an ill-informed and unwary public (Shockley 1980; Lowenstein 1982; Magleby 1984, 1989) or that the majority will use it infringe on the rights of minority groups (Hamilton 1970; Calhoun 1995; Gerber 1996). Instead, the greatest opposition originated with large business interests, big city political bosses, conservative Republicans, and the liquor industry who feared a decrease in their influence, as well as the destabilizing effects of unfiltered public sentiment (Wilcox 1912; Schmidt 1989). On the other hand, minor political parties and other groups representing such varied interests as prohibition, farm aid, the women’s suffrage movement, and labor federations spoke out in favor of the initiative (Schmidt 1989; Cronin 1989). Support for the instruments of direct democracy seems to vary inversely with the institutionalized power of the various interests, just as legislative support for the right to petition has apparently varied based on the extent to which the petition process has enhanced legislative power in different historical periods.²

²The case of prohibition illustrates how support for the initiative tended to vary with the amount of

The historical record seems to indicate that the initiative was viewed as a means of achieving the same functions that the Supreme Court associates with the citizens' right to petition the government. The statements of key political figures emphasize the use of direct democracy to make government more responsive to the public will. Republican Theodore Roosevelt said, "I believe in the Initiative and Referendum, which should be used not to destroy representative government, but to correct it whenever it becomes misrepresentative" (Roosevelt 1913). His Democratic contemporary, Woodrow Wilson, noted similarly, "The immediate thing we have got to do is resume popular government. We are cleaning house and in order to clean house the one thing we need is a good broom. Initiative and Referendum are good brooms" (Wilson 1913). Union leader Samuel Gompers saw the initiative and referendum as "a peaceful way to achieve union objectives, vastly preferable to costly, potentially bloody strikes" and young, urban, middle class Progressives saw these devices as a means of promoting new social and economic policies (Schmidt 1989). Midwestern and western farmers saw the initiative as a means of ensuring that the dislocations caused by industrialization would not leave them economically and politically impoverished (Hofstadter 1955). All of these proponents of direct democracy saw the initiative and the referendum as a means of reforming public policy when the institutions of representative government failed to address significant concerns of the public.

institutionalized power. The minor National Prohibition Party and most state prohibition movements endorsed the initiative, referendum, and recall devices at the turn of the century, seeing in direct democracy a means to promote prohibition. However the prohibitionists in North Dakota

When viewed in historical context, the right to petition the people through the initiative has a great deal in common with the Anglo-American tradition of the right to petition the government for redress of grievances. Forty years after Congress and the Supreme Court emasculated the right to petition government by denying any legislative duty to consider citizens' petitions, the proponents of the initiative (along with the referendum, the recall, and other reforms such as the secret ballot) promoted direct democracy as a means to make government more responsive to the people and to promote peaceful political change.

III. The Potential Impact of the Initiative Process

The initiative process certainly provides the *potential* to make government more responsive to the concerns and interests of the general public and to make the public aware of new concerns and minority points of view. By permitting groups and individuals to petition the public for the right to have the electorate decide almost any issue of public policy,³ the initiative makes it possible for underrepresented views and interests to be considered when the formal institutions of government fail to do so. The initiative has the *potential* to facilitate the adaptation of the political system to social and economic change. It could promote the peaceful adaptation of public policy to rapidly changing socio-economic conditions when "structure-induced equilibrium" makes it difficult for institutionalized government to respond to new problems, or leads government to

opposed these reforms, perceiving a threat to their movement since prohibition was already enconced in their state constitution (1989, 51-55).

shut out new ideas and “unpopular” points of view. The question is whether the initiative *does* serve these functions. Does the initiative provide an institutional means for interests under-represented in the representative institutions of government to make their voices heard?

Many scholars have noted the qualitative difference involved in the “direct democracy” of the initiative process as opposed to the representative democracy that is the hallmark of American democracy (Magleby 1995; Calhoun 1994, 1995; Collins and Oesterle 1995; Gamble 1997). The right to petition the people *directly* is qualitatively different than the right to petition the representatives of the people. The *Federalist Papers* clearly made the case for *representative* democracy as the surest means of protecting the rights of Americans. And, as previously mentioned, the concerns that are most often expressed about the initiative process today are that it may be abused by special interests at the expense of the public interest, or by groups who would promote their popular agendas at the expense of the rights of minority groups. The primary concern about direct democracy through the initiative process is still “Who governs?” and “To what ends?”

This research does not presume to judge the ends of various initiatives, to attempt to determine the extent to which the public policies they champion do or do not serve the “public interest.” Any such judgment would be quite subjective and certainly debatable. Nor will this study seek to categorize initiatives in terms

³Some states limit the subjects that initiatives may deal with. For instance, Mississippi prohibits initiatives to modify the state’s Bill of Rights or to change the state’s “Right to Work”

of whether they support or threaten minority interests or minority "rights." The initiative literature is clear on the fact that only a small percentage of statewide initiatives concern "rights" if one is speaking in terms of civil liberties or civil rights (Magleby 1989; Ranney 1978), and this author will leave it to the courts to determine whether particular initiatives do or do not infringe on the constitutional rights of various individuals or groups.

Through the investigation of the process by which the initiative agenda is set, this research does focus on who exercises power through the initiative process by setting the initiative agenda. As the review of the initiative literature in Chapter 3 discusses, wealthy special interests appear to have an edge in "shooting down" initiatives, and money plays a significant role in the *outcomes* of initiative elections. However, the literature does not adequately address who sets the initiative agenda. This research looks at the roles of the public, interest groups, institutional elites, the media, and policy entrepreneurs in setting the initiative in order to understand who uses the initiative process, when, and with what impact on the distribution of power in Colorado politics.

The data permit some conclusions regarding the extent to which the initiative in Colorado serves the agenda setting functions that the Supreme Court has recognized are served by the right to petition--particularly in terms of whether it makes state government more responsive to the general public and whether it makes the public and/or the government more aware of new ideas or minority concerns. This research demonstrates that, at least in the state of Colorado, the

constitutional provision (Constitutional Initiative in Mississippi: A Citizen's Guide 1996).

initiative process *does* have a different bias than the institutions of representative government. While there are clearly weaknesses in the initiative institution, especially in terms of the promotion of public *deliberation* of issues, the initiative does promote the consideration of different interests than those that predominate in the legislature. The initiative may, therefore, facilitate the adaptation of the state's political system, and perhaps even the national political system, in a rapidly changing environment.

IV. Research Design

The early advocates of the recognition of the "two faces of power," that is the power inherent in *nondecision* making as well as in decision making, recommend that research on political power and on agenda setting begin with the investigation of the "mobilization of bias" (Bachrach and Baratz 1962). In other words, it is necessary to understand the established political procedures and "rules of the game" in order to determine how individuals or groups are favored or handicapped by existing institutions. The agenda setting literature reviewed in Chapter 2 demonstrates an understanding of the biases of the conventional political processes that result from the rules and procedures followed by the representative institutions of government. The existing agenda setting literature accords different degrees of influence to institutional elites, interest groups, the media, policy entrepreneurs, and the public. The role of these actors in setting the policy agenda may vary, but the literature concludes that generally the most influential group is the institutional elites, who serve as the "ultimate guardians of

the formal agenda,” and the group with the least independent effect is the public, which generally responds to elite activity.

This paper seeks to determine the dynamics of the *initiative* agenda setting process. The research design facilitates a better understanding of the roles of these different actors under the rules and procedures of *direct* democracy, based on their roles in the Colorado initiative process. By determining the types of influence exercised by the various types of political actors in setting the initiative agenda, this research provides some insights into the extent to which the initiative process serves its originally intended purpose--to increase the role of the *general public* in setting the state policy agenda, either directly or by making *representative* government more responsive to the public. The existing agenda setting literature indicates that our pluralistic *representative* democracy tends to give short shrift to many majoritarian and non-institutionalized interests. This paper's investigation of the means by which the initiative agenda is set reveals the institutional bias of *direct* democracy. It examines which interests have the advantage under the initiative process.

The existing agenda setting research is largely based on interviews and case studies, with limited use of quantitative data such as that gathered from polls, records of newspaper coverage, and Congressional records. While in this study the “game” under investigation is *direct* democracy instead of *representative* democracy, the goal is still to determine where the power lies, to determine how the policy agenda is set. The forum has changed, but the political arena in which

initiative politics are conducted remains the same. Chapter 2's review of the agenda setting literature and Chapter 3's review of the initiative literature both point to the importance of the same types of political actors. The key is to examine the roles of these actors in making the decisions to escalate conflict, when to escalate conflict, and how those issues are framed.

This paper uses the complementary approaches used in the existing agenda setting literature. The conclusions from this study are primarily based on "elite" interviews with key state legislators, key bureaucrats from the legislative and executive branches, and initiative sponsors. In addition, representatives from a wide variety of interest groups that did *not* sponsor initiatives were sought out to provide insights into the rationale of interests that do *not* escalate conflict via the initiative process. The groups of respondents were selected for interviews based on their experience with and their knowledge of the initiative process in Colorado. Additional data--including the records of bills introduced in the Colorado General Assembly, campaign finance reports, newspaper coverage, public opinion polls, and voter turnout rates--are also examined for insights into the roles played by the various types of political actors and corroboration of interview data.

This research focuses on one state's experience over a limited period of time; it examines the use of the initiative institution in Colorado from 1992 to 1996. There are two primary reasons for this focus. First, as Bachrach and Baratz (1962) indicate, the rules and the procedures of a particular institution are key to the investigation of agenda setting. While the initiative processes in the 24 states

that employ the initiative have many similarities, they also have some distinct and significant differences (see Chapter 4). In order to draw valid conclusions from the data, it is essential for the researcher to have a complete familiarity with, and an appreciation of, the legal and administrative aspects of the relevant initiative process. Second, a qualitative, interview-based approach demands that the interviewer be knowledgeable about the topic of the interview (in this case the proposed initiatives), as well as to the context in which the policy exists (Lazarsfeld 1972; Weiss 1994; Kvale 1996). The span of three elections and six years provides a good variety of initiative issues, while still permitting the researcher to have a good understanding of the issues involved in each proposal and the social, political, and economic context, as well as the rules and procedures under which these policy proposals were proposed.

Of course there are weaknesses inherent in a research design that relies heavily on elite interview data, as well as the experience in one state over a relatively short time frame. First, because this research is based upon Colorado's experience from 1992 to 1996, the conclusions do not necessarily hold true over other time frames or in other states. Second, although there is a significant degree of standardization of interview questions, the lack of totally structured interviews does not allow precise comparisons among all of the respondents. The respondents do not comprise a random sample and, therefore, the data is not suitable for many forms of statistical analysis. And the lack of statistical analysis necessitates more interpretive, qualitative analysis.

However, the nature of the research questions and the lack of data on the initiative agenda setting process makes the heavy reliance on elite interviews necessary. The strength of relying on interview data and less-structured interviews is that it allows this author (and the reader) to learn about what the respondents think is relevant about the initiative process, in order to gain new insights into a phenomenon that has not been investigated. In this first effort at understanding the initiative agenda setting process this author has depended on elite interviews which are recognized as beneficial when "the interviewer is concerned with the discovery of facts and patterns rather than with measuring preselected phenomena" (Manheim and Rich 1991, 140). Exact quotes from the respondents are provided throughout this research, in order that the reader might better decide for herself whether the author's interpretation of responses was reasonable.

In addition, while the respondents in each category were not a *random* sample, they were selected to provide a *representative* sample, and other sources of empirical data are used in the examination of issues that come out of the interviews. Twenty-four out of 26 initiative sponsor whose initiatives made it on the ballot were interviewed, and their issues ranged from tax reform to animal rights to legalized gambling. And the representatives of interest groups that did not use the initiative includes groups concerned with issues ranging from child care to gun control. Furthermore, the interview data of different types of actors--from initiative sponsors to legislators and key bureaucrats--as well as the use of

official records--such as campaign finance reports and records of bills considered by the legislature--permit the corroboration of interview data.

This research comprises a first effort to understand the initiative agenda setting process. It provides data for theory building, constituting a first step in extending the analytical framework of agenda setting to an institution of *direct* democracy--the initiative.

A. Interview Data

The basic questions that this research seeks to answer are "How is the statewide initiative agenda set in Colorado?" and "Why do individuals and groups turn to the initiative process?" The primary source of data for this research, as in the existing agenda setting literature, is personal interviews. (See Appendices B and C for a list of individuals interviewed and the basic questions asked each group of respondents.) The unique nature of the initiative process facilitates the selection of the primary interviewees. Interview-based agenda setting research related to institutional policies (Kingdon 1984; Nelson 1984) has had to distill a list of interviewees from amongst a myriad of interest group leaders, elected officials, government bureaucrats, and media personalities who *may* have been involved in pushing a particular issue onto the formal, governmental agenda. And as Kingdon explains in his landmark work *Agendas, Alternative, and Public Policies* (1984), it is often not possible to speak directly with the "key" decision makers (221).

Recent Colorado initiatives, on the other hand, were sponsored by individuals who are easily identified as the “proximate cause” of the initiative agenda, and the identity of the individuals who are the official points of contact for each initiative is a matter of public record. Furthermore, with two exceptions the sponsors (or in a couple of cases key campaign workers) were available and quite willing to be interviewed about their experiences with the process. The number of officials in the state bureaucracy who have significant roles in the initiative process is very limited, and these individuals were also very forthcoming in interviews. Colorado state legislators were also quite open about their views of the initiative process and its impact on the General Assembly. The most difficult interviews to obtain were those with groups that had not used the initiative process in the period under study--the “dogs that didn’t bark” were [understandably] puzzled when they were asked “Why didn’t you ‘bark’?” and they were more reluctant to be interviewed.

While interview data provides the foundation for this study, each initiative is also a case study on the initiative process. Research on the initiative agenda setting process also poses some distinct advantages when it comes to case study research. In particular, initiatives are sponsored on such a wide variety of issues that it is perhaps easier to draw more generalizable conclusions on the initiative agenda setting process than it is to draw conclusions on the representative processes from the relatively few cases studied in most of the agenda setting literature (Cobb and Elder 1972; Kingdon 1984; Nelson 1984; Carmines and

Stimson 1989). During the period under study, 1992 to 1996, 26 initiatives were proposed on topics ranging from term limits and campaign finance reform, to banning the hunting of Black bears during the spring, and the prohibition of any “protected status” for homosexuals. The wide variety of issues makes the similarities amongst the various cases all the more noteworthy.

The following paragraphs describe the interviewee populations and summarize the foci of the interviews conducted with elected and non-elected “institutional elites” and with actual and potential initiative sponsors in the Colorado initiative process

1. Institutional Elites

Sixteen state legislators were interviewed regarding their views of the initiative process. Thirteen of the interviews were conducted with leading members of the Colorado House and Senate majority and minority parties in 1993 and 1994.⁴ These Republican and Democratic officials held leadership positions in both chambers of the legislature and are thus in a position to understand the effect of the initiative process on legislators and the institutions of the legislature. In addition, this author conducted three interviews with two former members and one current member of the Colorado legislature who also sponsored statewide initiatives during the period under study.⁵ Taken together these interviews

⁴This author is extremely grateful to Dr. Caroline Tolbert for sharing her data on interviews conducted with Colorado state legislators. Dr. Tolbert conducted these interviews in 1993 and 1994 as part of her dissertation research (Tolbert 1996). She deserves credit for both conducting the interviews and transcribing them. A list of the legislators she interviewed and the questions asked by Dr. Tolbert are provided in Appendix C.

⁵Three legislators who had sponsored initiatives that were interviewed included, former senator Terry Considine, former representative Ruth Wright, and current representative Barry Arrington.

examine the role of state legislators in the initiative process and the impact of the initiative process on the General Assembly's agenda.

In addition, the four bureaucratic officials who play key roles under the constitutional and statutory provisions of Colorado's initiative process--from the Legislative Council, the Office of Legislative Legal Services, the Attorney General's office, and the Colorado Secretary of State's office--were interviewed. The interviews with these key bureaucratic elites provide another perspective of the initiative process. Their comments provide additional "insider" views of how the initiative agenda is set. Each official plays an important part in the initiative process and the interviews shed additional light on questions regarding *when* the initiative process is used, by *whom*, and for what *types* of issues. Because each of these officials is also very active in the legislative policy making process, they are also in a position to see the impact that the initiative process has on the legislative agenda and vice versa.

2. Policy Entrepreneurs: the Initiative Sponsors

For the reasons noted above, this research focuses on one state's experience over three recent elections. Twenty-six statewide initiatives made it onto the Colorado ballot between 1992 and 1996. Interviews were conducted with the sponsors, or key campaign workers in two cases, of 24 of these initiatives. While these individuals were the "proximate causes" of each campaign, those who officially set the initiative agenda, the goal of the questions asked during the interviews was to determine what exactly led them to pursue

policy change via the initiative process in the first place. The questions were formulated to determine the sponsors' motivations for pursuing policy changes through the initiative process, their goals and expectations for the process, and the strategy they employed in their campaigns. Their answers help clarify the "why" and "how" questions that are the focus of this research. They relate to the roles played by various political actors in their decisions to escalate conflict via the initiative process, in determining the substance of their initiatives and initiative campaigns, and in determining the timing of their efforts. In addition, the sponsors were asked questions regarding their suggestions for improving the process and their explanations for the outcome of the elections. Their answers to these questions reveal a great deal about who the sponsors believe controls the initiative institution versus who controls the representative institutions of government.

The interview questions listed in Appendix B were asked of each of the interviewees, with a few exceptions when limited interview time did not permit some of the questions to be asked. The interviews varied in length from 15 minutes to over 3 hours, although most of the interviews lasted approximately 45 minutes to an hour. Most interviews were transcribed from audiotapes. All comments in quotations marks are exact quotes taken from the interviews. The vast majority of interviews were conducted in person, although several were conducted by telephone when the interviewee indicated that preference. My goal was to understand the *initiative sponsors'* views of the process, therefore the

prepared questions were as general as possible to get information regarding the sponsors' motivations, expectations, strategies, as well as their general views about the initiative process and representative government in Colorado.

3. Policy Entrepreneurs: Unsuccessful Initiative Sponsors and Non-Sponsors

Interviews were also conducted with 15 individuals who did *not* set the initiative agenda, but who might have done so. Ten individuals who started the initiative process but who either withdrew or were unsuccessful in qualifying their measures for the ballot, and six individuals who represent interest groups that were active in terms of lobbying the legislature but did *not* sponsor statewide initiatives during the period under study were interviewed regarding their experiences with and views on the process. The ten "unsuccessful" initiative sponsors were selected to represent a variety of issues proposed in recent years, ranging from insurance reform to making the possession of tobacco by minors illegal. The six "non-sponsors" were also chosen to represent a variety of interests, ranging from Mothers Against Drunk Drivers (MADD) to the Colorado Association of Commerce and Industry.

These interviews provide insights into why certain individuals or groups begin the process, but never finish, and why other groups don't go the initiative route even though they are actively involved in the legislative policy making process. While the interviews with the 23 sponsors of initiatives that were "successful"--in terms of making it onto the ballot and thereby setting the initiative agenda for the electorate--help explain when the initiative process *is*

used, the interviews with “unsuccessful” sponsors and “non-sponsors” determine more specifically when the initiative process is *not* used or is unsuccessfully attempted. In essence, these interviews comprise a set of “null cases” that help clarify the factors and the political actors that are determinative in the initiative agenda setting process.

B. Other Data on Ballot Initiatives

While the interview data provide some important information regarding the significance of the five types of political actors--institutional elites, interest groups, the media, policy entrepreneurs, and the public--additional information regarding these variables is also gathered from other data sources. Although the interviews indicate what the interviewees perceive to be the role of these actors, legislative records, campaign finance reports, newspaper coverage of the initiatives, and public opinion polls also provide important measures of their significance in setting the initiative agenda. These data provide a means of corroborating interview data.

1. Legislative Records

Official records of the bills proposed in the Colorado House and Senate are reviewed to determine the extent to which the General Assembly impacts or is impacted by the initiative agenda. These summaries are prepared by the Legislative Council of the General Assembly. This data reveals the extent to which the legislative agenda impacts the initiative agenda, or, conversely, the extent to which the initiative agenda impacts the legislative agenda. The records

of bills proposed in the General Assembly are examined for the year prior to and the year subsequent to each initiative to determine the direction of causality. A bill is considered to have been on the legislative agenda if the bill was assigned to a committee. These records demonstrate how legislative action or inaction affects the timing of initiatives.

2. Campaign Finance Records

Campaign finance records filed with the Colorado Secretary of State (Secretary of State 1992-1996) provide a measure of the influence of the various political actors in the initiative process. The records detail the sources of funds and the uses of funds by political committees organized in support of and in opposition to ballot measures. The sources of funds provide an indication of the breadth and depth of support for the various initiatives, and whether an initiative campaign is largely supported by an existing interest group or corporation, institutional elites, a handful of individuals, or large numbers of people from the general public. The uses of funds provide an indication of the significance of the media in initiative campaigns. In addition, the finance records allow a comparison of the composition of the issue committees organized on both sides of an issue. The unique nature of initiative politics permits the researcher to examine the nature of the support for and opposition to a specific policy proposal in a way that is not available to those who investigate public policy making in representative politics.

3. Public Opinion Polls and Newspaper Coverage

Public opinion polls provide a measure of the level of public support for change in public policy on the issues dealt with by initiatives. The earliest polls published on an initiative in one of the three major newspapers in the state provide an indication of “natural” or pre-existing support for policy change. The initiative literature (see Chapter 3) indicates that the vast majority of individuals are not familiar with what issues are on the ballot until the two weeks prior to the elections. Therefore, a poll response in support of an initiative is considered here to be an indication of the public’s support for policy change in an area, even if it may oppose the initiative when individuals find out more about the specifics of the initiative in the week or so before the election.

The amount of newspaper coverage on proposed initiatives by the leading state newspaper, *The Denver Post*, reveals a notable *lack* of coverage on most of the initiatives. It corroborates the legislators’ and initiative sponsors’ comments on the importance of finding alternative means of “getting the word out” to the public about the pros and cons of proposed measures. It clarifies why there is such an emphasis on paid media advertising by those who seek to control the way issues are framed for the public.

C. Summary of Research Approach

In summary, this research relies primarily on interviews with the initiative sponsors and institutional elites to determine what motivates individuals to turn to this institution of direct democracy to change public policy in Colorado, and to determine the significance of these political actors, as well as the public, interest

groups, and the media in setting the initiative agenda. Data from legislative records, campaign finance records, newspaper coverage, and public opinion polls provide additional insights into the process by which the initiative agenda is set and provide corroboration of interview data.

V. Preview of Chapters

Chapter 1 has explained the purpose of this research and the framework that is used to determine the initiative agenda setting process in Colorado. It explained the significance of agenda setting to the determination of “Who governs?” and to theories of political change. It examined the initiative as an agenda setting tool from a historical perspective, in order to develop a clearer understanding of the potential impact of the initiative process on the distribution of political power, as well as the potential impact of the initiative process on the broader processes of political change at the state and national levels. It also explained the research design, with a summary of what data is used and to what ends.

Chapter 2 reviews the agenda setting literature in order to understand the process by which the formal agenda is set under normal, representative political institutions. This review pays particular attention to several of the more general theoretical works on agenda setting, in order to understand the sequence of events and the influence exercised by different types of political actors. It discusses how the government agenda is usually dominated by institutional elites and interest groups that promote agenda change through the horizontal escalation of conflict.

Policy entrepreneurs acting on behalf of interest groups frame issues in order to make them appealing for members of the institutional elites to address.

Due to the limited “issue attention cycle” of both the public and the mass media, the public is generally a “slack resource” that is part of the environment in which agenda change occurs, rather than a significant determinant of agenda change. The timing of agenda change is a function of the purposive actions of interest groups, and it is guided by the concerns and interests of elected and appointed public officials. Interest groups provide the impetus for agenda change, but the institutional elites are the ultimate guardians of the governmental agenda. They determine whether the government will address a particular issue, when the government will address an issue, and the ultimate form that the government’s response will take.

Chapter 3 examines the literature on the citizens’ initiative, one of the institutions of direct democracy. Like the agenda setting literature, the initiative literature focuses on who exercises power in the political process. However, this body of literature has neglected to consider the crucial agenda setting stage of the policy making process. This review examines what the existing literature reveals about the actors that are influential in the post-agenda setting stages of the initiative process, and it examines what is known about how the three important agenda setting concepts identified in the agenda setting literature—conflict escalation, issue framing, and timing—apply to the initiative process. It reveals that there are significant gaps in the research regarding what types of groups or

individuals use the initiative to escalate conflict, when they do so, and what influences their framing of the policy proposals forwarded to the public via the initiative.

Chapter 4 discusses the major differences in the initiative institutions that exist in different states, as well as the specific requirements of Colorado's initiative process. The comparative view of this institution demonstrates how the specific legal provisions associated with the initiative determine the extent to which an initiative actually does permit individuals and groups to "bypass" the representative institutions of government. The examination of the constitutional, statutory, and regulatory provisions reveals some insights into the "mobilization of bias" of this institution in Colorado, and permits an overview of the influence of various political actors due to institutional constraints.

Chapters 5, 6, and 7 examine what the data reveal about three critical elements of agenda setting—conflict escalation, timing, and issue framing—in the initiative process. Chapter 5 discusses how the initiative process is used for both horizontal and vertical conflict escalation. Interviews with both legislators and initiative sponsors reveal that the initiative is sometimes successful in "forcing" the legislators to address issues that they tend to avoid. In particular, both of these groups noted that the initiative process is a useful tool to address "conflict of interest" issues and "hot potato" issues that concern the legislators' powers as elected officials and the legislators' political careers. Chapter 5 provides some

answers about how the initiative agenda is set and why initiative sponsors turned to the initiative process.

Chapter 6 reveals that the sponsors' perceptions of public opinion are the key factor in determining the timing of initiatives; it addresses in more detail why certain groups turned to the initiative process at a particular time. Initiative sponsors turned to the initiative after they perceived that their concerns would not be dealt with, or fairly dealt with, by the legislators. Leadership and volunteer support were also considerations, and several sponsors indicated that, if they were to sponsor another initiative, they would seek more sources of financial support ahead of time. However, the main factor that determined when a group would choose to escalate conflict, either horizontally or vertically, was the sponsors' assessments that public opinion was on their side, and the public would support their proposed policy changes.

Chapter 7 further examines how the initiative agenda is set. It notes that while the initiative sponsors have absolute control over the form their initiatives take, the institutional elites have a significant role in framing the public's perceptions of initiatives through their control over ballot titles and the state-prepared voter information pamphlets ("Blue Books"). Contrary to a common assumption, interviews with initiative sponsors revealed that the substance of the initiatives themselves, the wording and the specific framing of the policy proposals, is a result of compromise. Specifically, the initiative sponsors draft their measures in order to appeal to existing public opinion, always keeping in

mind what the arguments of any organized opposition are likely to be. Because they seek to escalate conflict to the public, or to escalate conflict horizontally by *threatening* to bring in the public, the public is uppermost in their minds when sponsors frame the initiatives.

Several sponsors demonstrated the most concern about the legislators' ultimate control over the Blue Book language. This pamphlet is mailed out to the household of every registered voter in Colorado, and these sponsors believed that the legislature, that they sought to circumvent by using the initiative process, were biased against their measures and that their bias was visible in the Blue Book language. Because the news media devote little coverage to most of the measures, the Blue Book language and paid advertising campaigns were key concerns of the sponsors. The sponsors were particularly concerned with having the funding to counter advertising campaigns by organized opposition through their own advertising in the mass media. However, the advertising by both proponents and opponents was heavy on emotion, light on substantial discussion of the issues entailed in the initiatives.

The conclusion, Chapter 9, summarizes how the initiative agenda is set in Colorado and why individuals and groups turn to the initiative to forward their policy proposals. This chapter compares and contrasts the processes by which the initiative agenda and the formal government agenda are set. The initiative process in Colorado is generally *not* a top-down process. While the sponsors are political activists, only a small percentage of initiatives were sponsored by institutional

elites. The initiative is primarily used by individuals and groups from outside of government who lack clout in the legislature, and it is usually used *after* the sponsors discover their political impotence in the legislative process. The sponsors of the initiatives perceive the Colorado General Assembly to be unresponsive to the general public on issues due to legislators' "conflicts of interest" or unwillingness to handle political "hot potato" issues. In all but a few cases the sponsors expected their initiatives to pass, and their comments revealed that the initiative process, while often used to propose new ideas and policies, is most conducive to the proposal of majoritarian policies rather than policies that aim to benefit a select few. Direct democracy in Colorado is used to escalate political conflicts to the level of the general public, or to threaten to escalate to the public, when the majority of the public is believed to support the policies of the "losers" in the legislative process.

Finally, the epilogue discusses some of this author's suggestions for reforming Colorado's initiative process, to increase its ability to promote more deliberation on the part of the public and the legislature.

In summary, in Colorado the availability of the alternative *initiative* agenda for changing public policy seems to facilitate political change by broadening both the public and the formal, governmental agendas. This institution is conducive to interests and issues not favored in the representative institutions of government, but that *are* favored by the majority of the public. This alternative agenda allows groups and individuals to publicize issues that the

legislature is unable to address, or to propose policies that the legislature is unwilling to consider due to the existing “mobilization of bias” within the legislature.

In terms of the existing agenda setting literature, this research demonstrates that in Colorado the initiative process serves as an alternative venue. It facilitates the ability of a variety of interests, that are largely majoritarian in nature, to make it onto an alternative agenda when these interests are, or perceive themselves to be, “shut out” of the legislative process. Compared to the representative institutions of democracy, the initiative is a very different type of institution with a very different mobilization of bias. By facilitating the expansion of the scope of political conflict, it provides a means for majoritarian interests to make it onto the agenda, thereby “opening up” Colorado’s democratic political process. It broadens the spectrum of interests represented in the pluralistic political system.

Finally, in the epilogue the author presents some of her conclusions regarding the extent to which the initiative process facilitates a “more self-regulating and gradualist model of political development” (Dodd 1994). This section considers the degree to which Colorado’s initiative process serves the beneficial agenda setting functions that the Supreme Court has associated with the right to petition. The author discusses the shortcomings of Colorado’s initiative process as a tool of deliberative democracy, as well as potential “fixes” to deal

with those shortcomings that are not inevitable due to the mobilization of bias of an institution of direct democracy.

Chapter 2

A Review of the Agenda Setting Literature: How the Formal Government Agenda is Set Under the Institutions of Representative Government

As Kingdon (1984) explains, the agenda setting process begins with the efforts of individuals and groups to make it onto the agenda of issues receiving the attention of the government, and it extends to the setting of the alternatives for governmental action being considered to deal with an issue. The agenda setting literature focuses on the sources of power and influence in the context of the representative channels of American government. It derives from critiques of pluralist democracy and builds upon earlier research on the relationships between public opinion, the public interest, the media, and public policy (Lippman 1922; Schattschneider 1960; Cohen 1963). This literature emphasizes a stage in the policymaking process which is often overlooked, the stage in which the “decision to decide” is made.¹ As critics of pluralist theory recognize, the ability to control which issues are even subject to debate is as important as the ability to control the policy debates which follow, if not more so (Lowi 1967; Berry 1984; Walker 1991). Power is exercised through “non-decisions” too (Bachrach and Baratz 1962).

This chapter will provide an overview of the agenda setting literature, reviewing the methodologies and the major findings of the research. The first part of this chapter demonstrates the various methodologies that are useful to agenda

¹The agenda setting stage of the policy making process is not entirely missing from other approaches to political analysis--such as the systems, power, decision-making, and interest group

setting research and that have led to a great deal of consensus on how the government agenda is normally set.² The second part of this chapter addresses three elements of the agenda setting process that are key in the literature--namely conflict escalation, issue framing, and timing--and that are integral to an understanding of the policy agenda setting process. Following this discussion, part three reveals the roles that key political actors--institutional elites, interest groups, the media, policy entrepreneurs, and the public--play in "normal," representative government, as a result of the different actors' motivations and institutional constraints. It therefore provides a baseline for comparison of the influence exercised by the public in setting the governmental agenda through representative and through direct democracy. This chapter concludes with an overview of the process by which the formal, government agenda is set. This section summarizes the major conclusions of the literature and discusses the implications for the distribution of political power and influence in setting the agenda of our representative government.

The existing agenda setting literature, although based on *representative* political processes, identifies variables and principles that are likely to be important to the analysis of agenda setting via *direct* democracy. It describes the

approaches--however, the focus of most research is the period of time after the "decision to decide" has already been made. (See Cobb and Elder 1972.)

²Throughout this paper I will refer to the formal governmental agenda although there are in reality many different agendas within the various branches and levels of the government. To be "on the agenda" signifies that an issue is actively being considered by one or more governmental institutions.

conventional agenda setting process that the initiative process is either complementing or competing against.³

I. Agenda Setting Research Methods

The following literature review will pay particular attention to the more general theoretical works on agenda setting, including Cobb and Elder (1972, 1983), Kingdon (1984), Carmines and Stimson (1989), and Baumgartner and Jones (1993). While more specifically focused research on the agenda setting process is discussed where it helps to clarify a particular concept or point, concentrating on these works that examine the general policy agenda setting process facilitates comparisons of findings across methodologies and across different types of policies.

While these four works present general models of agenda setting, they have different emphases. Cobb and Elder (1972,1983) focus on agenda setting as a means of determining the linkages between the mass public and elite decision makers in our democratic system. Carmines and Stimson (1989) and Baumgartner and Jones (1993) describe their works as inquiries into the processes of political change, although Carmines and Stimson focus on agendas in partisan politics, while Baumgartner and Jones focus on agenda change across a broad range of policies at the federal government level. Finally, Kingdon's (1984) research is the most general attempt to determine "why certain issues receive

³The agenda setting literature can be divided into three subfields based upon the different research foci--the policy agenda, the public agenda, and the media agenda (Rogers, Dearing, and Bregman (1993); Kosicki (1993). Because I seek to determine how a *policy* agenda is set, the following

governmental attention and others seemingly of equal merit are ignored or bypassed by the decision-makers at all levels of government” (1983, 63).⁴

Partly as a result of the different research emphases, these works employ different research methods. Cobb and Elder (1983) develop their conclusions on the significance of problem definition and escalating conflicts to the mass public based on group and conflict theories. In order to demonstrate how pluralist theories shortchange the influence of the public, they use short case studies to illustrate how groups reframe issues in an attempt to move an issue to the public agenda, with conflict escalation helping to promote consideration of that issue on the formal, governmental agenda. Carmines and Stimson (1989) apply the biological theory of evolution to the study of one issue, race, across fifty years in American history. They examine racial politics across many different contexts, in order to demonstrate how evolutionary theory applies to issues much in the same way it applies to biological species. These two works apply existing theory to the study of agendas. They establish new ways of looking at the policy agenda setting process and use particular cases to illustrate their models rather than to deduce the models.

review of the literature will focus on the policy agenda setting literature; four major theory-building works are emphasized.

⁴The research has primarily focused on agenda setting at the federal government level, rather than on the state or local level. For example, even when Baumgartner and Jones (1993) address “urban problems,” they do so in the context of the formal agenda of the national government. However, due to the similarities between the institutional framework of national and state governments—with a reliance on republican governments, the separation of powers, and a system of checks and balances—it seems likely that to a great extent the conclusions of the literature would also apply to the states. The data from interviews with Colorado legislators (see Chapter 5 of this work) seems to indicate that this is, indeed, the case in Colorado.

Kingdon (1984) and Baumgartner and Jones (1993) develop models of the policy agenda setting process based on case studies, interviews, and the analysis of quantitative measures. Kingdon studies two types of national policies, transportation policy and health policy, across several years. He deduces his model of agenda setting, with change resulting from the convergence of three independent process streams--problems, policies, and politics--from interviews of governmental and non-governmental participants in the health and transportation policy communities. Finally, Baumgartner and Jones study several types of public policies--ranging from urban affairs and child abuse to nuclear power and auto safety--over long periods of time, comparing the development of issues over time and across areas. The combination of the longer time frame and several different types of policies permits the use of quantitative data, such as news media coverage and records of Congressional hearings, to provide objective measures of changes in the environment and in the formal agenda. The quantitative data compliments their qualitative, historical analysis and makes their conclusions particularly convincing.

All of these methods are logical approaches to the examination of the agenda setting process, although the extensive empirical evidence and broader range of issues studied in Kingdon's (1984) and Baumgartner and Jones' (1993) research lends an even greater amount of credence to their conclusions. The following discussion of this literature's findings on key variables in the process reveals that the different methods and different policies examined have led to

some relatively minor inconsistencies in conclusions. However, these “inconsistencies” seem to largely reflect the fact that the agenda setting process varies under different conditions. There is no one, set route to the government agenda. Still, this literature reveals that there is a predominant route through which issues make it onto the formal agenda of our representative government, and it reveals that there is a general pattern in terms of the influence exercised by the different types of political actors in the agenda setting process. There are also common conclusions regarding why issues are framed in certain ways and why certain issues appear on the agenda at certain times.

II. Key Elements of the Agenda Setting Process

Three concepts are central to the policy agenda setting literature: conflict escalation, issue framing, and timing. Schattschneider’s (1960) concept of “conflict escalation” figures into much of the policy agenda setting work, with its emphasis on political competition for control of the policy agenda. Those who seek agenda change must escalate a conflict to a broader audience. Issue framing and timing are also integral to the agenda setting literature. Policy entrepreneurs and the media promote new issues or new understandings of old issues, by framing the issues in a manner that appeals to their “audiences.” And the concept of timing is key to the agenda setting research that seeks to understand what precipitates agenda change.

A. Conflict Escalation

Schattschneider's (1960) concept of "conflict escalation" is central to the policy agenda setting research. It is also closely linked to the framing of an issue. For example, the works of Cobb and Elder (1972, 1983), Downs (1972), Carmines and Stimson (1989), Stone (1989), Riker (1993), and Baumgartner and Jones (1993) are all concerned with the efforts of political actors to escalate conflict, to encourage "bystanders" to weigh in on an issue, by defining or redefining an issue. However, the literature differs in the significance attributed to escalating conflict to the mass public versus escalating conflict to other arenas.

Cobb and Elder (1972) assert that while there are different ways in which issues can make it to a formal, government agenda, the *surest* way is to involve the mass public. When the "mass public" is mobilized on any given conflict, it is able to determine the "selection and resolution of the major issues that a government will confront" (Cobb and Elder 1983, xi).⁵ That is, if the general public becomes highly concerned about an issue, the normal institutional impediments to change can be overcome. Baumgartner and Jones (1993) portray a similar role for the public, noting how through its sporadic interest in new (or redefined) issues, the public "hinders the stultifying and self-serving incrementalism that could result if issues were permanently of interest only to the

⁵Cobb and Elder (1972, 103-109) provide the following definitions for various publics, ranging from the narrowest and most politically involved to the broadest and least involved. Identification groups are made up of individuals who identify their interests generally with those of that group or that have a persistent sympathy with its generic interests. Issue publics are informed about and interested in specific issues. The attentive public is generally informed and concerned about public affairs. The mass public refers to the general population or a large portion of the population.

same groups" (250). However, they emphasize that a great deal of conflict escalation involves more horizontal escalation or "venue shopping" rather than an appeal to the general public. For example, groups whose interests are effectively shut out by a congressional committee that has jurisdiction over an issue will attempt to reframe the issue to "escalate" it to other committees, in hopes of receiving more favorable consideration in the new venue.

Carmines and Stimson (1989) and Kingdon (1984) also recognize the vertical escalation of conflict to the public as a significant factor in agenda setting politics. However, they emphasize that the public usually plays a more passive role. The chain of causality is described as running primarily from the elites to the public. For example, Carmines and Stimson portray "strategic politicians" as escalating issues to the public, however the issues are secondary to the politicians' primary concern--gaining electoral advantage. They seek to strike a "responsive cord" in the mass public with issues calculated for electoral advantage. And Kingdon notes that while there are probably occasions in which the public agenda does drive the official agenda, public opinion is often so broad and amorphous that it generally cannot be said to lead the institutional agendas.

The differences in conclusions about the level that issue conflicts are escalated to are the result of the different types of policies examined in the different works. Cobb and Elder illustrate their model of agenda setting with highly publicized cases where groups sought to focus the national public on the issues. Kingdon, and Carmines and Stimson deal with issues that were not as

likely to command the public's attention--national transportation and health policy in the 1970s on the one hand, and race politics in the first half of the 1900s on the other. Baumgartner and Jones' finding that conflict escalation may be vertical (to a broader public) *or* horizontal (to another venue at the same level of government), is based on the broadest spectrum of policy types, and for that reason is the most credible.

In those cases where an entrepreneur does seek to escalate a conflict to the public she will have to engage the public's interest, and some *types* of conflicts are more likely to draw the interest of the public than others. Cobb and Elder (1983, 110-129) outline several propositions linking issue characteristics and conflict expansion, propositions that have a great deal in common with the types of issues the news media prefer to report on (see the following discussion of "issue framing"). The public is more likely to be "involved" in a conflict, to be aware that an issue is contested and to hold a positive or negative view of the issue themselves, when an issue:

- is broadly defined so that everyone can find in it a cause with which they identify;
- concerns a majority or a substantial segment of the population;
- has long-term implications, beyond the exigencies of the immediate situation;
- is non-complex and non-technical;
- lacks a clear precedent, and;
- develops rapidly and has emotional appeal.

Issues which do not meet some or all of these criteria are less likely to mobilize the mass public. For example, a debate about the fluoridation of drinking water involved an issue not easily understood by many, without a clear, long-term effect, and without emotional appeal; as a result, it was not conducive to escalation to the mass public. On the other hand, a strike by California grape workers who were denied the right to unionize was much more conducive to conflict escalation. It involved a broadly-defined issue--worker's rights, or even civil rights, it was easily understood by the public, and it had emotional appeal, particularly when it involved "newsworthy" events such as an organized march on the state capitol and a grape boycott supported by unions across the nation.

However, on most issues the mass public is less active, less interested, and less-informed than more specific publics, such as "identification groups," "issue publics," or the "attentive public" (see footnote number 5). The attention and concern of the mass public is limited in terms of scope as well as duration. Furthermore, because public concern tends to be ephemeral, politicians can often avoid a politically-disadvantageous issue by waiting out the "issue attention cycle" of the public and the media (Cobb and Elder 1972; Downs 1972; Carmines and Stimson 1989; McCombs and Zhu 1995). Carmines and Stimson note how even an issue such as the civil rights of a significant portion of the citizenry were avoided decade after decade. Reports of questionable contributions to various elected officials' reelection campaigns may have made campaign finance reform a "hot" issue several times over the past two decades, but while national campaign

finance reform has been discussed at length, proposals for significant reform are blocked from consideration on the floor of the Congress. A by-product of the fleeting interest of the public is that its influence on public policy is limited. Most policy decisions are made within established policy subsystems. Baumgartner and Jones (1993) discuss how the *potential* for general public mobilization provides a check on those in government. Nevertheless, in their model of "punctuated equilibrium," "the American political system is a mosaic of continually reshaping systems of *limited* participation" (emphasis added, 6).

In summary, the concept of conflict escalation is integral to the agenda setting literature. Those organized on either side of an issue attempt to frame issues in order to escalate conflict, or to avoid conflict escalation. While much of the agenda setting struggle takes place below the level of the mass public, groups that are shut out of established policy subsystems may find that the only way to get onto the formal government agenda is to do so by way of the mass public agenda. However, the public has a very limited agenda capacity, with the result that "hot" issues come and go. Government officials may choose to "wait out" public concern on an issue on which they are reluctant to act, or they may respond in a symbolic fashion. For example, committee hearings may be held on campaign finance reform, but no significant reforms are forthcoming. As a result, the public's influence on the formal agenda is limited; narrower, organized interests are usually more influential in controlling both the policy agenda and the programs established to deal with specific issues. In other words, pluralism

generally characterizes the agenda setting stage of our policy making process, as well as the decision-making processes under representative government. The mass public has the *potential* to influence the government agenda, but in practice its influence is limited. Issue publics/interest groups are the primary competitors in an arena refereed by institutional elites.

B. Timing

Inasmuch as “problems” are social constructs defined by beliefs and values, problems--and the ability to expand a particular conflict--are a function of a certain place and a certain time. Timing is central to agenda setting research because the central question is not so much “What is on the agenda?” as it is “Why is “X” on the agenda at this time?” The centrality of time is particularly evident in the policy agenda literature’s use of terms such as “triggering devices” (Baumgartner and Jones 1993; Cobb and Elder 1972; Birkland 1997), “windows of opportunity” (Kingdon 1984; Baumgartner and Jones 1993; Birkland 1997), “evolution” (Carmines and Stimson 1989), and “cycles” (Downs 1960). Implicit in all of these terms is the idea that certain actions, events, or conditions precipitate change or make the environment conducive to change. A central concern of the agenda setting research is to demonstrate why an issue’s “time has come,” to determine the factors that precipitate agenda change.

While the agenda setting literature recognizes that objective changes in the environment may be significant in determining agenda change, a major point of the literature is that while environmental changes--from natural disasters to

economic downturns--may serve to focus attention on an issue, it inevitably requires the efforts of human beings to push an issue onto the policy agenda. The consensus in the literature is that changes in the environment, whether they be political, social, economic, or physical changes, are part of the "triggering" mechanism (Cobb and Elder 1972; Kingdon 1984; Carmines and Stimson 1989; Baumgartner and Jones 1993; Birkland 1997). However, these changes in objective conditions must be linked with the efforts of individuals who actively promote policy change, and who define issues in a way that focuses attention and calls on the government to deal with the "problem." As Birkland (1997) notes in his study of disasters as focusing events:

Ultimately, a focusing event is focal only if an interest group or several groups--some of which may form into advocacy coalitions--are available to react to the event. If no group exists to react to the event, the event will fail to gain more than passing attention (43).

The timing of agenda change is, therefore, determined by the intentional acts of human beings in conjunction with the policy environment. Policy entrepreneurs, "advocates for proposals or for the prominence of an idea" (Kingdon 1984, 129), wait for an opportune time to push their issues onto the agenda. Furthermore, Carmines and Stimson (1989) and Baumgartner and Jones (1993) demonstrate that the policy entrepreneur who promotes a particular policy position often acts independently of objectively measured changes in the environment. The "triggering event" or "focusing event"--the change in the environment--may occur well after or long before an entrepreneur has begun to mobilize in favor of a proposed policy change.

The literature is clear on the point that agenda access is not gained just because a significant problem exists. Kingdon (1984) describes policy “windows” as opening:

...because of change in the political stream (e.g. a change of administration, a shift in the partisan or ideological distribution of seats in Congress, or a shift in national mood); or it opens because a new problem captures the attention of governmental officials and those close to them (176).

The election cycle creates predictable “windows of opportunity” (Kingdon 1984; Carmines and Stimson 1989; Baumgartner and Jones 1993). Groups and issues vie for the attention of strategic politicians who, in turn, seek an issue that both “strikes a chord” that resonates with the public *and* enhances their political fortunes. On the other hand, windows of opportunity that result from new problems or shifts in the mood of the public are unpredictable. Kingdon concludes that agenda change is *most* likely when there is a convergence of politics, problems, and the availability of policies that appear capable of solving those problems.

In summary, the literature agrees that it takes purposive human action in order to get a new issue onto the agenda. An “event” becomes an “issue” for sustained public concern only after it has been framed by a policy entrepreneur--such as a reporter, a politician, or an issue activist--in a manner that focuses the public’s attention and makes corrective action seem necessary and possible. There may be particular periods of time in which political or social conditions are more conducive to change, for example during election years or after a

cataclysmic event. However, agenda access is ultimately achieved through the efforts of individuals acting on behalf of themselves or others. Timing of agenda change is largely determined by the efforts of policy entrepreneurs and the “strategic politicians” they seek action from.

C. Issue Framing

One way that policy entrepreneurs push an issue onto the agenda is to frame or reframe it in terms that make it more likely to receive the consideration. The framing of an issue relates to the terms and symbols invoked in explaining the substance of an issue. Cobb and Elder (1983) note that:

Policy problems are socially constructed. They arise not so much from events and circumstances as from the meanings that people attribute to those events and circumstances. Whether or not a situation is considered a public problem and what the problem is, if there is one, depends upon not just facts but upon beliefs and values--beliefs and values that determine what is taken to be fact, what facts are considered relevant, and how those facts are interpreted (172-173).

Problem definitions are also very much *political* constructs. As Stone's (1989) widely-cited article on “causal stories” explains, political actors seek to get an issue onto the public agenda or to keep an issue off the public agenda through the deliberate use of language and symbols. Individuals and groups engage in a battle of issue definition, with one side seeking to portray a problem as the result of intentional human actions (and thus meriting intentional corrective action), while the other side seeks to portray the same problem as the result of nature or as an unintended (and therefore not necessitating a policy response). The framing of

an issue often determines whether the public expects the government to take action on a “problem.”

Issue framing also determines who “owns” a problem and, as a result, the types of action that will be considered to deal with the problem. As Kingdon (1984) stresses, the agenda of issues addressed and the agenda of alternatives considered to deal with those issues can involve different actors. The literature demonstrates the significance of the mass media’s framing of issues, both to attributions of responsibility (Iyengar 1991) and to the public’s and the policymaker’s perceptions of the significance of various issues (Gitlin 1980; Linsky 1986; Hallin 1987; Bosso 1989). For example, Linsky (1986) describes the political “fall-out” from a 1977 front-page article about “neutron killer warheads.” Despite the fact that the government had been developing these “enhanced radiation” nuclear warheads for over twenty years, the new “killer” label led to heated and emotional Congressional hearings and significant changes in foreign and military policy. Baumgartner and Jones (1993) discuss how the shift in media emphasis from the economic boons of “atoms for peace” to the potential safety hazards of nuclear reactors encouraged an expanded roster of local, state, and federal actors involved in the oversight and regulation of the nuclear power industry.

Baumgartner and Jones also emphasize the impact of the media’s business concerns on their focus and framing of issues. The media is attracted to certain

types of issues and tends to package all issues in certain ways that appeal to their audiences.

Finally, the media must sell. Not only must reporters simplify often complex arguments of specialists so that the general reader or viewer may understand them, but they need ultimately to make things interesting enough to maintain sales and viewerships (1993, 103).

As a result, the media like to report on spectacular events and conflict, and they tend to package stories in ways that people can readily understand--such as presidential "horse races." Sinclair's (1989) examination of recent changes in the US Senate and Cook's (1989) examination of the impact of the news media on members of the House of Representatives also delve into this framing-related by-product of the mass media coverage of the policy making process. Both authors found that the media's predilection for issues that can be framed in certain ways leads our elected representatives to concentrate on certain types of issues. As Cook says:

The trade-off is that for legislators and the issues that concern them to receive coverage, they may have to choose issues that fit reporters' requisites--fresh, clear-cut, easily synopsisized, affecting as large a portion of the news audience as possible, and packaged with reforms that seem able to resolve the problems (121).

Issues that do not meet these criteria are less likely to make it onto individual representatives' agenda, and, hence, onto the legislative agenda. Cook notes that efforts to deregulate the trucking industry or to establish a coherent national industrial policy are likely to be shunned by members of Congress; they aren't

likely to generate much public interest, and they *are* likely to generate a great deal of opposition from entrenched interests (122).

Other research has identified another source of the framing bias of the mass media that can also influence the policy making process. Gitlin (1980) and Hallin (1987) note that the media, through their attempts to preserve “disinterested professionalism,” have a tendency to frame issues in terms of strategy, effectiveness, and technique. In an effort to remain politically neutral the media reports on “horse-races” instead of the issues of political campaigns. They may cover superficial information, such as “body counts,” instead of probing into the more significant aspects of issues, such as critical assessments of the justifications for war. These works point out how the media’s attempt to remain “objective” results in a framing bias that often excludes the discussion of the *ends* of policy from political discourse. As a result, the mass media may keep controversial issues off the agenda or avoid the controversial aspects of an issue (Gitlin 1980; Hallin 1987).

In summary, issue framing is critical to agenda setting. How an issue is defined determines whether the public or elites perceive a “problem” requiring corrective action. How a problem is framed will also determine “problem ownership,” that is, what governmental or private organization is deemed to be the legitimate problem-solving authority. This “problem ownership” will, in turn, have a significant effect on what policy alternatives are considered to be potential “solutions” by the elected representatives of the people. In addition, the media’s

desire for stories that can be framed in certain ways, combined with our elected representatives' desire to receive credit through media exposure, appears to promote certain types of problems on the legislative agenda and to lead our elected representatives to shy away from issues less likely to generate public interest. Finally, the media may unintentionally limit the scope of its influence and the scope of political discourse through their avoidance of potentially controversial issues in their attempt to remain "objective."

III. Key Actors in the Agenda Setting Process

Recognizing that agenda change results from the purposive actions of individuals, the agenda setting research examines the roles played by several types of political actors in setting the formal, governmental agenda. Even though the focus of the policy agenda setting research has varied--from Cobb and Elder's (1972) emphasis on the public's political participation to Carmines and Stimson's (1989) emphasis on political parties to Baumgartner and Jones' (1993) emphasis on the broader processes of political change--there is a significant amount of overlap in terms of the various works' assessments of how the official governmental agenda is set. Indeed, Baumgartner and Jones' work explicitly incorporates much of the substance of earlier works. Their book expands upon the earlier research, noting how it fits into a more comprehensive, institutionally-focused theory of political stability and political change. The following review of the agenda setting literature's assessments of the roles played by the different political actors reveals that there is a great deal of consensus about the influence

of the various actors in the formation of the formal policy agenda, although there are some areas of disagreement that seem to result from the different cases studied by the different authors.

Five types of political actors are repeatedly discussed in the literature as potentially key players in the agenda setting process--the institutional elites (elected officials and key appointed public officials), interest groups, the mass media, policy entrepreneurs, and the mass public. There is a remarkable amount of agreement regarding the influence exercised by these different actors in the agenda setting process. Table 2.1 briefly summarizes the major points in the following discussion of the literature's conclusions on the influence exercised by each type of actor in the conventional channels of policy making, that is through the representative channels of government that have been the focus of agenda setting research.

[Table 2.1 about here]

A. The Institutional Elites

The consensus in the policy agenda setting literature is that institutional elites--the elected representatives of the people and key appointed officials--are the

“ultimate guardians” of the governmental agenda. That is, these elites determine whether or not the government will even address an issue. This is the conclusion of literature that varies in focus from the general studies of agenda setting (Cobb

and Elder 1972; Downs 1972; Kingdon 1984; Carmines and Stimson 1989; Baumgartner and Jones 1993) to institution or issue-focused studies that discuss

Table 2.1
Political Actors' Roles in Setting the Formal Agenda
Through the Representative Governmental Process

ACTORS	MOTIVATIONS	ACTIONS	INFLUENCE ON AGENDA
<u>Institutional Elites</u> - Empowered - Seeking power	- Empowered elites seek to maintain current agenda that empowers them - Those lacking inst'l power seek a new basis of competition through new issues	- Stress how current policies/institutions adequate to deal with issues - Stress how new policies/institutions required to deal with new issues	Ultimate guardians of the official agenda; elites seeking to enhance power introduce new issues, but majority of elites determine if and when issue will be added to official agenda
<u>Interest Groups</u> - Entrenched Interests - New Interests	- Entrenched interests seek to maintain status quo policies by blocking agenda change - New/unempowered groups seek to change policy by promoting agenda change	- Stress current issues and current framing of issues - Promote new issues or new framing of old issues	Conflicting interest groups draw the attention of institutional elites, as they seek to escalate issues/block the escalation of issues; promote specific framing of an issue
<u>Mass Media</u>	Seek to maximize audience/readership	Publicize dramatic, clear-cut issues that are of interest to a large part of their publics; constant search for new issues to attract audience/readers	Largely a conduit of information and issue framings; focus public/elite attention on issues for short periods of time
<u>Policy Entrepreneurs</u>	Seek policy change via agenda change	Frame/reframe issues; shop for receptive policy venues; couple problems and solutions	Efforts lead elites to consider new issues/agenda change; promote specific framing of an issue
<u>Mass Public</u>	Primarily concerned about issues that affect it directly; only passing concern about other issues such as those that command attention due to emotional impact	Except on issues that affect them directly, short "issue attention cycle" leads members of public to pay attention to most issues for short period of time	Public opinion, beliefs, values set broad constraints on agenda and policies; infrequently, public's sustained interest may escalate an issue to the formal agenda

Source: This author's synthesis of major agenda setting works, particularly Cobb and Elder (1972), Carmines and Stimson (1989), Kingdon (1984), and Baumgartner and Jones (1993).

the agenda setting process (Nelson 1984; Cook 1989; Sinclair 1989). Because the research considers the formal, governmental agenda, elected officials and their appointees almost by definition control access to the agenda. The real question is the extent to which other political actors can influence these institutional elites. How much freedom does this group of actors enjoy in determining the issues that will be the topic of formal governmental consideration? The literature concludes that elected officials and their appointees have a great deal of discretion in determining agenda access.

Cobb and Elder (1972/1983) discuss how the American public can exercise significant political influence just by virtue of its interest in various issues. Organized interests compete for access to officials. They note, however, "For an issue to attain agenda status, it must command the support of at least some key decision-makers, for they are the ultimate guardians of the formal agenda" (1983, 89). And at least in terms of the well-publicized group conflicts they consider, organized interests compete for access to the public officials who have "considerable freedom to choose among the plethora of issues competing for attention...." (1972, 90). Sinclair's (1989) and Cook's (1989) research on the two houses of Congress conclude that legislators have significant control over their personal agendas and, therefore, over the legislative agenda. Like Kingdon (1984) and Carmines and Stimson (1989), they stress the strategic concerns of politicians who seek to increase their own visibility by promoting new issues on the agenda, but who shy away from issues that will make a lot of enemies. Cook notes that

issues where there is low conflict among interest groups are more likely to be sponsored on the legislative agenda than issues where there is likely to be significant conflict amongst organized interest groups (122).

Carmines and Stimson's (1989) application of issue evolution to the political arena also emphasizes that politicians *choose* to deal with issues that serve their own interests.

All successful politicians instinctively understand which issues benefit them and their party and which do not. The trick is to politicize the former, deemphasize the latter (6).

Like Baumgartner and Jones (1993), Carmines and Stimson view the political losers, that is those individuals or groups who lack institutional power, as the impetus for political change. Because electoral politics are central to issue evolution, the public is a key environmental consideration. In order to assure an electoral victory the politician chooses an issue that strikes a "responsive chord" in the mass public, while avoiding issues that will bring organized opposition that will cost him supporters. As was the case in Cobb and Elder (1972, 1983), Kingdon (1984), Cook (1989), and Sinclair (1989), the politicians use issues--and the public--in an attempt to maximize their own power. The environment and the mood of the public determine the universe of viable issues, but the politicians pick and choose amongst the many issues based on personal considerations; "strategic politicians attempt to maintain their power by being associated with winning issues" (Carmines and Stimson 1989, 6). They emphasize that it is the elite who

determine the issues and who frame their positions on those issues. The public may or may not *react*.

Baumgartner and Jones's (1993) cross-sectional and longitudinal analysis of how the policy agenda is set differentiates between Congress's agenda setting role under two different types of issue mobilization. They conclude that Congress is most clearly influential in determining agenda access under "Schattschneider mobilizations," where a great deal of *negative* attention is rather suddenly focused on an existing issue due to new ways of looking that issue. The previously cited example of how nuclear energy was transformed from an "economic" issue into a "health and safety" issue is instructive (see "issue framing" discussion above). The champions for reform of the nuclear industry reframed nuclear power as a health and safety issue, allowing broader consideration of nuclear energy by dozens of committee, where one or two committees once reigned supreme. However, despite significant increases in negative media coverage of nuclear power beginning in the 1950s, and increasingly negative perceptions on the part of the public beginning in the 1960s, the tone of congressional hearings on nuclear power remained overwhelmingly positive until the mid-1970s. Members of Congress took their time in putting the newly-defined issue on the formal committee and subcommittee agendas, although once they did so policy change occurred in a rather dramatic fashion.

However, Baumgartner and Jones (1993) demonstrate through this same case how Congress also plays a key role in determining agenda access under a

“mobilization of enthusiasm” (or Downsian mobilization). For three decades a policy subsystem consisting only of the supporters of nuclear power and development controlled the nuclear policy agenda. The congressionally-established Atomic Energy Commission was granted a governmental monopoly on the development of nuclear power, and when it subsequently legislated private control of the nuclear industry, the AEC became the chief facilitator and patron. Congress “assigned [the issue] to the private sector for decision, with a small group of executive and legislative branch officials charged with boosterism, facilitation, and almost incidentally, oversight” (66). For three decades the limited number of officials granted jurisdiction in nuclear issues were concerned with promoting the nuclear industry, not listening to its critics. Congress set up the institutions that limited the agenda as far as nuclear power was concerned.

Kingdon’s (1984) interview-based research led him to the same conclusion regarding the key role played by members of Congress. However, he concluded that “the administration”--consisting of the president, the Executive Office Staff, and political appointees in departments and bureaus--exercised the most influence in setting the agenda in the 23 health and transportation cases he investigated. Based on the responses of governmental and non-governmental actors in these two policy areas he found these leading officials in the executive branch to be the most influential actors in setting the transportation and health policy agendas. However, he noted that Congress is almost as influential in setting the agenda, and Congress is more influential than executive branch officials when it comes to

deciding which policies will be adopted to deal with the issues on the agenda. Because of the interaction of the various actors and the environment Kingdon concludes that no one entirely dominates the agenda setting process, but “to the extent that anybody is important, it is elected officials and their appointees” (47).

The policy agenda setting literature concludes that institutional elites--elected officials and their appointees--are the most influential type of political actor when it comes to setting the formal, governmental agenda. The other actors must appeal, directly or indirectly, to these institutional elites in order to achieve agenda access for new issues. The previous discussion of conflict escalation, timing, and issue framing revealed that it is the interaction of the various political actors and the environment that lead to agenda access. However, the politicians are usually in the driver's seat. This is because the governmental agenda is limited, while the number of issues that the norms and values of the public would allow them to deal with is almost infinite. Also, while the public, the media, interest groups, and/or a particularly adept policy entrepreneur may create an environment in which various public officials will be more likely to address an issue, the limited attention span of the public and the media (see the earlier discussion under “conflict escalation”) and the proliferation of organized groups on every side of an issue limit the influence of these other actors vis a vis the institutional elite. As Kingdon notes, his research lends support to the traditional emphasis on the importance of elected officials and their appointees. The literature demonstrates the institutional elites' ultimate “guardianship” over the

formal, governmental agenda and the significance of their own self-interest in determining the issues that will be addressed.

B. Interest Groups

Interest groups are accorded a very important role in most of the agenda setting literature. They exercise only indirect influence over the formal agenda, but interest group conflict may escalate issues to the public agenda which may, in turn, make them more likely candidates for the governmental agenda. On the other hand, entrenched interests will work to block agenda access. Issue framing is key to groups on both sides of an issue.

Cobb and Elder (1983) explain agenda setting in terms of group conflict. In their view, agendas change as a result of conflict escalation when those groups disadvantaged by the status quo seek to improve their position by expanding the scope of conflict. For Baumgartner and Jones (1993) also, agenda change is largely attributable to the mobilization of previously disinterested groups, for “where interests are well mobilized on one side of an issue and poorly organized on the other, conflict and political debate are unlikely” (190). However, as discussed above (see discussion under “institutional elites”), on new issues there is often only one “side” mobilized, and policy subsystems are created under precisely such circumstances. Under the Downsian mobilization, the enthusiasm shared by the public, the media, and the political elites may result in the creation of institutions that will persist for decades and continue to serve the interests manifest during the original mobilization. Baumgartner and Jones note that

mobilized groups are important because they structure both the choices available to policymakers and the public's understanding of what is at stake in a public policy debate. The institutions of government work to establish equilibrium through policy monopolies, and groups that are disadvantaged by the status quo may have to struggle for many years to redefine issues in order to gain entrée to a new policy venue and break down an existing monopoly.

Although he recognizes there are some situations where interest groups may effectively force an issue onto the governmental agenda through intense lobbying, Kingdon (1984) finds interest groups to be most influential in terms of *blocking* agenda change and in generating policy *alternatives* for items that are already on the agenda. Interest groups:

...depend on those in elected positions. If the administration or Congress are receptive, these people push their ideas. If not, they shelve their proposals and wait for a different administration or a new mood on the Hill. But in any event, they must persuade elected officials (47).

Like Baumgartner and Jones, Kingdon recognizes that various groups thrive in different political and/or partisan climates. Sinclair's (1989) examination of agenda setting in the Senate also points out that the proliferation of interest groups over the past two decades has resulted in increased competition for space on the formal agenda. Now, more than ever, it may be difficult for "new" interest groups to promote new policy. The proliferation of interest groups may be related to Kingdon's observation that interest groups are more active in blocking agenda change than in promoting it.

Interest groups are conspicuously absent from Carmines and Stimson's (1989) work. While they assume politicians are motivated by their desire to be elected, the money which interest groups pump into campaigns doesn't enter into their theory. The "strategic politicians" are sensitive to the general public when they select their campaign issues, rather than to the interest groups. However, their theory of issue evolution is not incompatible with the other agenda setting literature. In fact, their theory would gain much by considering the ability of organized and well-financed groups to influence the public's and the policymakers' perceptions through issue framing (Baumgartner and Jones 1993; Smith 1993) and/or to block the consideration of certain specific issues (Kingdon 1984). Interest groups can change the politician's calculus as to which issues are advantageous or "dangerous" to address.

In summary, interest groups are very influential in the agenda setting process due to their involvement in conflict escalation, as well as their involvement in issue framing during the "mobilization of enthusiasm" when government institutions and policy subsystems are created. The literature notes that certain interest groups tend to be favored by these "policy subsystems." The deck is stacked against those who seek agenda change. New understandings of an issue and escalation of the issue to new institutional players are generally required to gain agenda access, but entrenched interests will work to contain the conflict and to prevent agenda change. Finally, this author concludes that with the increasing number of interest groups mobilized on either side of so many issues,

the institutional elite may now be more than ever in the “driver’s seat” when it comes to agenda setting. Kingdon’s finding that interest groups are more likely to block agenda access than to promote it supports this conclusion. The proliferation of interest groups, combined with the limited attention spans of the media and the public (see “conflict escalation”) and with the strategic politician’s desire to avoid alienating potential supporters (see “institutional elites”), would logically tend to decrease the influence of interest groups in setting the agenda. New interest groups press their demands on the government, but groups whose interests have been entrenched in policy subsystems have the advantage in a government with so many “veto points.” Both the predominant institutional elites and the entrenched interest groups will fight to maintain the status quo, to avoid agenda change.

C. The Mass Media

The agenda setting literature is least consistent in the conclusions it draws regarding the role that the media plays in setting the formal, governmental agenda. While many of the case study-based agenda setting works find the mass media to be extremely influential in setting the agenda (Downs 1972; Cobb and Elder 1972; Baumgartner and Jones 1993; Birkland 1997), Kingdon’s major work on agenda setting (1984) finds that the mass media largely react to the government agenda in the areas of federal health and transportation policy. However, the disparate conclusions are not irreconcilable, and Carmines and Stimson’s (1989) work can also be reconciled within a fairly consistent understanding of the media’s impact on the formal agenda.

Cobb and Elder (1972) found that on the handful of issues they considered, the media did not create issues or conflicts, but that media publicity was key to the strategy of conflict escalation which aimed to generate public interest in a conflict. They proposed that the media are an integral part of the agenda setting process, sometimes reinforcing and sometimes altering the prevailing definition of the conflict. The mass media are a mechanism “by which groups can channel their demands to a wider constituency and enhance their chances of success” (150). Cesar Chavez used tactics, such as the march on Sacramento, to publicize the grape workers’ grievances and escalate the conflict to the *national* public.

Baumgartner and Jones (1993) also find the media to be important for their ability to generate publicity. They emphasize the issue framing role of the media, as well as the media’s projection of another actor’s framing of an issue. The media can play “an integral role in the policy process by directing attention alternately toward different aspects of the same issues over time and by shifting attention from one issue to another” (103). This reframing of the issues may be more important in the long run due to the media’s “fitful” attention to issues. Because the media must always be concerned with maintaining their audiences, their interest tends to come in waves. Based on Baumgartner and Jones’ examination of several types of public policies over several years or even decades, they find that media attention sometimes precedes and sometimes follows increased governmental attention to an issue. There was a large increase in the

number of Congressional hearings that focused on the negative aspects of pesticides *following* increased negative media coverage on the health risks. On the other hand, the deregulation of air transportation in the 1970s was an issue that swept through the government unrelated to any significant media interest, although there was some competition among congressional subcommittee chairs to claim credit for the popular initiative. They conclude that media attention and government attention to an issue affect, and reinforce, each other.

Although Kingdon (1984) notes that only a quarter of the policy specialists he interviewed cited the media as having a "very important" impact on the departmental agendas, however, he attributes this finding to his interview sample. In *Agendas, Alternatives, and Public Policies* (1984) Kingdon relies primarily on interviews with policy *specialists*. He notes that the media seem to have more of an impact on the policy *generalists* (i.e. the institutional elites) who are most influential in setting the government agenda. His earlier book, *Congressmen's Voting Decisions* (1981) was based on interviews with members of Congress and concluded that media attention to an issue affects legislators' attention to that issue, in part because the representatives follow the media and in part because they know their constituents are affected by the media. However, in the latter work Kingdon discusses how the media's lack of "staying power" limits their effect on the policy agenda; public officials recognize that the "public fuss" over an issue will often pass over. As a result, even when there is heavy media

attention to something such as the "health threat" posed by saccharin, they often feel free to ignore the public concern.

The media's tendency to give prominence to the most newsworthy or dramatic story actually diminishes their impact on governmental policy agendas because such stories tend to come at the end of a policy-making process, rather than at the beginning (1984, 62).

As Downs (1972) notes, the "news" is largely a form of entertainment for many Americans, and with the "fierce struggle for space in the highly limited universe of newsprint and television viewing time," the profit-oriented news media agenda is often led by the public's limited attention span (42). First and foremost, "media must sell" (Baumgartner and Jones 1993, 103); the media's focus is not on controlling the policy agenda.⁶

Carmines and Stimson (1989) overlook the media in their study of the evolution of the politics of race. However, their theory would be strengthened by the addition of this variable as an explanation for how the "strategic politician" chooses his issues and informs the public of that choice. As Kingdon (1984) and Baumgartner and Jones (1993) demonstrate, the media help link the different political actors, permitting them to keep tabs on each other as well as the "public mood." Certainly the mass media would be an important source of information about the "external disruptions" and the "dissatisfied constituents" that politicians seek to "exploit" in their campaigns. In addition to helping the strategic politician

⁶McComb and Zhu's (1995) research on the volatility of the public agenda due to the increasing number of issues vying for the public's attention would seem to indicate that the increased supply of mass media has also served to diminish the media's "staying power."

choose an issue that would “resonate” with the public, the media would also be an “intervening variable” of sorts, helping the politician to publicize his “new” issue.

In all of these works then, the media can serve as an “issue entrepreneur” that redefines an issue or as a conduit of information for entrepreneurs looking to redefine and escalate an issue. However, the policy agenda setting literature usually portrays the media as serving the latter function, with new issues and new framing of old issues originating with policy entrepreneurs outside of the mass media, although media attention and governmental attention on an issue affect and reinforce each other. The variations in the agenda setting research’s conclusions regarding the role of the media are related to the different cases considered, for in exceptional cases (see Bosso 1989) the mass media can serve as the policy entrepreneur who pushes an issue out into the forefront. However, as the previous discussions of “issue framing” and “conflict escalation” indicated, the media are drawn to certain types of issues and certain types of coverage. As a result the mass media primarily exercise influence on the public and the governmental agendas indirectly, by making certain types of issues more appealing to the strategic politicians, because they are more apt to receive the attention of a news media that are, after all, businesses that must make a profit.

D. Policy Entrepreneurs

The role of policy entrepreneurs is most clearly articulated by Kingdon (1984, 129), who defines them as “advocates for proposals or for the prominence of an idea.” He borrows the concept from the group theorists, and he finds that

individuals usually do act on behalf of various groups and are thus motivated by a variety of factors.⁷ These entrepreneurs serve several key functions including: redefining issues to achieve more favorable outcomes, linking preferred policies with new problems, “softening up” the policy community for their “pet” proposals, and engaging in the “give and take” which leads to the development of the “fittest” proposals. Kingdon says they “perform the function for the system of coupling solutions to problems, problems to political forces, and political forces to proposals” (214). Similarly, the policy entrepreneurs are the individuals who lead the challenge to the status quo in Baumgartner and Jones’ (1993) “subsystem” politics, redefining issues and searching out new venues in order to facilitate a new look at old issues. In essence, the entrepreneurs--whether they are political activists, lobbyists, politicians, or news reporters--are the grease which keeps the policy making system going.

While the term “policy entrepreneur” is not used by either Cobb and Elder (1983) or Carmines and Stimson (1989), the concept is implicit in their works. In Cobb and Elder’s work, the group conflict which leads to the creation and escalation of issues is logical only in the context an entrepreneurial leadership. The “organized” strategies of the groups, with intentionally-forged problem definitions and means of drawing the media and the public into group conflict,

⁷Policy entrepreneurs may be motivated by many factors (such as concern about certain problems or inequities in the system), not just by self-interest or the interest of a particular interest group. Cobb and Elder (1983) also recognize the influence of citizens’ interest groups who seek to benefit the “greater good.” Carmines and Stimson’s (1989) theory is unique in its assumption that “strategic politicians” use issues only to gain electoral advantage.

require leadership; they require policy entrepreneurs such as Cesar Chavez, whose efforts to transform a farm workers' union issue into a civil rights issue is discussed by Cobb and Elder. Carmines and Stimson (1989) portray citizen political activists as the "leading actors" in the producing issue change. These activists are often the force pushing the issues that "strategic politicians" grab onto. They seek politicians to serve as advocates for issues and policy proposals.

There is no disagreement on the importance of policy entrepreneurs-- individuals who stand as advocates for ideas and policies. As the earlier discussion on "timing" discussed, the agenda setting literature agrees on the necessity of human agency in order to turn an issue into an agenda item. The different works highlight how different types of political actors can serve as the issue entrepreneurs. Generally it requires a mobilized group to package an issue and a policy proposal in a manner that makes it evident to the public, the media, and/or the institutional elites that something should and can be done to change public policy. But once the institutional elites become aware of an "issue" it takes a sponsor within the government to adopt the issue and push it onto the formal agenda. Carmines and Stimson (1989) and Kingdon (1984) stress the role of the politician who seeks to make a name for herself by championing a winning issue, but it is also clear in Cobb and Elder's and Baumgartner and Jones' works that it is ultimately the institutional elites who determine access to the formal agenda. The policy entrepreneurs, the original advocates of policy change, provide the

linkages between those who favor policy change and those who are willing and able to make those changes.

E. The Mass Public

The general conclusion of the literature is that the public plays a significant but relatively passive role in setting the government agenda under the conventional policymaking process. Even Cobb and Elder (1983), who conclude that “public participation in political decision-making may extend well beyond the mere selection of the governing elite to selection and resolution of the major issues that a government will confront” (xi), portray the public as a sort of preliminary gatekeeper. The public’s interest in a particular conflict *may* lead the institutional elite to consider the issue, but most of the time the public’s role is in limiting the universe of issues and policies that are acceptable, or profitable, for government to consider. While conflict escalation is central to three of the theories, the public is primarily an “environmental” variable. Politicians seek to “strike a responsive chord” in the public in Carmines and Stimson’s (1989) theory. In terms of institutional “subsystem” politics, Baumgartner and Jones (1993) describe the public arena as one of many venues, and the public as a “slack resource,” a *potential* threat. Kingdon (1984) considers the masses primarily in terms of a predominant “public mood,” although he does note that the public may also enter into the equation as part of a feedback loop that institutional elites consider when they determine which issues to address and how to address them.

Based on Kingdon's extensive interviews of government and non-government officials involved in national health and transportation issues, public opinion is "neither insignificant by any means, nor among the most prominent [influences on setting the government agenda]" (69). He finds that public opinion is more influential as a constraint on the government policy, rather than in prompting the government to act. For example, there was a much clearer tie between *limits* on government action to reduce health care costs through the regulation of liquor and tobacco and public opinion, than there was between the *promotion* of a national health care system and public opinion.

Similarly, Baumgartner and Jones (1993) recognize the potential for agenda change should the mass public be mobilized. However, they emphasize that much of the time strategically-minded political actors will "escalate" an issue to a different venue--such as a new congressional committee, the courts, or the national level of government--rather than escalate an issue to the public agenda. In their research and in Cobb and Elder's (1983) research, members of the public primarily influence the government agenda through their involvement in organized interest groups. For example, Baumgartner and Jones discuss how the growth in the number, the size, and the resources of environmental groups since the 1970s has changed the mobilization of bias; new views have gained support in the political sphere, resulting in the restructuring of the public policy debate on issues ranging from nuclear power to the regulation of pesticides.

The previous section on “conflict escalation” explained how the public’s limited attention cycle and limited agenda capacity necessarily limit its influence on the formal agenda, just as these factors limit the media’s influence. In addition, while high levels of public concern on an issue may increase the chances of obtaining agenda access, on many issues it is not easy to gain high visibility. As previously discussed (see “issue framing” and “conflict escalation”), issues that are broadly-defined, non-technical, “fresh,” and that affect a large portion of the public are more likely to generate significant levels of public concern than issues that do not have these characteristics. On less “appealing” issues the policy entrepreneurs’ efforts to escalate conflict are more likely to be aimed at horizontal “escalation” rather than vertical escalation (Baumgartner and Jones 1993). Policy entrepreneurs seek new venues where officials might be more receptive to new issue definitions and policy change (Baumgartner and Jones), or they wait for a political climate that is more conducive to their interests (Kingdon 1984), rather than attempting to get the public involved.

In summary, while the mass public poses a significant “slack resource” that groups disadvantaged by current public policy may seek to mobilize, the vast majority of issues on the governmental agenda do not come directly by way of the public agenda. Entrepreneurs may seek to push an issue onto the formal agenda by escalating it to the public. However, the previous discussions of conflict escalation and issue framing indicate that it is no simple task to build the type of lasting public concern that can force an issue onto the government agenda. As a

result, policy entrepreneurs are more likely to be acting on behalf of mobilized groups, looking to new venues within the government or waiting out a hostile political climate. The mass public tends to act as a *preliminary* gatekeeper of sorts, as a constraint on agenda change rather than as the impetus for agenda change.

IV. Summary: Setting the Policy Agenda under Representative Democracy

The preceding review of the policy agenda setting literature reveals a fairly consistent model of the process by which the formal governmental agenda is set through our representative government. The sequence of events (see Figure 2.1 below) and the influence of political actors involved in setting the public policy agenda varies, depending on whether an issue is more conducive to what Baumgartner and Jones (1993) have termed “horizontal escalation” or “vertical escalation.” Table 2.2 summarizes the influence that different types of political actors exercise in terms of the conflict escalation, issue framing, and timing elements of the agenda setting process. Because of the limited scope of the general public agenda, and given the vast array of issues with which the government is involved, the process is usually dominated by institutional elites and individuals and groups with a particular interest in a fairly narrow area of policy. Although it is possible for an issue to make it to the formal agenda through its domination of the mass public, or “systemic” agenda, attempts at horizontal conflict escalation are much more common.

[Insert Figure 2.1 about here]

[Insert Table 2.2 about here]

The policy entrepreneur provides the purposive action required to turn an event or an issue into a “problem” that is a likely candidate for the government agenda. Whether the entrepreneur comes from the ranks of interest groups, the mass media, or elite political officials or aspirants, she frames the issue in a way

Table 2.2
Elements of the Agenda Setting Process
Under Representative Government

ELEMENTS OF THE AGENDA SETTING PROCESS	MAJOR ACTORS INVOLVED	INFLUENCE
Conflict Escalation	Interest Groups	Currently empowered groups seek to maintain status quo policies by blocking conflict escalation/ agenda change; unempowered groups seek to change policy by escalating conflict and promoting agenda change
	Policy Entrepreneur	Actively promotes conflict escalation to achieve policy change, usually on behalf of unempowered interest group
	Mass Media	Focus public and/or elite attention on issues for short periods of time
	Mass Public	Mass public's sustained interest in an issue may promote elite consideration of issue
	Institutional Elites	Decide whether to promote/avoid issue
Issue Framing	Policy Entrepreneur	Frame/reframe issues to appeal to institutional elites
	Mass Media	Usually a conduit of information and issue framing; covers issues that are likely to appeal to audience in the mass public
Timing	Institutional Elites	Ultimate guardians of official agenda; promote new issues and policies to enhance power, but majority of elites determine if and when issue added to government agenda
	Policy Entrepreneur	Efforts to frame issues, couple problems and solutions, and shop for receptive institutional venues brings issues to attention of elites
	Mass Public	Public opinion, beliefs, and values set broad constraints on agenda and policy change at a particular time; infrequently public's sustained interest may escalate an issue to the formal agenda

Source: This author's synthesis of major agenda setting works, especially Cobb and Elder (1972), Carmines and Stimson (1989), Kingdon (1984), and Baumgartner and Jones (1993).

that makes it appealing for members of the institutional elite to promote its addition to the governmental agenda. Most of the time policy entrepreneurs aim to influence institutional elites directly. This sequence is illustrated in Baumgartner and Jones' (1993) model of the horizontal conflict "escalation." Advocates for policy change reframe an issue and "shop" for a venue where new institutional elites will weigh in on a conflict that has been dominated by the opposing side, the side whose interests are entrenched in existing policy subsystems. Baumgartner and Jones (1993), Carmines and Stimson (1989), and Kingdon (1984) note the politicians' concerns about the benefits and risks associated with taking on new issues. The entrepreneur seeks to frame the problem (and as Kingdon notes she must often package the problem with a suitable policy "solution") in a manner that is politically appealing to the right official at the right time. Elected and high-ranking appointed government officials promote agenda change when it will enhance their influence *without* alienating the public or groups whose organized opposition poses a threat to their positions and power.

The alternate sequence, described first by Cobb and Elder (1983) but found to be less common by the broader research of Baumgartner and Jones (1993) and Kingdon (1984), involves the entrepreneur's vertical escalation of the conflict through the media and the mass public. This approach is particularly appealing for issues with certain characteristics that tend to make them more interesting to the mass media and the public. In particular, new issues that have a

broad impact on a large segment of the public and that are easily understood, emotional, and quick-developing are good candidates for escalation to the mass public. However, the limited attention span of the media and the public (in terms of the number of issues and the time those issues will be of concern), as well as the natural limitations of some issues' appeal, make this type of vertical conflict escalation less common than venue shopping/horizontal conflict escalation.

The actions of interests groups, the mass media, institutional elites, and policy entrepreneurs are constrained by, but rarely directed by, the mass public. The literature comes back again and again to the "mood" of the public. As Kingdon (1984) notes, "People in and around government sense a national mood" (153). This national mood serves to promote some types of issues and to restrain the consideration of others. Carmines and Stimson (1989) specifically refer to the mass public *environment* that politicians consider when deciding which issues will serve both their political careers and "fit" their constituencies in the mass public. Baumgartner and Jones (1993) note that most conflicts don't involve the public, but that it is important as a "slack resource" that entrepreneurs might mobilize with just the right framing of an appealing issue. Finally, Cobb and Elder (1983) describe the mass public as an "audience" whose awareness of an issue and positive or negative attraction to it increase or decrease the likelihood that it will appear on the governmental agenda. Largely because of the limited attention span of the public, the literature concludes that most of the time the mass public sets only the broad parameters for the agenda setting and policy making

processes; it acts more often as a constraint on the formal agenda rather than as a major promoter of agenda issues. The mass public is part of the environment in which the other actors work to influence the agenda.

The timing of agenda change has been demonstrated to be a function of many different variables. Election cycles, focusing events, and shifts in the mood of the public may open “windows of opportunity,” but with few exceptions agenda change occurs through the purposive actions of individuals. A new issue (or a new look at an old issue) makes it onto the agenda when an entrepreneur effectively promotes the issue *and* when the institutional elites decide it is necessary and/or desirable to deal with that issue. The voices of the public and the media in the agenda setting process are muted because of these actors’ limited attention spans, and the voices of interest groups tend to drown each other out. To a large extent, then, elected and appointed officials who are the “ultimate guardians” of the governmental agenda ultimately determine *whether* the government will address an issue and *when* the government will address an issue.

The agenda setting literature seems to support at least some of the conclusions reached by the critics of pluralistic democracy. In particular, public opinion and the public interest are not nearly as instrumental in setting the formal agenda as the more narrow goals of organized interest groups and the professional ambitions of elected and appointed public officials. The formal agenda of representative government is ultimately controlled by elected officials and their

high-level appointees. Generally, institutional elites must only act within broad constraints imposed by the prevailing norms and values of society, although on rare occasions when the mass public is mobilized for a sustained period of time, public opinion can essentially force an issue onto the agenda. Most of the time the governmental agenda is influenced through organized interest group activity that is focused on either promoting or blocking *agenda* change, as a means of promoting or blocking *policy* change. The agenda setting literature demonstrates that to a very large extent, pluralist theory describes the process by which “the decision to decide” is made in our representative government, as much as it describes the process by which representative government makes the policy decisions themselves.

Chapter 3 examines what the initiative literature reveals about the process by which the initiative agenda is set. There are obvious and significant differences between the “normal,” representative processes of government and the processes associated with the initiative. First and foremost, the agenda of concern is not the formal, governmental agenda that is examined in the agenda setting literature. The initiative agenda is not developed by, or controlled by, the people’s elected representatives. Initiatives are placed on the ballot when members of the public sign petitions. Furthermore, those who sign the petitions are forwarding a specific policy proposal for voters to approve/disapprove. In contrast to the two distinct phases of the agenda setting process identified in the agenda setting

literature, most clearly by Kingdon (1984), the initiative process combines setting the agenda with the proposal of policy alternatives.

However, the ballot initiative clearly constitutes a policy agenda. And, as both the agenda setting literature (discussed in this chapter) and some of the literature that led to this relatively new analytical framework (discussed in Chapter 1) emphasize, an essential part of the question “Who governs?” can only be answered when one knows who controls the agenda. Whether it is the formal agenda of bills considered in Congress each year, or the agenda of initiatives that appear on the voters’ ballots, the question “Why *this* issue at *this* time?” is critical to determining the loci of power in the policy making process. An investigation of the three key elements of the agenda setting process--conflict escalation, timing, and issue framing--is as essential to the determination of who controls the initiative process as it is to the determination of how the initiative agenda is set, as well as why certain individuals and groups turn to the initiative process.

Chapter 3

A Review of the Initiative Literature: Insights on Agenda Setting Via the Initiative Process

Like the agenda setting literature, the initiative literature also focuses on who exercises power in the political process. After all, the initiative was proposed by the populists and the progressives as a means to shift power and influence *from* wealthy and narrow, particularist interests *to* “the people.” It was believed that the direct involvement of the citizenry in the policy making process (or the threat of that involvement) would lead to a government more responsive to the general public and less preoccupied with the entrenched interests of large-scale capital and the wealthy (Hofstadter 1955, 64). Hence, it is natural that the scholarly research on the initiative process focuses on the question of whose power is enhanced through this instrument of direct democracy.

Despite the similarities in research questions, the initiative research has neglected to avail itself of the insights offered by the agenda setting literature. Both bodies of research are concerned with the exercise of power in the policy making process. However, while a great deal of knowledge has been acquired about the roles played by various political actors *after* the initiative agenda--the ballot--has been set, research on this political institution has neglected to consider the impact of the agenda setting stage of the process. The initiative process was intended to allow the citizenry to place certain issues and specific policy alternatives on the public policy agenda. It was intended to promote the *public's* concerns and the *public's* views when representative government failed to do so.

In order to more fully understand who exercises power through the initiative, it is essential to understand how the initiative agenda is set. And as has been recognized in the agenda setting research, it is essential to understand how both particular issues and particular policy solutions make it onto the ballot.

This chapter examines the research on the initiative that relates to the agenda setting process. It reviews the initiative literature's findings on who are the important political actors in the *post*-agenda setting stages of the initiative process, in order to determine if there are any additional political actors, beyond those identified in the agenda setting literature, that need to be considered in the investigation of the process by which the *initiative* agenda is set. The second part of this chapter discusses the three concepts identified as being so central to the agenda setting literature--conflict escalation, timing, and issue framing. This chapter then concludes with a framework for the analysis of the initiative process, as a political institution that promotes policy change through the vertical escalation of conflict to an alternative, public, policy agenda.

I. Key Actors in the Initiative Literature

The political actors identified as significant players in the initiative literature are largely the same as those identified in the agenda setting literature, although they exercise significantly different types and amounts of influence. A great deal of the initiative research concentrates on the role of the public, the mass media, and interest groups in the campaign and election stages of the process. The roles that interest groups play in the initiative process are scrutinized in much of the literature, because of the concern with the impact of money in the campaign

process. The initiative literature places particular emphasis on two different types of interest groups--public interest groups and special interest groups--and notes that the money associated with special interests gives them a significant advantage in the initiative process. Money buys advertising in the mass media, as well as professional campaign management services. There is little discussion of either the policy entrepreneurs or institutional elites in the initiative literature. The policy entrepreneurs--initiative sponsors--are rarely discussed or even identified; their role in the process is largely overlooked due to the research's emphasis on interest groups and corporate money in the post-agenda setting stage of the initiative process. The institutional elites--elected and appointed government officials---receive little attention in the initiative literature. At times legislators, governors, or candidates for office are mentioned because they are initiative sponsors, or the judiciary is mentioned as a final check on the power of the initiative. However, due to the research's focus on the campaign stages of the process, institutional elites are not generally discussed as an integral part of the process.

A. Institutional Elites

The research on the initiative recognizes a few different roles played by institutional elites in the initiative process. While they may sponsor and/or endorse initiatives, elected and appointed officials are most often discussed as a factor precipitating *others'* efforts to sponsor initiatives, because of their action or, more often, their lack of action on an issue. The initiative literature portrays the institutional elites in much the same way that the mass public is portrayed in the

agenda setting literature. They are largely an environmental factor, and they largely react to others' actions. An exception is the judiciary, for the courts figure heavily in the post-election stage of the initiative process.

The research cites several examples of candidates for elective office sponsoring or endorsing initiatives in order to make a name for themselves (Shockley 1980; Lee 1981; Magleby 1984; Tolbert 1996). Much as Carmines and Stimson (1989) propose, individuals sometimes seek to further their political careers by latching onto an issue with mass public appeal. And in other cases, state legislators or executives have used (or threatened to use) the initiative in order to by-pass a policy stalemate caused by the other branch. However, most of the research notes that elite sponsorship of initiatives is not the norm. The fact that initiatives fail far more often than they succeed is one deterrent to their use by elites who have other institutional means of challenging the status quo (Magleby 1984). In addition, initiative campaigns are expensive to run and there are also significant costs associated with the process. Legislators and governors recognize that when their initiative loses at the polls it may allow their opponents to block any related policy change in the future by citing a demonstrated lack of public support (Lee 1981). Furthermore, initiative campaigns are expensive to run, particularly if there is any organized opposition (Lee 1981; Zisk 1987; Magleby 1995).

The inaction of institutional elites is often identified as a factor precipitating individuals' and groups' use of the initiative. Bone and Benedict (1975) conclude from Washington state's experience that the sponsors of

initiatives are often ahead of the legislature, and that the wide margins by which many reforms are passed indicates that the legislature was “unresponsive to a widespread desire for change” (347). The research by Tolbert (1996) on Washington and Colorado supports this conclusion, as does research by Lee (1981) and Smith (1997) on California initiatives. They find that the initiative has been used as a strategy to get state legislatures to act on issues of concern to the public that range from the regulation of nuclear power plants to tax reform. Gerber’s (1996) analysis of the relationship between the existence of the initiative process in the states and the representativeness of laws on parental consent for teenage abortions concludes that the availability of the initiative process may serve as a means of making legislators’ actions more representative of the voters’ views, whether or not the initiative is actually used.

While the courts are mentioned in passing in the agenda setting literature, the state and federal courts receive much more attention in the initiative literature.

As Magleby (1984) remarks:

Opponents of the initiative and referendum have always resorted to the courts either to exclude the initiative and referendum entirely or to declare certain outcomes unconstitutional (47).

Since the courts have upheld the constitutionality of the initiative process,¹ the literature is primarily concerned with the involvement of the judiciary in its review of the constitutionality of specific measures that have been passed at the polls. The research notes that judicial review of initiatives provides a “check,”

¹Magleby (1984, 48) describes the US Supreme Court’s logic in the *Pacific States Telephone and Telegraph Company v. Oregon* (1912) case. Basically, the Court declared that what constitutes the

perhaps the sole check, on majority rule when it conflicts with the rights of individuals and minority groups, and it emphasizes that the courts have not hesitated to “veto” many voter-approved initiatives (Schmidt 1989; Cronin 1989; Magleby 1994; Gamble 1997).

In summary, elected officials and aspirants to elective office sometimes use the initiative as a means of gaining publicity and public support for themselves and sometimes to circumvent an uncooperative legislature or executive. However, the existing research indicates that most initiatives do not originate with institutional elites. Instead, it appears to be the *inaction* of elected representatives that most often motivates individuals outside of the government to turn to the initiative process. More often than not, the elites are portrayed as *reacting* to the initiative process. However, in terms of policy *outcomes* of initiative campaigns, the literature does recognize that the judiciary exercises a great deal of influence. This is due to their active role in the post-election stage of the process, determining whether successful initiatives are constitutional--in terms of both the state and federal constitutions.

B. Interest Groups

Interest groups are a major focal point of the initiative research. Magleby (1984) expresses the consensus of the literature:

With few exceptions, issues do not emerge from the vox populi spontaneously but, rather, are extensions of the legislative strategy of interest groups. Citizens do not sponsor initiatives; groups do (197).

“republican government” guaranteed to the states under the US Constitution is a political question that Congress has resolved by accepting the representatives of states with the initiative process.

The centrality of organized interest groups is attributed to the costly nature of the initiative process which generally entails paid signature-gathering and paid advertising, and often involves paid campaign managers, consultants, and pollsters as well (Zimmerman 1986; Zisk 1987; Magleby 1995).

The initiative literature differentiates between “public interest” groups/grassroots efforts that seek policies to benefit the broad public, and “special interest” groups that seek policies to benefit their members in particular. “Special interest groups” is generally used in the initiative literature (and will be used in this paper) in terms of James Q. Wilson’s (1974; 1995) categorization, as groups that seek to influence public policy in order to achieve benefits for their own members, rather than the general public. “Public interest” groups, then, are those groups whose goals principally benefit nonmembers.

Magleby (1984) notes that while special interest groups are heavily involved in initiative politics, their involvement is primarily important in terms of a “veto” power (199). That is, the “special interests” are generally active as organized opposition to initiatives proposed by others, rather than as proponents of initiatives. Zisk (1987), Zimmerman (1986), and Schmidt (1989) also observe that special interests are more likely to *react* to initiative proposals than to originate them. Lee (1981) notes that while several well-financed groups did propose special interest measures in California between 1964 and 1976, not one of them--agribusiness, farm labor, state employees, realtors and land developers, or greyhound racing interests--succeeded in *passing* a measure.

The general conclusion supported by research to date is that money is very effective in its ability to *oppose* an initiative, but it is of questionable effect in terms of its ability to secure the passage of an initiative (Shockley 1981; Schmidt 1987; Zisk 1987; Cronin 1989). In particular, corporations have contributed large amounts to groups organized against proposed initiatives ranging from taxing tobacco and regulating public utilities, to regulating the nuclear industry and campaign finance reform (Shockley 1981; Zisk 1987; Schmidt 1989). And the literature has demonstrated that overwhelming spending by the *opponents* of a measure is very effective in shooting down ballot measures (Lee 1981; Lowenstein 1982; Zisk 1987; Schmidt 1989).

The typical pattern of change in voting intentions on propositions moves from widespread support--often by as much as two to one--early in the campaign to one-sided rejection on election day, often by the same margin. The decline in the degree of support appears to begin as the opposition launches its well-financed advertising campaign...While the disparity in campaign expenditures is certainly not the only reason for the defeat of these propositions, the effect of the campaigns against them was great (Schmidt, 151).

However, even overwhelming spending by the opposition is not always determinative. Zisk (1987, 106) says there is a "minimum critical mass" needed to support a staff and to finance some media advertisements. When a campaign reaches this minimum critical mass it may be victorious, despite an overwhelming advantage in resources by the opposing side. But without this minimum level of support, a grassroots campaign is destined to fail if it faces significant, well-organized opposition--as is the case with many of the public interest-type issues.

Shockley's research on several Colorado initiatives (1980) and Schmidt's examination of initiatives across the states (1987) support Zisk's conclusion.

The research concludes that interest groups' financial resources are extremely critical in the initiative process, although not determinative. While the data seem to indicate that the initiative is not an especially promising venue for special interest groups, they also indicate that public interest/grassroots groups have a disadvantage in the process due to their limited financial resources. As Daniel Lowenstein states, his research on the initiative process in California

...demonstrates the power of some groups to raise enormous sums of money to oppose ballot propositions, without regard to any breadth or depth of popular feeling, seriously interferes with the ability of other groups to use the institutions of direct democracy as they were intended to be used (1982, 608).

Judicial decisions such as the Supreme Court's *Bellotti* decision,² that have basically eliminated the ability of the states to regulate initiative campaign expenditures, have done a great deal to undermine the ability of less-wealthy public interest groups to use the initiative to promote change in public policy when that change is opposed by a well-financed group or corporation.

C. The Mass Media

The individuals and interest groups that sponsor initiatives seek to bring their proposals to the attention of the public. The primary means of reaching the public and informing potential voters about the proposed initiatives is through the mass media. The initiative research concludes that the unpaid news coverage is

²*First National Bank of Boston et al. v. Bellotti (1978)* basically recognized that corporations have the right to free speech, and that states have minimal ability to limit corporate contributions to

limited and not particularly informative, and that its impact on the voters is questionable. With limited news coverage, most of the media coverage that reaches the public is paid advertising. However, paid advertising by both the proponents and opponents of initiatives has also been found to be lacking in substance.

Based on surveys conducted in California, Magleby (1984) concludes that voters rely on the mass media more than any other source for information about ballot propositions. Over 80 percent of surveyed voters indicated that their most important source of information on propositions was television, radio, or newspapers (133). Non-media sources of information, such as personal communications or government-prepared voter handbooks were also cited as significant sources of information. However the personal communications were cited by only four percent of voters in a 1982 survey, and voter handbooks were cited by only 13 percent of voters in 1976 and by 27 percent of voters in 1982 (132-133). Without additional data, however, any conclusions about the significance of the news media's coverage of initiatives are premature.

Even if the voters do get most of the information on initiatives from the mass media, the actual impact of news coverage is not so easily deduced. For example, while voters indicate that they get information from the media, is it from news coverage or from paid advertising? Despite some examples when newspaper editorials played a key role in some California initiative campaigns

initiative campaigns. See Cronin (1989, 101-119) and Lowenstein (1982) for a discussion of this and related cases.

(Harris 1967), comparisons of actual voting patterns and newspaper endorsements indicate that this is not always the case. Other research provides no evidence of a systematic relationship between editors' endorsements and the success of initiatives in California (Mueller 1969) or Colorado (Campbell 1997). Furthermore, others (Shockley 1980; Zisk 1987) discuss the lack of substantial, analytical media coverage of the initiative issues, and Cronin (1989) posits that "poor or sloppy news coverage can obscure the issues or avoid them entirely, creating confusion and helping to defeat a ballot measure (especially given the fact that, when in doubt, voters usually vote no)" (117). The literature lacks a systematic examination of the news media's framing of proposed initiatives and campaign outcomes, so the nature and extent of the mass media's influence on the voters and the sponsors of initiatives remains an unknown. While there is research that indicates the importance of the news media's framing of issues on the public's perception of those issues (Iyengar and Kinder 1987; Iyengar 1991), the role of the news media in initiative campaigns is uncertain.

The research does conclude that the voting public is heavily influenced by advertising in the mass media (Shockley 1980; Magleby 1984; Schmidt 1989; Zisk 1987). For instance, Shockley (1980) describes how a panel study confirmed the effectiveness of a campaign against an initiative that proposed to replace a sales tax on food with new taxes on corporations. An advertising company developed the opposition campaign's strategy, and its portrayal of the proposed initiative as a sugar-coated lemon apparently turned support of the proposal from three to one *for* the initiative to three to one *against* the initiative (23). And as

discussed above (under “interest groups”) Magleby (1984), Schmidt (1989), and Zisk (1987) provide numerous examples of how advertising campaigns by the opposition have been effective in shifting public opinion against an initiative.

In summary, there is only limited research on the mass media’s impact on initiative campaign outcomes. The available research, based on case studies and on the analysis of campaign spending and voting patterns, indicates that advertising in the mass media is an important source of voter information on initiatives. Analyses of campaign spending and electoral outcomes strongly suggests that advertising is very influential in *defeating* initiatives. The evidence regarding the *news* media’s influence on initiative voting behavior is minimal, but seems to indicate that at least in the case of editorial endorsements the news media are not particularly influential.

D. The Policy Entrepreneur

The initiative literature concentrates on the issues and the issue campaigns rather than on the individuals or groups that sponsor initiatives and their motivations for doing so. It emphasizes the role of interest groups in the initiative campaigns, but it does not address why some groups resort to the initiative and others do not, or why certain groups resort to the initiative at some times and not at others. Actually, individual citizens, not interest groups, are the official sponsors of initiatives, but there is very little research on the roles played by the

leaders of the initiative campaigns.³ The preceding discussion on interest groups revealed that the research has drawn some conclusions regarding the types of groups that use the initiative process, and for what types of issues. However, the research to date does not address under what circumstances an entrepreneur, acting on behalf of himself or on behalf of an interest group, will attempt to push an issue onto the initiative agenda.

The literature portrays the initiative as primarily the tool of interest groups thwarted in the normal channels of the legislature. For example, Lee's (1981) examination of California initiatives leads him to conclude that while a few groups from outside the political mainstream propose initiatives,

...the main actors are those who regularly do battle in legislative corridors or in campaigns for elective office. For these groups, the initiative is mainly another weapon--or hurdle--in the contest for political power and influence (99).

Other works agree that initiatives usually come after failed attempts at changing public policy through the legislative process (Bone and Benedict 1975; Shockley 1981; Magleby 1984; Schmidt 1989). However, there is no discussion of why *most* policy failures in the legislature do *not* lead to initiative campaigns.

The individuals who actually sponsor the initiatives are seldom discussed in the literature, with the exception of those cases when candidates for elective office or sitting legislators sponsor or endorse initiatives as a means of drawing public attention and public support for themselves. Magleby (1995) and Tolbert

³Smith (1996, 1997) has done some more biographical work on of the sponsors of two of the nationally-renowned tax reform initiatives, and a few works note the identity of initiative sponsors when they are well-known public figures (Shockley 1981; Magleby 1984).

(1996) discuss politicians' use of the initiative process in order to further their own political careers or a minority party's goals. Magleby cites California as an example; in 1990 gubernatorial candidate John K. Van de Kamp sponsored three initiatives that dealt with environmental reform, crime prevention, and campaign finance and ethics reform (37). Tolbert notes that there have been several cases in Washington state and Colorado in which politicians from the minority party, legislators or the governor, sponsored initiatives when they were unable to get their policies through a hostile legislature. However, these cases of elite sponsorship appear to be the exception rather than the rule. And again, the question of *when* these institutional elites decide to sponsor an initiative remains unanswered.

Finally, the literature notes that the initiative has not been monopolized by any one ideology or subject. Considering the 187 state-level initiatives that appeared on ballots between 1977 and 1986, Schmidt (1989, 37) found that initiative agendas have been remarkably balanced between liberal and conservative measures, both in terms of the number of measures on the ballot and in terms of their success rates. Ranney (1978) and Magleby (1994) come to a similar conclusion. And both Ranney (1978, 78) and Magleby (1994, 238) classify initiative measures by subjects, with their combined analysis covering all state measures between 1898 and 1992. Initiatives subjects ranged from government/political reform (19 percent) and public morality (15 percent), to the regulation of business and labor (16 percent) and environment or land use (9 percent). No single interest or ideology has dominated the initiative agenda.

In summary, the literature demonstrates a consensus that groups and individuals turn to the initiative process when they challenge the status quo favored in the state legislatures, whether their ultimate goal is policy change or publicity. The variety of ideologies and issues represented on the various state ballots seems to support Shockley's (1981) conclusion that:

...citizen-initiated proposals (as distinct from those referred by the legislature) are likely to continue to challenge the existing structure--either from right or left--for the simple reason that if proponents could get their measures passed by the legislature, they would not need to use initiatives (42).

However, the literature does not address under what circumstances an issue that has been unsuccessful in the legislature will be forwarded as an initiative. The motivations and calculations of the policy entrepreneurs who set the initiative agenda are not clear.

E. The Mass Public

The initiative literature examines the *voting* public to a much larger extent than the mass public. A key concern expressed throughout the literature is the extent of citizen participation in and control of the initiative process, given that a relatively small percentage of the citizenry determine whether or not an initiative will make it to the ballot, as well as whether or not a ballot measure passes. A great deal of discussion regards the ability of the electorate to understand the initiatives on which they are asked to vote. Other concerns center around the predominance of corporate money versus "citizen" contributions in the initiative campaigns. The literature seeks to determine the extent to which the public

influences the initiative process, but it only examines the public's role in terms of the initiatives that have already made it to the ballot.

Magleby (1994) notes that the public can participate in the initiative process through a range of activities, circulating and signing petitions, campaigning for and against measures, and voting on them. There is an increasing tendency for initiatives to be put on the ballot primarily through the efforts of "professional" paid petition circulators, particularly since the Supreme Court ruled that states' prohibitions on paid circulators was a violation of the 1st Amendment freedom of speech (Cronin 1989; Magleby 1994). It no longer requires a dedicated corp of volunteers to collect the required signatures, so theoretically any group can "buy" its way onto the initiative agenda. In effect, the literature argues that the only effective control the public retains over the initiative agenda is through its ability to vote.

The literature is not particularly confident about the voters' comprehension of the issues, or about how well the electorate reflects the general public. The previously discussed lack of quality coverage of the issues in the news media and the advertising media is one cause of concern. In addition, the research notes that the best source of information on the ballot issues, state-prepared ballot handbooks, are of questionable value if the voters cannot comprehend the descriptions that are written at the fifteenth to eighteenth grade level (La Palombara 1950; Magleby 1984, 138). A related concern is that the higher costs of gathering information for initiatives (which unlike candidate elections lack partisan cues) may lead to an unrepresentative electorate, and, as a result, a

process biased in favor of the wealthy and well-educated (Cronin 1989, 77; Magleby 1989, 179). Indeed, the average initiative voter is more affluent, better educated, and more politically informed than the overall voting population (Clubb and Traugott 1972; Magleby 1979).

On the other hand, the research also provides some cause for optimism regarding the ability of the general public to control the initiative process. The voter turnout on the individual ballot initiatives is comparable to that which occurs on most candidate elections. While on average not as many voters cast a vote for initiatives as they do for the highly-publicized presidential and gubernatorial races, the voting rates for initiatives are often higher than the voting rates for other elective offices (Cronin 1989; Magleby 1994; Campbell 1997). The initiative electorate is, therefore, generally no more or less biased than the electorate that votes on most candidate elections. And while partisan cues are usually not available on initiatives, the electoral outcomes are consistent with the conservative-liberal political preferences of the voters (Lee 1981; Ranney 1978; Magleby 1984). That is, the voters apparently understand enough about the initiatives to vote in accordance with their ideological preferences. Some of this consistency may result from voters taking their cues from other people, particularly respected community leaders who take a position on the measures (Wolfinger and Greenstein 1968; Field 1972).

Probably the most common concern expressed in the initiative literature is the dominance of special interest money in initiative campaigns. Magleby (1994, 243) notes that two-thirds of all of the funds spent on California initiative

campaigns in 1990 came from business interests, and only 12 percent came from individuals. And in the 1992 election, 67 percent of all of the money donated to initiative campaigns was in amounts of \$100,000 or more, and 37 percent was in amounts of \$1 *million* or more. However, Magleby and others (Shockley 1981; Zisk 1987; Schmidt 1989) note that most of this "big money" is spent on campaigns in *opposition to* initiatives. Business and other special interests tend to shy away from the initiative, which is understandable if Campbell's (1997) analysis of Colorado initiatives is indicative of a broader trend. She finds that success rates of initiatives vary significantly by policy type. In particular, the Colorado citizens rarely passed "clientilistic" ("special interest") measures; that is, measures that asked the general public to pay the costs for policies that would primarily benefit a small group.

The literature does not lead to any consensus on the level of the public's control over the initiative process. The initiative electorate is about as representative as the voters on most candidate elections. It is not clear exactly how voters make their decisions on the ballot measures, although the paucity of substantive media coverage does not seem to lead to ideologically inconsistent results. The general public is definitely outspent by corporations in the initiative campaigns, but business interests are generally weighing in *against* initiatives, rather than proposing their own initiatives. The process has generally not been an agenda setting tool of corporate or other "special" interests. The tendency of the voters to vote "no" if they are uncertain about an initiative (Lee 1981; Magleby 1984; Cronin 1989) and the voters' reluctance to pay for benefits for "special

interests” would seem to enhance the public’s influence in determining what does *not* appear on the ballot. However, the research does not reveal the role of the public in determining the issues that *do* make it to the ballot.

II. Agenda Setting Concepts in the Initiative Literature

Only one of the three key elements of the agenda setting process receives significant coverage in the initiative literature. The concept of issue framing appears in many of the discussions about the mass media’s role in the initiative process, and it also figures into Campbell’s (1997) examination of initiative policy types. “Conflict escalation” is not specifically addressed, but the preceding discussion about groups’ turning to the initiative process after they have failed in the legislative process, and the very nature of the initiative process itself, indicate that the initiative entails the vertical escalation of conflict, or at least the *threat* of vertical escalation. Consideration of why certain initiatives appear on the ballot at a given time is largely absent in the literature, due to the existing research’s emphasis on the campaign stage of the initiative process when the “decision to decide” has already been made. However, it is commonly observed that initiatives are often proposed *after* earlier attempts in the legislature have failed, and a few inferences about the timing of initiatives can be developed from other observations in the literature. This section discusses these and other insights that the initiative literature offers about the three key elements of the agenda setting framework--conflict escalation, timing, and issue framing.

A. Escalating Conflict Via the Initiative

The initiative process is essentially a tool to escalate political conflicts. Individuals or groups sponsor a measure when they want the public to notice an issue. An entrepreneur who sought to keep an issue out of the public eye would not use a process which requires them to collect tens (or hundreds) of thousands of signatures from ordinary citizens, and to go through numerous administrative procedures that entail the scrutiny of their proposals in meetings open to the public and the mass media.⁴ As previously discussed, the literature concludes that the initiative is primarily used after failed attempts to change policy through the state legislatures. However, the literature recognizes that the initiative's vertical escalation of conflict to the mass public may serve several other purposes as well.

Lee's (1978) research on California initiatives, combined with his review of other initiative research, leads him to conclude that "direct legislation" has become "an integral part of the strategy of law making" (98). He recognizes several situations in which the initiative is used: the legislature refuses to pass a measure that is important to a particular group; groups wish to have a measure adopted in a certain form, rather than have it "amended to death" in the legislature; the sponsor desires a change of a constitutional nature; the sponsor seeks to inform the public and thereby stimulate subsequent legislative action, or; the sponsor may see the initiative campaign as a catalyst for organization and action that will extend beyond the campaign (97). In other words, sometimes the

⁴There is very little comparative discussion of how the particular provisions for the initiative in the various states affects the use of the initiative to escalate conflict, although Collins and Oesterle

sponsors of initiatives seek to escalate conflicts to the public to directly effect a change in policy, but other times the initiative is used to bring the public in as a means of setting the *legislative* agenda.

Zisk (1987) states that both the initiative and the citizen's referendum⁵ serve an important function by "bringing new ideas to the attention of the wider polity," and she concludes that the initiative in particular has been a means of early enactment of some of these ideas (11). Shockley (1980), Lee (1981), Zimmerman (1986), and Magleby (1994) comment that the initiative has in many cases served to increase public exposure and to gain legitimacy for new ideas. Individual cases described in these and other works have demonstrated that the initiative process has been used to broaden both the public agenda and the state legislative agenda in the states, or as "a last resort to the public to bypass a recalcitrant legislature and/or governor" (Price 1975, 262). Tolbert's (1996) interviews of legislators in Colorado and Washington revealed similarly that, "State lawmakers believed that the rise in the use of [the] initiative process was rooted in public frustration and anger with government, especially the slow reaction time of the legislature in responding to social problems" (188). She relates the increased use of the initiative to adopt "governance policies," that is

(1995) address procedures that "do and don't work." Chapter 4 of this research will also address this issue.

⁵The citizen's referendum process allows citizens to refer laws passed by the state legislature to the voters for their consideration as to whether that law should be kept or voted down. This referendum process is used much less often than the initiative process, in part because the legislature often includes "emergency clauses" in legislation that prohibits a law from being referred to the people.

policies that restructure political institutions and the operation of representative government, to inaction on the part of the state legislatures.

Finally, in addition to these uses of the initiative to promote policy change and to focus public attention on issues when the state legislatures are unresponsive to particular concerns or interests, Magleby (1984) points out that the initiative process is also a means of escalating conflicts *across* states and to the nation as a whole. He attributes the often overwhelming spending by opponents of initiatives in the states to the fact that greater stakes than just one state's policies are in the balance:

Groups such as organized labor, public utilities, tobacco companies, and glass and aluminum bottlers may not need to spend as much as they do, but their desire for certain victory leads to expensive campaigns. Their strategic consideration is probably accurate: one loss could spawn a host of other ballot measures and give energy to legislative efforts at the local, state, and even national levels (193).

Magleby cites the tax limitation movement as one example of how the passage of an initiative in one state can set a mandate or, conversely, how the failure of an initiative may stall future consideration or action on an issue. The use of the initiative to escalate conflict is not without risk.

B. Timing

Because the initiative research focuses on initiatives that have already made it to the ballot, the timing of initiatives--why they are proposed in a particular year or election--has not been a significant concern. However, the research does provide some insights into factors that are related to this central agenda setting concept. Several works have noted that initiatives are often

proposed after failures at policy change in the legislature, and the observation that candidates for office sometimes use the initiative process as a publicity-gaining tool indicates a tie between the initiative process and the campaign cycle. Finally, a few authors have noted that there is some similarity of issues dealt with in the different initiative states.

The initiative literature points to one major hypothesis regarding the timing of proposed measures; proponents of policy change use the initiative process *after* they have failed in attempts to change policy through the state legislatures (Bone and Benedict 1975; Price 1975; Lee 1981; Magleby 1984, 1995; Tolbert 1996; Smith 1997). Case studies and interviews point to the conclusion that the initiative process is part of an overall legislative policy making strategy. As Lee (1978, 119) points out, the initiative may be used to prompt the legislature to act in a preemptive manner to avoid a more extreme proposal; it may be used to raise public support that will increase legislative interest on an issue, or; it may be used to circumvent the legislature entirely. In any case, proponents are portrayed as likely to use the initiative process after they have already availed themselves of the normal, legislative channels.

Examples cited in the literature strongly support the conclusion that the initiative is sometimes used by candidates primarily to make a name for themselves (Shockley 1980; Lee 1981; Magleby 1984; Tolbert 1996). Particularly when an individual is challenging an established officeholder, the initiative presents an opportunity to establish statewide name recognition. Magleby (1984, 192-193) notes how the sponsorship of popular initiatives has furthered the

careers of issue activists such as Paul Gann and Jerry Brown. And Shockley's (1980, 4) finding that in the 1976 Colorado elections "there was generally much greater voter awareness on the initiatives than on the candidate races," certainly points to a logical rationale for candidates' use of the initiative process to further their own political careers. In such cases, the timing of initiatives would be a function of the timing of a candidate's own campaign.

Finally, the literature mentions that there appear to be certain trends in the types of initiatives dealt with over a period of time across the states, but it does not probe into this timing-related phenomenon. Shockley (1980, 13) notes that Colorado's "nuclear power safety" initiative was proposed in 1976, following a successful nuclear safety campaign in California and the overwhelming passage of a 1974 Colorado initiative that required voter approval before any nuclear detonation could take place in the state. Ranney (1978) recognizes trends in different types of initiatives that are popular in different decades, such as civil rights and civil liberties initiatives in the 1970s, and Tolbert (1996) notes the more recent proliferation of measures dealing with governance policies such as term limitations and tax limitation that affect government organization and operations. As Magleby (1984, 193) explains, groups are often willing to spend large amounts of money to oppose an initiative because they recognize that the success or failure of an initiative in one state may impact the policy agendas at the local, state, and national levels.

In summary, while the initiative literature has not examined "timing" *per se*, it does provide some important insights about this element of the initiative

process. First, it appears that the most important timing-related factor is the failure of previous attempts to change policy through the state legislatures. However, most of the policy making failures in the state legislature do *not* result in initiatives, and there is no research on the circumstances under which failure in the legislature *will* lead to an initiative. Second, election cycles are likely to play a role in determining when certain candidate-sponsored initiatives are proposed. Finally, there are some indications that the timing of the proposal of an initiative in one state is related to the proposal of similar initiatives in that state and in other states. The initiative research has determined some factors that tend to be related to the timing of initiative campaigns, but the precipitants that trigger the use of direct democracy have not been investigated.

C. Issue Framing

Part I of this chapter discussed the predilection of the news media for certain types of news stories and the resultant tendency to focus on certain types of issues. Issue framing has received relatively little attention in the initiative literature, because of the research's emphasis on campaign spending and the quantity of advertising, rather than on the quantity or quality of news media coverage. However, the limited research that has considered the significance of issue framing to the initiative process seems to indicate that initiative sponsors and their opponents tend to package their campaigns in ways that appeal to the news media and to the public. What is not clear is the extent to which the initiative entrepreneurs frame their policy proposals, the substance of the initiatives, with other political actors in mind.

The concern with the “professionalization” of the initiative process and the creation of an initiative “industry” that is evident in much of the literature (Shockley 1980; Lee 1981; Magleby 1984; Zisk 1987) is related to the ability of groups to purchase advertising that affects the public’s conception of the issues, rather than the public’s understanding of the proposed measures. For example, Shockley (1980) describes how a nuclear safety initiative proposed by environmental groups was defeated by the corporate-funded opposition’s well-organized and extremely well-funded media campaign. Based on the results of sophisticated polling and focus groups, an opposition campaign was designed that redefined the initiative as constituting a virtual *ban* on nuclear power, versus its actual requirement for the Colorado legislature’s *approval* of new or expanded nuclear power plants. Schmidt (1987) also emphasizes the importance of framing to the proponents’ campaign strategies. Washington state environmentalists, although primarily concerned with nuclear safety, chose to frame their ballot issue in terms of “the popular and understandable issue of cost control, rather than the complex technical issue of nuclear power and safety, [which would result in] a confusing technical debate” (78).

Campbell’s (1997) research demonstrates that the arguments forwarded in editorials by those who favor and those who oppose particular initiatives are often framed in terms of the locus of the costs and benefits. Her research on 57 Colorado initiatives on the ballot between 1966 and 1994 found that those who favored a measure framed an issue in terms of the benefits that will accrue to the general public, while those who opposed a measure framed an issue in terms of

the costs that will accrue to the general public. Issue framing is an important aspect of the initiative campaigns. However, as noted previously, the research concludes that the most likely source of issue framing, advertising, seems to be influential in “buying” confusion and the defeat of an initiative, rather than the passage of what were originally unpopular policy proposals.

There is actually very little research on the nature of the *news* media’s coverage of initiatives. Cronin (1989) does comment on the manner in which “sloppy” news coverage can obscure or avoid the issues involved in the proposed measures, and Shockley (1980) notes that many observers of the 1976 Colorado initiative campaigns complained about the “mindlessly superficial” coverage of the six initiated measures on the ballot. He quotes a local newspaper:

Generally, the press seemed content to dismiss complex issues by merely noting that they were complex. The press has a responsibility to get to the bottom of factual discrepancies instead of merely reporting that such conflicts exist....The effect of press inadequacy was not that voters drew *wrong* conclusions, but that they simply did not have the factual base upon which to draw any conclusions (41).

These and other observations seem to point toward a situation much like that posited by Gitlin (1980) and Hallin (1987) and discussed previously (in Chapter 2 under “issue framing”); many cases are cited in which the news media neglect to consider the more substantive aspects of proposed initiatives, framing initiatives in terms of strategy, effectiveness, and personalities rather than considering the merits of the policy changes proposed.

The initiative literature has also neglected to consider a very significant framing-related aspect of the initiative process. Because initiatives involve

putting an issue *and* a proposed policy solution on the agenda simultaneously, it is important to know the impact of different political actors in framing the initiatives themselves, the substance of their policy proposals. Magleby (1984, 189) observes that initiatives are most often fashioned by single-issue groups, and he proposes that because of this the initiative sponsors have no concern for compromise when they draft their measures. He proposes that, to the contrary, initiative policy proposals are apt to be framed in extreme terms in order to attract the activists and/or money required to escalate an issue to the initiative agenda through the petition process. However, there has been no research into the factors that affect the language of the laws and constitutional amendments proposed as initiatives.

In essence the literature's anecdotal evidence deals with how the coverage of initiatives in the news media and in mass media advertising is most notable for its *lack* of informative value, due to the way the issues are framed for the public. The emphasis is on the effects of paid advertising during the campaign stage of the initiative process, and the ability of well-financed opposition campaigns to "buy" the defeat of initiatives through overwhelming spending on advertising campaigns that affect the public's framing of the issues, often merely confusing the voters. In terms of the news media, the initiative literature is skeptical that the mass media serve a very influential role in most campaigns, based on largely anecdotal evidence that initiatives receive superficial coverage as a result of an emphasis on contests rather than on issues. A framing-related issue that has not been investigated involves the drafting of the specific initiative language, although

one author speculates that there may be a tendency for the sponsors of initiatives to frame the initiatives with the views of issue activists rather than the views of the public in mind.

III. A Framework for the Analysis of the Initiative Agenda Setting Process

To determine how the initiative agenda is set and why certain groups and individuals use the initiative process, it is essential to understand the role played by the public and other political actors *throughout* the process. The initiative literature has made some progress in understanding the roles of various actors, particularly the media and interest groups, during the campaign stage of the process. But the campaign occurs after an issue has already made it onto the ballot. To fully determine the nature of the linkages between the public and policymaking by initiative, it is critical to understand how the initiative *agenda* is set.

This chapter revealed that there are significant gaps in the initiative research regarding the process by which the initiative agenda is set. In particular, while the literature reveals the influence exercised by the five types of political actors in the later stages of the initiative process, it is still very unclear what roles they play in setting the initiative agenda. Table 3.1 summarizes what can be deduced about the initiative agenda setting process from existing research.

[Table 3.1 about here]

The initiative is a political institution that appears to facilitate the vertical escalation of conflict on an issue to the public. Citizens have to sign a petition to

qualify an initiative for the ballot, although the requirement that states allow the use of paid petitioners has decreased the difficulty of this step for those groups

Table 3.1
Existing Initiative Research: Existing Data on the
Key Elements of the Agenda Setting Process

ELEMENTS OF THE AGENDA SETTING PROCESS	MAJOR ACTORS INVOLVED	INFLUENCE
Conflict Escalation	Interest Groups Policy Entrepreneur Mass Public	Groups unsuccessful in legislature seek to change policy by escalating conflict to the public via the initiative Promotes conflict escalation and policy change by petitioning to get an issue on the ballot as an initiative, often on behalf of groups facing significant opposition by "special interest" groups Signs petition to qualify measure for the ballot
Issue Framing	Policy Entrepreneur/ Interest Groups Promoting an Initiative Interest Groups Opposing an Initiative Mass Media	Frame/reframe issues to appeal to public; emphasize benefits to public Opponents of initiative frame issue to reduce public support of initiative, emphasize costs to public Advertising in mass media key source of public information about competing issue framings by proponents/opponents of initiatives
Timing	Institutional Elites Policy Entrepreneur	Elite action/inaction on policy occurs before initiative attempted Determines if and when an initiative will be attempted

Source: This author's synthesis of data in existing initiative literature, as discussed in this chapter.

with adequate funds. It is not clear exactly what types of groups or individuals use the initiative to escalate conflict or *when* they will choose to do so. While the action or inaction of institutional elites, especially legislators, generally *precedes* efforts to escalate conflict to the public through the initiative, it is unclear what precipitates the use of the initiative to escalate conflict on some issues but not on others. Finally, although issue framing is definitely an important strategic consideration during the campaign stage of the initiative process, the research does not reveal what factors influence the framing of the initiatives themselves, that is the actual language that defines the problem and the solution that the voters are called to vote on.

This study seeks to provide a better understanding of the significance of the initiative process, a political institution that facilitates the vertical escalation of issues to a *public*, policy agenda. Table 3.2 summarizes the major gaps and weaknesses in the initiative research. This research addresses these areas--conflict escalation, timing, and issue framing--in order to determine how the initiative agenda is set, and the impact that the initiative process has on the formal, governmental agenda. The following chapters address these areas by examining *who* sponsors initiatives, *why* groups and individuals sponsor initiatives, *what* affects the way they frame their initiatives, and *when* groups and individuals resort to the initiative. These are missing pieces of the puzzle that must be found before we can develop a clearer picture of the significance of the initiative process to the representative institutions of government and to the processes of political change. Before we can determine "Who governs?" via the initiative process, we need to

gain a more complete understanding of how conflict escalation, the timing of agenda change, and issue framing factor into the initiative agenda setting process, and of the influence that different types of political actors exercise in setting the initiative agenda.

[Table 3.2 about here]

The following chapters examine a variety of data in order to determine how conflict escalation, issue framing, and timing factor into the initiative agenda setting process, and to better understand the influence exercised by institutional elites, the mass media, policy entrepreneurs, special and public interest groups, and the mass public on the initiative agenda. Chapter 4 reviews the specific structure of the initiative institution in Colorado from a comparative perspective in order to clarify the “rules of the game” and the “mobilization of bias” of Colorado’s initiative process. Chapter 5 on conflict escalation deals with both “How is the agenda is set?” and “Why the initiative?” questions. Chapter 6 on timing looks in more depth at data that helps answer the “why” question. The data in Chapter 7 on issue framing speaks more to the “how” question. The final chapter summarizes the findings of this research and compares agenda setting via the initiative to agenda setting via representative government. It discusses the conclusions of this research regarding how the initiative agenda is set in Colorado, as well as why certain individuals and groups turn to this institution of direct democracy.. The epilogue reflects on the ability of the initiative process to facilitate political change that benefits the political community as a whole.

Table 3.2
Gaps in the Initiative Literature's Understanding
of the How the Initiative Agenda is Set

ELEMENTS OF THE AGENDA SETTING PROCESS	GAPS IN THE EXISTING INITIATIVE LITERATURE
Conflict Escalation	Literature emphasizes certain "noteworthy" initiatives, with a focus on the influence exercised by groups after a measure has already made it onto the ballot. Because conflict escalation was never the specific focus of initiative research, evidence on who uses the initiative process and why they use it is largely anecdotal. No systematic comparison across a universe of initiatives proposed in a state during a specific timeframe.
Timing	Again, emphasis of the literature is on "noteworthy" initiatives. Several examples of elite use of initiative and use of initiative by groups when legislators unresponsive to their concerns. A few examples cited of similar initiatives in different states. However, focus is on the post-agenda setting stages of the initiative process. As a result, the factors that determine why an initiative is on the ballot at a particular time have not been examined systematically.
Issue Framing	Existing research emphasizes the importance of advertising as a means of affecting the outcomes of initiative elections. Several examples of how different framings of the initiatives in the campaigns appeared to impact outcomes. However, literature fails to address the significance of issue framing by actors such as the mass media in setting the initiative agenda. In addition, while the initiative agenda consists of issues and policy proposals, the research has neglected to consider how the particular substance of an initiative is determined.

Source: This author's synthesis of data in existing initiative literature, as discussed in this chapter.

Chapter 4

An Examination of the Initiative Process in Colorado

The citizen's initiative process "enables citizens to bypass the legislature by placing proposed statutes and/or constitutional amendments on the ballot" (Colorado League of Women Voters 1994). The interviews conducted as part of this research clearly indicate that, at least in the state of Colorado, sponsors of initiatives see the process as a "last resort." The sponsors of ballot measures pursued policy change via the initiative after they (or others) had failed to convince the state legislature to act on the issues. Sponsors appealed to the voters when the legislature failed or refused to act on a particular issue, or in response to actions of the legislature that they opposed.

The first part of this chapter reviews some of the major differences in the architecture of the various states' initiative institutions in order to demonstrate how these provisions may determine the extent to which an initiative actually does "bypass" the state legislatures, and to develop a comparative perspective on the state of Colorado's initiative process. It also briefly examines the types of initiatives proposed in Colorado during the period under study. The second part of this chapter reviews the specific requirements of Colorado's initiative process in more detail. The major steps of the process are discussed in terms of the constitutional, statutory, and regulatory provisions that apply to each step, and in terms of the significance of these provisions for the "mobilization of bias" of the initiative. Part three of this chapter summarizes how the influence of the different types of political actors--institutional elites, interest groups, the mass media,

policy entrepreneurs, and the mass public--is affected by the "rules of the game." This conclusion provides an overview of the roles played by the various actors in escalating conflict via the initiative, in framing the initiatives for the public, and in determining the timing of initiatives.

I. Comparing the States' Initiative Processes

The extent to which the initiative process in any of the 24 states *can* serve as a means to bypass the legislature depends upon the various constitutional and statutory provisions, as well as the implementing regulations, which exist in these states. However, while there are truly 24 different initiative processes, several provisions are particularly significant determinants of initiative "power." Table 4.1 provides a summary of several key characteristics of this institution of direct democracy in the 24 initiative states, including: 1) whether constitutional and/or statutory changes are permitted; 2) restrictions on the subject matter of initiatives; 3) the ability of the state legislatures to amend or repeal initiative policies passed by the voters, and; 4) the signature requirements for petitions on constitutional and statutory initiatives.

[Table 4.1 about here]

The first three items are perhaps the most critical determinants of the power inherent in a particular state's initiative process; the first two determine for what purposes the citizens *can* use the right of petition to circumvent their state legislatures, and the third determines the extent to which enacted measures are

Table 4.1
States with the Citizens' Initiative

protected from changes by the legislature. The signature requirements are important determinants of how difficult it is to qualify a measure on the ballot. The most demanding petition processes include requirements for a geographical distribution of the petition signatures collected to put a measure on the ballot and for votes cast in favor of the measure. These distribution requirements make gathering the requisite signatures and gaining the requisite votes a much more onerous task and, as a result, would affect which citizens (or groups) have the wherewithal to use the petition process. For instance, the two sponsors of three Colorado initiatives that relied on volunteer petitioners (1992-#10, 1994-#15, and 1996-#15) commented that the effect of the state senate's proposal for a distribution requirement for petition signatures in Colorado would be to make a total volunteer effort all but impossible.¹ Patricia Johnson of the League of Women Voters remarked that, whatever additional requirements are put on the petition process really only hurt those who rely on volunteer petitioners. She noted that while "you can send people out in the boonies if you pay them," there just aren't citizens' groups whose grass roots extend to all of the corners of the state.

In addition, Table 4.2 shows that out of the 18 states which permit constitutional initiatives and the 21 states which permit statutory initiatives, two states permit only "indirect initiatives" on constitutional amendments and six states permit only "indirect" statutory initiatives--that is, initiatives must be

¹The proposed legislative referendum, 1997's Senate Concurrent Resolution-2, that called for distribution requirements for petition signatures, did not make it out of the Senate.

Table 4.2
Initiative States
Ranked in Order of Use, 1898-1992

STATE	YEAR ADOPTED	TOTAL # INITIATIVES	AVG # INITS/ YEAR	STATUTORY INITS	CONST'L AMEND
Oregon	1902	274	3.0	Direct	Direct
California	1911	232	2.9	Direct	Direct
North Dakota	1914	160	2.0	Direct	Direct
Colorado	1910	150	1.8	Direct	Direct
Arizona	1910	133	1.6	Direct	Direct
Washington	1912	91	1.1	Direct / Indirect	N/A
Arkansas	1909	80	1.0	Direct	Direct
Oklahoma	1907	79	.9	Direct	Direct
Missouri	1906	60	.7	Direct	Direct
Ohio	1912	58	.7	Indirect	Direct
Montana	1904	56	.6	Direct	Direct
Michigan	1908	54	.6	Indirect	Direct
South Dakota	1898	42	.4	Direct	Direct
Massachusetts	1918	41	.6	Indirect	Indirect
Nebraska	1912	35	.4	Direct	Direct
Nevada	1904	27	.3	Indirect	Direct
Maine	1908	27	.3	Indirect	N/A
Alaska	1959	22	.7	Direct	N/A
Idaho	1912	17	.2	Direct	N/A
Utah	1900	16	.2	Direct/ Indirect	N/A
Florida	1972	12	.6	N/A	Direct
Illinois	1970	4	.2	N/A	Direct
Wyoming	1968	3	.1	Indirect	N/A
Mississippi	1992	0	0	N/A	Indirect

Sources: *The League of Women Voters of Colorado* (1994) "Ballot Issues: The Initiative Process in Colorado"; Collins and Oesterle (1995) "Structuring the Ballot Initiative: Procedures that Do and Don't Work," *University of Colorado Law Review*, 66:47-127, and; *The Book of States* (1993).

submitted to the state legislature *before* they are placed on the ballot.² The requirement for prior legislative review restricts and/or delays the escalation of conflict to the mass public, although if a measure is not addressed by the legislature in a specific period of time its proponents may then proceed to collect additional signatures to qualify for the ballot. The legislature plays an additional role in a few states such as Maine, where the legislature also has the option of proposing a “competing measure” which then appears on the ballot as “Option B” under the proposed initiative.³ This provision encourages institutional elites to join the battle that has been escalated to the public.

[Table 4.2 about here]

Considering the information in Tables 4.1 and 4.2, it is evident just how dramatically the initiative process varies from state to state. On one end of the spectrum, in the state of Wyoming initiatives must be formally submitted to the legislature prior to the beginning of the legislative session for that election year

²Unlike Oesterle and Collins (1995) this author has not classified Alaska’s statutory initiative process as “indirect.” This author agrees with the Book of States’ (1992) classification of the Alaskan process as being “direct.” Based upon discussions with Ms. Jody Davis of the Alaska Division of Elections (on May 12, 1997), the legislature has the *opportunity* to enact legislation substantially the same as proposed by a certified petition, in which case the Lieutenant Governor (with the state Attorney General’s concurrence) may void the petition and the measure will not appear on the ballot. However, this is quite uncommon and initiatives are not *required* to undergo legislative review prior to appearing on the ballot as they are in other “indirect” initiative states.

³In every initiative state the legislature has the power to put “counter-proposals” on the ballot via legislative referendum. However, with Maine’s “competing measure” the legislature is automatically empowered to propose a counter initiative, and the ballot actually provides for three choices on “one” initiative subject. The voter may vote for the original initiative (Option A), for the legislative measure (Option B), or for no change (Option C). Hence the legislature’s “disapproval” of the initiative is readily apparent. Massachusetts’ legislature also has the option of grouping its own proposal on the ballot with the initiative measure as an alternate choice, but the state-prepared instructions to petitioners indicates that this is “a rarely-used procedure” (Massachusetts 1997, 8).

before they may appear on the ballot. They may only propose statutory changes, and these statutory changes may not: earmark, make or repeal appropriations; create courts, define the jurisdiction of courts or court rules; pertain to locally specific legislation; propose a statute which has been the subject of an initiative defeated within the past five years, or; propose any other legislation prohibited by the state constitution. In order to qualify for the ballot a sponsor in Wyoming must gather a number of signatures equal to 15 percent of the *total* vote in the last general election. Furthermore, once an initiative has passed, the state legislature is free to amend its provisions immediately, and it may repeal the substance of an initiative in its entirety after a two-year period. These provisions increase the burden on those who might seek to escalate conflict to the public, restrict the issues that can be escalated, and decrease the policy entrepreneur's control over the timing of conflict escalation.

On the other end of the spectrum, the initiative process in California makes it much easier to use the petition process to escalate conflict and propose policy change. Both constitutional amendments and statutory changes may be proposed through a petition process that totally circumvents the state legislature, and the substance is only limited by the requirement that the initiative cover a single subject. The petitioner must gather signatures equal to 8 percent of the vote for governor in the previous election for a constitutional initiative, or 5 percent of the vote for governor for a statutory initiative. Once approved by the voters, the substance of an initiative--constitutional or statutory--can only be amended or

repealed by the legislature with voter approval.⁴ The initiative sponsor is virtually unlimited in terms of subject matter and assured that, once passed, even a statutory policy change will remain in effect until a contrary initiative or referendum is approved by the voters.

While there are certainly many factors which would be likely to affect the number of ballot measures,⁵ it is interesting to note that of the five states (Oregon, California, North Dakota, Colorado, and Arizona) which have the *highest* number of initiatives on the ballot both in terms of total measures and in terms of the average number of measures per year: *all* permit constitutional amendments by initiative; *four of the five* have significant protection of such amendments from future amendment⁶; *all* have relatively limited restrictions on subject matter, and; *all* have moderate requirements for the number of signatures required to qualify a petition for the ballot. (See Tables 4.1 and 4.2.) In these five states, which account for 57 percent of all ballot initiatives between 1898 and 1992, the initiative process is relatively liberal in terms of subject matter and relatively easy to use, and measures are relatively well-protected against legislative change after they pass. The institutional characteristics of the initiative process in these states

⁴The California legislature may make changes to voter-approved initiatives if there is a provision in the initiative that permits such changes.

⁵There are other process-related factors, such as Mississippi's particularly onerous procedures for signature verification by county which require that petition signatures be gathered and filed by county. In addition, there are certainly factors unrelated to the initiative process itself that are likely to impact the frequency with which the initiative is used such as: population size, education levels, the relative homogeneity or heterogeneity of the population.

⁶Arizona is an exception, permitting both legislative amendment and repeal of even constitutional amendments passed by initiative.

facilitate and promote the use of the initiative for the vertical escalation of conflict to the public.

On the other hand, out of six states with the *lowest* number of ballot measures per year⁷ (Wyoming, Illinois, Utah, Idaho, Maine, and Nevada), it is interesting to note that four of the six do *not* permit constitutional amendments by initiative, and the two states permitting constitutional amendments (Nevada and Illinois) have significant restrictions on subject matter (see Tables 4.1 and 4.2). In the four states which permit only statutory initiatives, the legislature has the power to override proposed measures by amending, appealing, or not appropriating money for them even if they are passed. While the signature requirements on petitions is moderate in all but one of these states,⁸ it is not surprising that citizens in any of these states rarely avail themselves of the initiative given that the subject matter is significantly restricted and that even when measures are passed by the voters they are easily overridden by the legislature. The policy entrepreneur can escalate conflict to the public, but unless she can successfully promote the public's sustained interest on the issue, the legislature may turn around and nullify any citizen-initiated policy changes.

In summary, a review of several key differences amongst the states' initiative processes reveals that the initiative process is most often used to escalate policy conflicts to the public in those states where the costs of using this

⁷This calculation excludes Mississippi since that state only adopted the initiative process in the year in 1992, the last year in which initiatives were counted in Table 4.2.

⁸Nevada has one of the most demanding signature requirements with the number of signatures required on a petition being equal to 10 percent of *total* votes cast in the last general election *and* with 10 percent of signatures required from each of 3/4 of all of the counties.

institution are lowest and the benefits are highest. Individuals and groups are more likely to turn to this institution of direct democracy in those states where the initiative sponsors have more control over the timing and the substance of policy proposals, and where the legislature is most constrained from overturning the policy changes. Policy entrepreneurs appear to be deterred from escalating conflict to the public when it will subsequently be necessary to maintain high levels of public concern to dissuade institutional elites from overturning policy changes that the public voted for.

II. The Initiative Process in Colorado

In terms of the general characteristics discussed above, Colorado is one of the more initiative-friendly states. The costs associated with the process are relatively low, and the benefit--the extent to which the legislature is truly "bypassed"--is relatively high. Colorado permits direct initiatives on both statutory and constitutional measures, and the only restriction on substance is the requirement that the initiative cover a single subject. In order to qualify for the ballot a petition must be filed with the signatures of a number of registered voters that is equal to five percent of the votes cast for the two major parties' candidates for Secretary of State in the last election.⁹ While statutory provisions enacted by initiative may be amended or repealed by the legislature just like any other law, constitutional initiatives require the same number of signatures to qualify for the ballot, and once passed by the majority of the voters they can not be amended or

⁹For the 1994 election, 49,279 valid signatures were required for an initiative to be placed on the ballot.

repealed without another vote of the people. Given these relatively liberal provisions it is not surprising that Colorado ranks fourth in initiative use, in terms of both the total number of initiatives on the ballot since the process was instituted in 1910 and the average number of initiatives per year.

Colorado provides a good case study for an initial investigation of the initiative agenda setting process. Its initiative procedures are moderate relative to other states, and there have been a relatively large number of initiatives on diverse issues on the ballot in recent years. In addition, while it conforms to the generally recognized pattern of being used most often by interests that are at least at first glance of a "public interest" nature (campaign finance reform, environmental issues, term limits, tax and spending limits), it has also been used by interests that appear to be "special interests" (expansion of limited gambling).

Campbell (1997) notes that during the period between 1966 and 1994 the vast majority of initiatives proposed were "majoritarian" or "entrepreneurial" in nature. According to Wilson's (1974; 1995) policy typology majoritarian and entrepreneurial policies both entail the providing benefits to the general public, rather than to limited numbers of individuals who constitute a special interest. Appendix A lists the issues that appeared on the statewide ballot in Colorado from 1992 to 1996. It illustrates how the initiative has been used in Colorado by interests that would generally be considered to be "liberal"--such as animal rights and the elimination of property tax exemptions for churches, educational standards and sales tax--as well as by interests that would generally be considered to be "conservative"--such as "no protected status for homosexuals," school

vouchers, and tax limitations. In addition, there are also non-partisan issues such as term limits, campaign finance reform, and election reform. As will be discussed in the following chapters, the only thing that this diverse group of initiatives appear to have in common is their sponsors' belief that their issues were not receiving the consideration in the legislature that the levels of general public for the issues made them warrant.

The 26 initiatives on the ballot illustrate that the initiative process in Colorado has been used relatively frequently. However, the following discussion of the legal and administrative requirements associated with this institution in Colorado reveals that it is a serious, and not particularly simple undertaking to sponsor an initiative. The review of the major steps of the process--through an examination of constitutional, statutory, and administrative provisions, as well as through the reflections of initiative sponsors, state legislators, and key bureaucrats on these provisions-- demonstrates how the process itself affects the influence exercised by various political actors.¹⁰ The "rules of the game" definitely affect the influence that the institutional elites, interest groups, the mass media, policy entrepreneurs, and the mass public have on the initiative process.

The remainder of this section will examine the Colorado initiative process by looking at eight major stages of the process. These stages include:

- A) Citizen's submission of proposed initiative to the Legislative Council
- B) Legislative Council/Legislative Legal Services review and comments

¹⁰Unless otherwise noted, the statutory provisions discussed in this chapter are in Section 1, article 40 of the Colorado Revised Statutes, with page numbers according to *West's Colorado Revised*

- C) Ballot title setting
- D) Petition process
- E) Preparation of voter information pamphlet (“Blue Book”)
- F) The campaign and the election
- G) Post-election legal challenges

A. Citizen’s Submission of Proposed Initiative

Article V of the Colorado Constitution, entitled “Legislative Department,” specifies that:

The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives, both to be elected by the people, ***but the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly*** and also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly [emphasis added] (Article V, section 1(1)).

A 1978 Colorado case noted that “legislative acts which prescribe the procedure to be used in voting on initiatives may not restrict the free exercise of that voting right” (Colorado Constitution 1980, notes at 223).¹¹ The constitution further protects the people’s legislative power, stating that, “[t]he veto power of the governor shall not extend to measures initiated by or referred to the people” (Article V, section 1(4)).

This constitutional language makes it clear that the citizens of Colorado have the right to bypass the executive and legislative branches of the government

Statutes Annotated (1996), and the constitutional provisions are in Article V of the Colorado Constitution.

by proposing both statutory and constitutional changes that neither the legislators nor the governor have the authority to block. Indeed, the Colorado Supreme Court confirmed that “[t]he power to call referendum and initiative elections is a direct check on the exercise or nonexercise of legislative power by elected officials” (Colorado Constitution 1996, notes at 164).¹² Any citizen of Colorado may propose an initiative and circulate petitions in order to qualify a measure for the ballot, and thereby escalate an issue to the general public.

Up until very recently there were no limitations on the subject matter of initiatives. However, in 1994 the legislature referred a measure to the people that limited initiatives and referendums to a single subject. According to several state legislators, the “single subject rule” referendum was a reaction to the passage of Doug Bruce’s tax limitation initiative in 1992 (1992-#1). The legislators viewed the measure as being too complex and concluded that the voters had not understood the ramifications of the measure as a result. While a few of the initiative sponsors viewed the single subject rule as a “necessary evil,” several others commented that the rule was unfairly applied. They stated that it makes it difficult to deal with some more complex issues by initiative and that it leaves the door open for court challenges that are intended only to delay the proponents so that they cannot collect signatures in time to qualify for the ballot. One initiative sponsor laughingly noted that the legislators had just made it impossible for

¹¹*City of Glendale v. Buchanan (1978).*

¹²*Margolis v. District Court (1981).*

themselves or anyone else to undo the Bruce tax limitation initiative that had so enraged them.

Despite the limitation on the number of subjects dealt with in any one initiative, the citizens' right to use the initiative is still relatively unlimited in Colorado. The constitution and the courts' decisions have made it clear that the people may use this instrument of direct democracy to propose and pass legislation and constitutional amendments, notwithstanding legislative or executive opposition. Any Colorado citizen has the institutional means to bypass the formal institutions of representative government and escalate an issue to the mass public for its determination.

B. Legislative Council and Legislative Legal Services Review

According to the legislative staff, the review of proposed initiatives by the legislative staff is for the benefit of the initiative sponsor. Within two weeks after the submission of a draft of an initiative, the Legislative Council staff and the Legislative Legal Services staff must provide the sponsor with their comments regarding the format and contents of the petition at a meeting open to the public. The sponsors may or may not respond to the comments, and they may choose whether or not they wish to revise their initiatives. If the proponents of the initiative decide to revise a measure after it has gone through review, they must be certain that their revisions do not constitute "substantial amendment...to the petition, other than an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services." Otherwise they must resubmit their amended petition for further review and

comment (CRS 1-40-105). The failure to do so may leave the proponents of an initiative open to a legal challenge that the ballot title was set prior to this constitutionally mandated review step.¹³

This initial review of proposed initiatives primarily assists the sponsor in drafting a measure that accomplishes what she intends it to accomplish. Staff from both legislative offices remarked that the greatest benefit of the review is for the “lay person” who has drafted a measure without the benefit of legal expertise. This author attended several public meetings on two initiatives that were being proposed by just such an individual. The jeans-clad, cowboy-booted sponsor went through several iterations on his growth-limitation measure, commenting openly about his goals and asking advice from the legislative staff at each hearing. He went through seven months of changes to his initiative before he proceeded to the next stage of the process.

Other proponents were less forthcoming at these public meetings. Some came in with their lawyers, allowing their lawyers to respond to most questions. Another experienced initiative sponsor came in alone, but he also refrained from responding to most of the legislative staff’s questions or comments. Even when the Legislative Council or Legal Services representative pressed for a comment, he generally responded that he had “noted” their comment or question. After the hearing he told this author that it was dangerous to say too much at these meetings, because recordings of the meetings were a matter of public record and

¹³See Singer (1992). The failure to resubmit for comments has resulted in the title being set aside by the Colorado Supreme Court, because the title board does not have the authority to fix a title

groups opposing his initiative would look for any admissions on his part that there were weaknesses in his initiative.

Indeed, on the more controversial initiatives representatives from various interest groups that have an interest in the initiative topic attend these public meetings. For example, there were always representatives of realtors groups, builders groups, and education-related groups at the many hearings on the growth-limitation initiative. These interest groups representatives are not allowed to speak during the meeting, and they did not seem to want to speak to the sponsors of the initiatives even after the hearing. However, they did pay close attention to the comments of the legislative staff and to any statements made by the sponsors.

The press and members of the general public were noticeably absent from the review and comment sessions attended by this author. The legislative staff that ran the meetings indicated that often only they and the sponsor(s) attended. They said that the media rarely showed up, although they noted that the media could request transcripts from the hearings. They were not surprised that the public was not often present, due to the fact that notices of the hearings do not usually appear anywhere outside of the capitol and the legal notices section of the major newspapers. The staff noted that lobbyists and state legislators are always aware of what issues are being dealt with, but that apparently few others are.

In summary, because of the format of the review and comment sessions, with no opportunity for members of the public or representatives of interested groups to comment on the substance of the proposed measures, this step of the

prior to the constitutionally-mandated public hearing with the legislative staff.

initiative process serves primarily as a means of assisting the inexperienced sponsor in drafting an initiative. It does greatly enhance the ability of such “lay persons” to write measures that “say what they mean.” On the other hand, the sessions do not do much to help the initiative sponsor escalate an issue to the public, due to the lack of publicity surrounding them. This stage of the process seems to be of interest primarily to the initiative sponsor and to the interest groups (and sometimes the legislators) that have a vested interest in the issues being addressed. The influence of institutional elites is limited by the constitution that stipulates that neither the General Assembly nor the Legislative Council or Legislative Legal Services staff may require “the amendment, modification, or other alteration of the text of any such proposed measure” (Article V, section 1(5)).

C. The Title Setting Hearing

After a proposed initiative goes through the review and comment hearing, the proponent may submit it to the Secretary of State’s office to get the ballot title fixed.

The statutes (CRS 1-40-106) specify that the title setting board consists of the Secretary of State, the Attorney General, and the Director of the Office of Legislative Legal Services or the director’s designee. By majority vote, the title board fixes the title which will go on the top of every page of the petition, as well as on the ballot. Title setting boards are held twice a month between December

and May for all measures except those which involve taxing and spending.¹⁴

Measures must be submitted to the Secretary of State at least twelve days before the meeting of the board in order to be considered at that next meeting. The board is required to develop a ballot title that “fairly and accurately represents the true intent and meaning of the proposed text of the initiative” and that also includes a statement of the estimated fiscal impact of the proposed measure.

Because this title will appear on the top of each page of the petition, as well as on the election ballots, both the proponents and opponents of a measure are keenly interested in the title language. Unlike the public meeting conducted by the legislative staff, where only the staff and the proponents of a measure (or their representatives) may speak, members of the public may speak at the title setting meeting. The proponents of a measure are as likely to make comments as the opponents of a measure, because the statutes prohibit the proponents from furnishing any suggested title when they submit their measure to the Secretary of State’s office.

The proponents of an initiative or any registered elector may file a motion with the Secretary of State for a rehearing if they are not satisfied with the ballot title set by the board. If the motion is denied, or if after a rehearing they still believe that the title set is unfair or does not clearly express the true meaning and intent of the measure, they may then file a motion for review with the Colorado

¹⁴The Colorado Secretary of State has interpreted the constitution as allowing the title setting board to set titles for taxation and spending measures between May and December. There is currently a case pending to determine whether the title board can set any titles during the period between May and December.

Supreme Court.¹⁵ The initial rehearing motion must be filed within seven days after the title is set. The appeal to the Supreme Court must be filed within five days of the date of the title board rehearing or the denial of a rehearing.

Setting the ballot title is a critical stage of the process, and a significant cause of delay in the initiative process. Although the Supreme Court only rarely overrules the actions of the Board,¹⁶ the proponents of a measure may not begin to circulate their petitions until a final decision has been made by the title board and, if applicable, the Supreme Court. Even though the statutes require that such a motion to the Supreme Court “shall be placed at the head of the calendar and disposed of summarily” (CRS 1-40-107(2)), the court’s decision can take weeks or even months. Several proponents who were novices at the system remarked that “had they known” they would have begun the process much earlier to leave time for the delays caused by opponents’ appeals and to prevent cutting into their time for circulating petitions.¹⁷ The title setting meetings are much more heavily attended than the Legislative Council and Legislative Legal Services review and comment meetings. The news media seem to be more interested in

¹⁵The appeal may also be on the grounds that an initiative violates the “single subject” requirement which is stated in the constitution and more explicitly defined by “legislative declaration” in CRS 1-40-106.5. As explained in the annotated statutes, a measure violates the single subject restriction when it has “at least two distinct and separate purposes which are not dependent upon or connected with each other” (277).

¹⁶See Kent (1992) and CRS (1996, 1-40-107 annotated notes page 282).

¹⁷The shortened time for circulating petitions resulted from the need to meet the constitutional deadline for submitting petitions at least three months prior to the election. Due to appeals the six months for collecting signatures is often cut short by this petition deadline.

An interesting twist on appeals tactics occurred in 1996 when one initiative proponent (Douglas Bruce) filed more than thirty initiatives in order to make those individuals opposing his measure pay \$75 for filing an appeal on each separate initiative. He freely admitted to both the Legislative Council staff and to this author that he was proliferating slightly different versions of a petition only to harass those who he felt had harassed him.

this stage of the process, when many individuals speak out about the significance of specific points in the measure under the guise of recommending changes to the title. Any individual may address the title board with recommendations for changes in the ballot language, including changes in the figures that the government has computed to represent the fiscal impact of the initiative. Even punctuation is heatedly discussed. Interviews with the sponsors reveal that their major goal at this stage of the process is to keep the title as short and as simple as possible, in order to avoid "turning off" the voters with a lot of "legalese." The opponents of initiatives appear to aim towards the opposite extreme. They push for the board to include a clause in the ballot title on every single aspect of an initiative, which increases the length and the complexity of the ballot title.

The members of the title board come from three separate agencies in the Colorado government, whose heads are all independently elected--the legislature, the Secretary of State's office, and the Attorney General's office. Based on interviews with these board members there is very little conflict amongst their staffs when they set the original language that is then discussed at the hearing. Their respective staffs get together to draft the language, with the common goal of explaining the major points of an initiative in as straight forward a manner as possible. There seems to be little "politics" motivating these officials' actions in this stage of the process, and even if there were the constitutionally-mandated sharing of this power amongst the three different agencies seems to guarantee some "checks and balances" when it comes to setting a fair ballot title.

In summary, the policy entrepreneurs, institutional elites, and interest groups are heavily involved at this stage of the process, and the media seems most apt to take notice of an initiative at this stage of the process. The constitution dictates that three separate government agencies share this important duty of determining the language that will appear on initiative petitions and on the ballot itself. The initiative sponsors and their opponents demonstrate great concern about the ballot title. There is a great deal of involvement of competing interest groups during the title setting process, with groups on each side of an issue attempting to control what is often the only official language the public will see on a measure. The proponents try to “keep it simple.” The opponents try to make the issue look as complex as possible. The title board members try to strike a “happy medium” between the two extremes. This is the first step in framing the initiative for the public, and everyone involved understands what is at stake.

D. The Petition Process

Some of the most significant provisions of the initiative process, in terms of “weeding out” many of the proposed measures before they make it to the ballot, concern the petition stage of the process. Other than specifying that the number of valid signatures of registered electors gathered must be at least 5 percent of the total vote cast for Secretary of State in the preceding election, the constitution is largely silent on the administration of the petition process. Although the citizens who do or don’t sign a petition ultimately determine whether a measure will make it onto the ballot, the likelihood of gathering the required number of valid signatures is greatly affected by several legal provisions. The provisions that have

proven to be “sticking points” for many initiative sponsors--provisions relating to petition form requirements, the time allowed for gathering signatures, petition circulator requirements, and the verification of signatures on the petitions--are statutory provisions promulgated by the legislature (CRS 1-40-108 to 114).

By law the petition “shall be printed on a form as prescribed by the secretary of state. No petition shall be printed, published, or otherwise circulated unless the form and the first printer’s proof of the petition have been approved by the secretary of state” (CRS 1-40-113). The time involved in complying with this requirement can be a significant concern, particularly when a ballot title appeal occurs. If the initiative sponsor waits to print up the ballots until after the appeals process has been completed, he needs to recognize that it takes time for the printing of the proof, for the approval by the Secretary of State, and for the final printing. In the case of the “parental rights” initiative (1996-#17), the sponsor indicated that this process ate up another few weeks of the few months she had remaining to circulate petitions after the title appeals process. On the other hand, if the sponsor prints the petition forms early he risks having the form disapproved and all signatures collected on those forms disqualified. The petition form may be invalidated for anything ranging from a failure to capitalize a word in the ballot title on each petition page to the lack of a comma on the statute-mandated “Warning: it is against the law....” statement that must also appear on the top of each page of every petition section.

The statutory provisions regarding the time allowed for gathering signatures are usually mentioned as the main hurdle in the process, both by those

who were unsuccessful in qualifying measures for the ballot and by those who did successfully qualify initiatives. The statutes dictate that signatures must be gathered and the petition must be filed with the Secretary of State within six months from the date that the titles are finally set. As previously discussed, the six-month period begins after any title appeals have been decided. While this deadline was appealed in 1994, the Federal District Court ruled that the six-month period did not constitute an unreasonable burden on the petition rights of the citizens (CRS 1-40-108 notes, 285). The initiative sponsors who relied on paid circulators were not greatly concerned about this time limit or about recent attempts by legislators to dictate signature distribution requirements. However, the sponsors of initiatives whose campaigns relied on volunteer petitioners felt quite differently about the six-month period allowed for collecting signatures. Getting the required number of signatures in six months (or less) was described as being a monumental task. The sponsor of a 1992 amendment that required state lottery revenues to be spent on parks, recreation and wildlife said it was “a humongous effort.”¹⁸ The six-month petition circulation period handicaps less wealthy groups and individuals.

In fact, even the “grassroots” petition efforts that intend to rely on volunteers often end up supplementing with paid petitioners when it gets close to the petition deadline. Secretary of State Victoria Buckley remarked that she

¹⁸The sponsor, Richard Daily, remarked that, having attempted to run his own business to provide paid petition circulators, it is even difficult to get the signatures when you pay the circulators. However, he added that one particular company (Kennedy Enterprises, which is the company relied upon by the vast majority of Colorado initiative campaigns from 1992-1996) is so experienced at the petition process that they could get signatures on just about anything.

would be reluctant to prohibit paid petitioners for that very reason--even if the US Supreme Court were to reverse its decision that such a prohibition is an infringement of the sponsors' First Amendment rights.¹⁹ She noted that if a senate proposal to require a certain percentage of signatures to be collected in the various districts throughout the state passed, it would make paid petitioners even more of a necessity.

The sponsor of a "parental rights" initiative in 1996 explained how the six months limit, combined with the weather in Colorado, makes timing the title setting a key strategic decision. Initiative sponsors in Colorado need to time their initiatives, factoring in delays due to title setting protests, to begin gathering signatures when the weather is good enough for petitioners to stand outside of the grocery store or the shopping mall. The petitions have to be turned in to the Secretary of State by early August (three months prior to the election), but it is not easy to get volunteers or potential petition signers to stand outside in the cold winter months, which may last well into April. As a result, most campaigns rely on paid petitioners to some extent, at an average cost of about \$1 per signature.²⁰

The statutes specify that petition circulators must be registered electors and at least eighteen years of age.²¹ A sponsor of a gaming initiative (1994-#14

¹⁹*Meyer v Grant (1988).*

²⁰Based on campaign spending records (in reports to the Secretary of State), interviews with the sponsors, and information printed in the 1992 *Analysis of Ballot Proposals*, five initiatives were placed on the ballot *entirely* through the efforts of volunteer petitioners between 1992 and 1996 (1992-#1, #2, #6, and #10; 1996-#14) and five initiatives were placed on the ballot *primarily* through the efforts of volunteer petitioners (1994-#12, #15, #16, #17; 1996-#15).

²¹In December 1997 the US Supreme Court granted cert on *American Constitutional Law Foundation, Inc. v. Meyer*. The court will consider the constitutionality of statutory requirements that petition circulators be registered voters and wear nametags, as well as of requirements that the

and 1996-#18) cited the difficulties he had with a private company²² he contracted with for the petition process. When it turned out some of the hired petitioners did not meet the statutory qualifications thousands of signatures were rejected. While he had over 100,000 signatures on the petitions, so many were disqualified for this and other reasons that his initiative was removed from the ballot in 1994 for having fewer than the 49,279 signatures required. However, it was subsequently determined by the Colorado Supreme Court that there were sufficient signatures to have qualified for the ballot in 1994, and the initiative was put on the ballot again in 1996.

The process by which the Secretary of State verifies petitions was a point of concern expressed by several initiative sponsors. The statutes specify that the Secretary of State must verify the signatures on the petition by use of random sampling, with a requirement to examine no less than five percent of the signatures or 4,000 signatures, whichever is more. Most of the sponsors' concerns with this stage of the process related to the actions of the previous Secretary of State's staff. One example was discussed above, in which a gaming initiative was taken off the ballot by the Secretary of State's office, but was subsequently put back on the ballot by the Colorado Supreme Court. Another instance referred to by more than one initiative sponsor involved a measure proposing "parental notification of abortion for minors" that was disqualified by the previous Secretary of State because the wording of the circulator's affidavit on

proponents of an initiative must file reports disclosing amounts paid to circulators and the identities of petition circulators (United States Law Week 1997, 97-930).

the petition, although previously approved by her office, did not conform to current statutes. All of the signatures collected by the sponsor, over 100,000 signatures, were thrown out. Several of the pre-1996 sponsors commented on how otherwise valid petition signatures were thrown out for being “incomplete” or “incorrect” when a registered voter neglected to sign using his middle initial or signed “Mike” instead of “Michael.”

For the most part the more recent sponsors did not have many complaints about the current Secretary of State’s verification procedures. Having worked her way up through the ranks to her current office, Ms. Buckley is quite familiar with the details of the verification process. Her comments, along with those of legislative staff and initiative sponsors, seem to indicate that the current procedures give more of the benefit of the doubt to those who have turned in the petitions. Given statutory language that states that the Secretary of State “may adopt rules consistent with this subsection (3) for the examination and verification of signatures,” the administration of the petition process can vary with the Secretary of State even under the same statutes.

The final delay point in the initiative process results from protests regarding the Secretary of State’s determination of a petition’s sufficiency or insufficiency. These protests must be filed at the county district court level within 30 days after the determination has been made. If random sampling was used to verify signatures, then the protest must challenge defects in the procedure used by the Secretary of State to verify the petition or must challenge its application on

²²This was *not* Kennedy Enterprises mentioned above.

individual signatures. If each name was verified, the protest must identify specific signatures contested and why the Secretary of State is in error. The individual protesting the Secretary of State's determination has the burden of proof.

However, even though "[h]earings shall be had as soon as is conveniently possible and shall be concluded within thirty days after the commencement thereof..."(CRS 1-40-119), delays due to verification challenges may be enough to keep an initiative off the ballot. By the time a district court ruling is appealed to the Colorado Supreme Court, months may have passed. As noted above, one gaming initiative (1994-#14) that was removed from the ballot in 1994 due to a signature protest was put back on the ballot in 1996 when the court over-ruled the Secretary of State's disqualification of some of the signatures. One initiative sponsor that has proposed several "pro-labor" ballot measures noted that it is for precisely this type of delay that he ensures that his ballot language does not tie an initiative to any particular election. Otherwise opposing groups may seek to kill an initiative by stringing out appeals until the election is past.

To summarize, initiative sponsors, members of the legislative staff, and the Secretary of State agree that the petition process presents a significant challenge to many groups, largely as a result of statutory requirements passed by the state legislature and administrative procedures dictated by the Secretary of State. While sponsors who can afford to pay \$100,000 for professional petition circulators are not particularly concerned about the intricacies of the petition process, these requirements have a major impact on "grassroots" groups that must rely primarily on volunteer petitioners. The Secretary of State's office has a

significant degree of influence over the petition process through the signature verification procedures it uses, and interest groups opposed to a proposed initiative also exercise influence during this stage by appealing the qualification of ballot measures, thereby tying the sponsors up in court.

E. The Voter Information Pamphlet (“Blue Book”)

The Colorado Constitution states that the nonpartisan research staff of the General Assembly must prepare and distribute a ballot information booklet to active registered voters statewide. The booklet must state the text and title of each measure to be voted on, and it must provide “a fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure” (Article V, section 1(7.5)(a)(II)). While the vast majority of the initiative sponsors welcomed the opportunity to get information about their ballot measures out to the voters, several of the initiative sponsors criticized this stage of the process as being the most biased and a major source of concern, due to the legislators’ control over it. The Blue Book is a major concern for both proponents and opponents of initiatives because it frames the issues for those who read the pamphlet that is mailed to every household with a registered voter.

The Blue Book hearing is the final pre-election “hurdle” for the initiative sponsors. Several initiative sponsors expressed a strong disagreement with the process that is actually followed. In particular, while the non-partisan staff of the Legislative Council does prepare the primary draft of the “Analysis of Ballot Proposals” (commonly referred to as the “Blue Book” because of its light blue cover), the statutes specify that:

Prior to completion of the booklet, a draft shall be reviewed by the legislative council at a public hearing held after notice. At the hearing, any proponent or other interested person shall be allowed to comment on the accuracy or fairness of the analysis of any measure addressed by the booklet (CRS, 1-40-124.5(1)).

The statute then goes on to say what happens “following the completion of the ballot information booklet.” It says nothing about the fact that, in practice, the legislators on the Legislative Council, a committee chaired by the House and Senate majority leaders, have the power to change or add language to that prepared by the non-partisan staff.

One individual who has worked in drafting laws both through the legislature and through the initiative said that the Blue Book process, “Puts the fox in charge of the hen house” (Daily 1997). While he was satisfied with the draft prepared by the non-partisan staff, he said that the elected representatives on the Council added language which “misrepresented” the substance and effects of his initiative (1992-#8). A former legislator who sponsored an initiative (1996-#16) was similarly chagrined at the changes to the Blue Book dictated by the majority party committee members (Wright 1997). The sponsor remarked that while the Blue Book has the reputation of being factual, that is not always the case. Another initiative activist (1996-#14) remarked that the civil servants did a great job preparing the Blue Book, “but 18 legislators have absolute power to decide what arguments go in the Blue Book...[and] the legislators are so offended by ballot initiatives that they’re using their power to put arguments in the Blue Book to sink amendments” (Angell 1997).

Five of the sponsors interviewed were quite dismayed about statements that were changed or added by the legislators. The proponent of an increased tobacco tax (1994-#1) noted that in his case “the tobacco lobby ruled the day” (Levinson 1997). He described how representatives of the tobacco industry

proposed several changes to the language in the Blue Book's listing of arguments both for and against the initiative. "They won on each one, and we lost on each one." The sponsor of an initiative to tax non-profits (1996-#11) was shocked when the legislators added a sentence to the "con" arguments set forth in the Blue Book that he believed misrepresented his proposal; "I sat there numb...a bleak day, September 4th...It never entered my mind that we'd have trouble with the legislature" (Bridges 1997).

While most of the initiative sponsors had little concern over the Blue Book process, several of the initiative sponsors argued that when the legislative leadership has fought "tooth and nail" against the passage of a policy through the legislature, giving this same leadership, and the interest groups they are predisposed to favor, control over what is printed in the Blue Book does not lead to the "fair an impartial analysis of each measure" that is required by the Colorado Constitution. The actual procedures would appear to conflict with the spirit if not the specific language of the constitution. The "impartial analysis" of each measure which is distributed to each registered elector is edited by the legislators that the initiative sponsors are trying to circumvent. As a result, the legislators have significant influence over the manner in which initiatives are framed in the voter information pamphlets that are mailed to the household of every registered voter.

F. The Campaign and Election

Article 45 of title 1, Colorado Revised Statutes, The Fair Campaign Practices Act, was enacted by the citizens of Colorado when they passed the 1996

“campaign finance reform” initiative (1996-#15). With the exception of the reports required on the amounts paid to petition circulators (see CRS 1-40-121), the reporting requirements for “political committees” formed to propose or to oppose an initiated measure are defined in the revised article 45. Prior to the passage of this act, all “political committees”²³ for statewide ballot issues were required to file reports with the Secretary of State detailing all contributions received and all expenditures made eleven days before and thirty days after any primary or general election. The 1996 Act requires what are now referred to as “issue committees”²⁴ to report contributions and expenditures to the Secretary of State (including the name and address of each person who has contributed twenty dollars or more) *quarterly* in off-election years, *monthly* beginning the sixth full month before the major election, and *fourteen days before and thirty days after the major election*. Clearly, one aim of this act--sponsored by the Colorado League of Women Voters, Colorado Common Cause, and COPIRG-- was to provide the public with more information about the finances surrounding the ballot measure campaigns.

The public record of campaign contributions maintained by the Secretary of State is an important source of information for news reports on the initiative campaigns. The sponsor of the “parental rights” initiative (1996-#17) attributed

²³A “political committee” is defined as “any two or more persons who are elected, appointed, or chosen or who have associated themselves or cooperated for the purpose of accepting contributions or contributions in kind or making expenditures to support or oppose a candidate for public office at any election *or seek to influence the passage or defeat of any issue* [emphasis added] (CRS 1-45-103(10)).

much of the loss of public support in the days before the election to the newspapers' revelations that over 98 percent of her funds came from an out-of-state organization. She remarked that, were she to do it again, she would ensure she had *all* in-state funds. Another example of the information that can be gleaned from the financial reports is that, in the case of the initiatives seeking to permit limited gaming in the town of Trinidad (1994-#14 and 1996-#18), the vast majority of the funds in support of the initiatives came from numerous smaller donations by individuals and businesses located in Trinidad. On the other hand the opposition political committee, which called itself "Citizens Against Statewide Casinos, Inc." was funded almost exclusively by casinos in the three Colorado towns that had legalized limited gaming. So, the advertising campaign against the initiative that featured citizens of Trinidad speaking out against bringing the "vices associated with gambling" to *their* town was funded by casino owners from Blackhawk, Central City, and Cripple Creek.

The campaign finance reporting requirements provide a means for the mass media, opposing political issue committees, and the public to understand who is providing the financial support on both sides of an initiative. While the Secretary of State's office is responsible for maintaining the finance records, this stage of the process is largely "policed" by the interest groups and issue committees that readily call the government's attention to any lack of conformance with reporting requirements by groups on the other side of an issue.

²⁴An "issue committee" is defined as "two or more persons who are elected, appointed, or chosen, or have associated themselves, for the purpose of accepting contributions and making expenditures

The reports provide important insights into the breadth and depth of support for the various measures and, as will be discussed in the following chapters. They also demonstrate the importance of various types of organized interest groups and of mass media advertising in the initiative process. The campaign finance reporting requirements are particularly important because they have had an apparently significant impact on the public's support of initiatives.

G. Post-Election Court Challenges

As the review of the initiative literature noted (Chapter 3), the state and federal courts have come to play a very important role after an initiative is passed by the voters. Colorado Solicitor General Richard Westphal noted that after the 1996 election three of the four initiatives that passed were subsequently challenged in court.²⁵ He remarked that the Attorney General's office expected that this would be the norm in the future, as the "losers" at the polls turn to the courts because there is no other authority to which they can turn after the people change the state constitution, and the state legislators are usually reluctant to "tamper" with statutory initiatives, at least through legislative means. Several state legislators are party to the lawsuit filed against the "campaign finance reform initiative" (1996-15), even though it was a statutory initiative that the legislature itself has the power to revise.

to support or oppose any ballot initiative or referendum" (CRS 1-45-103(8)).

²⁵1996-#12 (term limits), 1996-#15 (campaign finance reform), and 1996-#16 (state trust lands) were appealed in court. The sponsors of 1996-#14 (prohibited methods of taking wildlife) had threatened the legislature with a lawsuit if it did not carry out its requirement to pass enabling legislation, but the legislature did pass the required bill shortly after the constitutional deadline established in the initiative.

Most of the sponsors whose successful measures ended up in court after the elections seemed resigned to the fact. A supporter of the 1996 initiative that prohibited certain methods of taking wildlife (1996-#14) remarked that the hardest part of the process was *after* their measure passed, when they almost had to sue the legislature to get it to pass enabling legislation for their constitutional amendment. The proponent of the 1996 term limits initiative (1996-#12) is working another term limits initiative through the process to go on the 1998 ballot, largely because the courts declared the last initiative to be unconstitutional. This is his third term limits initiative.

However, a few sponsors noted that the inevitability of long court battles after the passage of an initiative can have the effect of deterring individuals and groups from attempting the process. Both sponsors of the 1996 "campaign finance reform" initiative from Common Cause and the Colorado League of Women Voters noted that it takes a great deal of time and energy to follow through *after* an initiative is passed, even though the Colorado Attorney General's office is tasked with defending measures passed by the voters. A key campaign worker for the 1992 initiative that prohibited the granting of any "special status" for homosexuals noted that many of the supporters of the successful initiative were very disillusioned after their measure was struck down by the courts, including the US Supreme Court, as unconstitutional. He wasn't sure that the group would ever attempt the initiative process again; "The biggest question today is, 'Does it do any good?'" He concluded that in the long run it will probably be easier and cheaper to change legislation through the legislature.

After the election is over there is still one last step to the initiative process. Because most measures passed by the voters are likely to be challenged in court, the initiative sponsors have to be psychologically and logistically prepared to continue to fight for their initiatives. Some sponsors seemed prepared for the inevitable shift in venues, but others become disillusioned with the process when they discovered that the voters do not have the final say on initiatives. The courts do.²⁶

III. Political Actors' Influence in Conflict Escalation, Issue Framing, and Timing in the Initiative Process

While relatively speaking Colorado is one of the more "initiative-friendly" states, this chapter's review of the initiative process reveals why this institution of "direct democracy" is used to escalate conflict to the public almost exclusively as a last resort. More than one sponsor laughed out loud when this author began one question, "If you were to sponsor another initiative...." One of the two paid staff for the nationally-discussed initiative which forbade any "protected status" to homosexuals (1992-#2) remarked that running an initiative campaign "is a lot of gut-wrenching hard work." Several sponsors said that sponsoring an initiative is basically a full-time job for over a year. None of the sponsors interviewed for this research took the process lightly.

This chapter's review of the Colorado initiative process reveals that the public, policy entrepreneurs, and interest groups largely determine the success or

²⁶Although legal scholar Julian Eule (1990) notes that the courts often afford greater judicial deference to voter-approved legislation than they afford to legislatures' actions.

failure of attempts at the vertical escalation of conflict through the initiative in Colorado. Groups who have the money and/or the volunteers needed to collect the signatures are likely to make it onto the ballot, as long as they can get the voters to sign. While the Secretary of State's review and validation of petitions has kept some measures off of the ballot, the availability of an appeals process limits the ability of this public office to keep measures off the ballot when the proponents have gathered sufficient valid signatures.

The legislature has undoubtedly reduced the number of measures that have made it to the ballot by legislating a maximum of six months for collecting signatures, and it has the potential to further limit the initiative agenda through additional requirements. However, the legislature's recent failure to qualify referendums for the ballot that dictated distribution requirements for petition signatures, as well as for votes, indicates that restrictions on the right to petition are not so easily "sold" to the Colorado voters.²⁷

While the institutional elites rarely use the initiative to escalate conflict themselves, they are much more influential in terms of *framing* initiatives. The Secretary of State, the Director of Legislative Legal Services, and the Attorney General's office determine the language that describes the proposed initiatives on the top of the petition forms and on the ballot. While the title they set can be appealed to the Colorado Supreme Court, such appeals are generally only a delaying tactic since the court rarely overrules the title setting board's decision.

The proponents and the opponents of initiatives are also very concerned with the language that goes in the Blue Book, the voter information pamphlet that is mailed to the household of every registered voter in the state. More specifically, proponents of recent initiatives have expressed a great concern with the *legislators* who sit on the Legislative Council and “review” the Blue Book language. They fear that the legislators who “fought tooth and nail” against their policies in the legislatures insert biased, and even erroneous, comments in this supposedly impartial source of information.

The roles that interest groups, policy entrepreneurs, and the media play in framing the issues for the public are revealed through the campaign finance reports that “issue committees” are required to file. Increasingly strict laws, with greater disclosure requirements and limitations on contributions, that were passed by initiative in 1996 indicate that the Colorado voters support laws that give them the ability to know more about who is framing the issues for them. The voting results on a 1996 “parental rights” initiative seems to indicate that voters are very concerned with the source of the campaign funds that finance huge advertising campaigns. (Chapter 7 discusses this topic in more detail.)

Finally, the discussion of the process itself does not shed a great deal of light on the *timing* of initiatives. The various appeals processes associated with the title setting board and petition verification are important determinants of the *exact* timing of a policy entrepreneur’s initiative effort. The almost inevitable

²⁷In addition, the legislature’s 1996 referendum that would have changed the Colorado Constitution to require a 60 percent supermajority vote for the passage of any initiative or

appeals delays, coupled with the constitutional requirements regarding months in which titles may be set and regarding petition turn-in at least three months prior to an election, as well as the statutory requirement that signatures be gathered within six months of the title being set, often have an impact on when a proposed measure will be filed. However, it can not be discerned from the “rules of the game” alone, what precipitates the sponsors’ use of the initiative to escalate political issues to the public during a particular election.

IV. Conclusions

Part I of this chapter discussed how several specific characteristics of the different initiative institutions in the states are related to the frequency of initiative use. By examining the restrictions on the use of the initiative, this chapter provides some preliminary insights into how the initiative agenda is set and why it is probably used more in some states than in other states. The data in Table 4.1 and Table 4.2 reveal that the initiative process is used most frequently in those states where there are the fewest restrictions on the subjects addressed by initiative, where the signature-gathering requirements are the least onerous, and where policy changes enacted by initiative are most “protected” from changes by the state legislatures. Consistent with these findings, the states with the *fewest* ballot measures per year tend to have significant limitations on subject matter, as well as more difficult petition requirements--in terms of the numbers of signatures required and/or distribution requirements for the collection of signatures. In addition, the legislatures in these states can more easily modify or override policy

referendum was voted down by the electorate.

changes enacted by the voters. The initiative process in Colorado comes under the first group, of high usage states, with minimal restrictions on subject matter, moderate petition requirements, and with a process that permits sponsors to propose constitutional amendments that can only be changed by the voting public.

Parts 2 and 3 of this chapter discussed the specific “rules of the game” that apply to this institution of direct democracy in Colorado. While Colorado is a *relatively* initiative-friendly state, a review of the steps that the initiative sponsor must go through, and the influence exercised by various political actors during various steps of the process, goes a long way to explaining why the initiative process is not used more often than it is. Table 4.3 summarizes how the mobilization of bias of the initiative process is affected by the procedures associated with each step of the process in Colorado.

[Table 4.3 about here]

Because of the minimal resources required to go through the first three steps of the process, there is no clear bias towards any specific type of interest or political actor. The only *requisite* up through the title setting step is a minimal investment of time by a policy entrepreneur, or the entrepreneur’s willingness to

Table 4.3
The “Mobilization of Bias” of the Initiative Process in Colorado

Steps of the Initiative Process	Influential Actors	Mobilization of Bias and Consequences
Submit proposed measure to Legislative Council	Mass public (any citizen of Colorado)	Negligible costs to proponent, so process open to individual citizens representing any interest/any type of political actor.
Legislative Council/Legislative Legal Services review and comments	Institutional elites (non-elected public officials from these two legislative offices)	Hearings are public, but only officials from these two offices and the sponsors may ask questions or make comments. Rarely covered by the media. Helps novice policy entrepreneurs in drafting their measures. Assists potential opponents of measures in detecting potential weaknesses in measures.
Title Setting Hearing	-Institutional elites (on title hearing board and CO Supreme Court) -Policy entrepreneurs (sponsors) -Interest groups -Mass media	Anyone entitled to speak at public hearing, with significant amount of debate amongst initiative sponsors, individuals and groups opposed to proposed measure, and institutional elites on board. Significant conflict often leads to first coverage by mass media. “Losers” often appeal to state court, with delays usually favoring those who support the status quo.
Petition Process	-Policy entrepreneurs -Public -Interest groups -Institutional elites (Secretary of State)	Collecting required signatures expensive and/or time-consuming. Process most easily used by wealthy and/or well-organized interest groups and wealthy individuals. 6-month time constraint and ability to “stall” initiative through appeals process favors those who support the status quo. Signatures of public determine ballot access.
Voter Information Pamphlet	-Policy entrepreneurs -Interest groups -Institutional elites (elected and appointed members of Legislative Council)	Vast majority of material in pamphlet drafted by non-elected officials with the assistance of sponsors and organized opposition. Final draft subject to changes by legislators. Disfavors interests opposed by majority party in legislature, because legislators ultimately control how initiatives framed for public.
Campaign and Election	-Voting public -Policy entrepreneurs -Interest groups -Mass media	Voting public approves/disapproves policy. Lack of media coverage of many initiatives makes advertising by proponents and opponents major source of info on measures. Favors wealthy interest groups/individuals.
Post-Election Court Challenges	-Interest Groups -Institutional elites (Attorney General’s office)	Most measures that pass are challenged in court by organized opposition. Because CO Attorney General’s office defends voter-approved measures in court, favors policy entrepreneurs. Those who oppose change bear costs of legal challenges.

Source: Based on Colorado Constitution and Colorado Revised Statutes, and interview data collected for this research.

pay someone to promote a measure for her. This is also the case in the later step of the process when the voter information pamphlet is prepared. Little money or organization is required on the part of the policy entrepreneur, although those who challenge interests favored in the legislature are disfavored in this "Blue Book" step, because the majority party has the final say on the language in this voter information pamphlet. In addition, those who challenge the status quo through the initiative process are disfavored by the need to gather sufficient signatures in the time left after the almost inevitable title challenge.

However, when it comes to the petition process, those who would set the initiative agenda must have either very significant financial resources to pay for professional petition circulators, or they must have significant volunteer support. In either case, organized interest groups and wealthy individuals have an advantage over "grassroots" citizens' campaigns. Because there is often minimal media coverage of many of the measures, and because of the apparent tendency of voters to vote "no" when they are uncertain about an initiative (see discussion in Chapter 3), initiative sponsors who face any organized opposition must be prepared to wage an advertising campaign to counter the negative messages put out by the opposition. The bias during the campaign step is, once again, in favor of those who promote the status quo and/or those who have significant financial backing. The grassroots-supported policy entrepreneurs who seek to promote policy change are at a great disadvantage in the latter steps of the process.

The following chapters examine the mobilization of bias of the initiative process in Colorado in much greater depth. They examine conflict escalation,

timing, and issue framing in the context of Colorado's initiative process, in order to clarify what factors determine the circumstances under which this institution of direct democracy is used for the vertical escalation of political conflict. These chapters examine how the initiative agenda is set in Colorado and why certain individuals and groups turn to this alternative policy making process.

Chapter 5

Escalating Conflict via the Initiative

Chapter 2's discussion of the agenda setting literature revealed that *horizontal* conflict escalation is much more prevalent than *vertical* conflict escalation when it comes to setting the agenda of representative government. Policy entrepreneurs are the agents of agenda change. They usually act on behalf of interest groups that are disfavored by existing policy subsystems, by the mobilization of bias that prevails in the institutions of representative government. The vertical escalation of conflict to the public is rather infrequently used as a means of promoting agenda change. This is due to the inherent difficulty of achieving the type of sustained, public concern on an issue that can convince institutional elites to act counter to existing, entrenched interests. Instead, policy entrepreneurs usually engage in "venue-shopping," escalating conflict horizontally to alternative audiences amongst the institutional elites, or the entrepreneurs wait for a change in the composition of the institutional elites. Since elites within the government are the ultimate guardians of the formal agenda, institutional elites are the ultimate target of conflict escalation under the representative institutions of government.

In order to determine how the initiative agenda is set and why the initiative is used, it is essential to determine who is using this institution of direct democracy and why they do not pursue their policy goals through the representative institutions of government. This research demonstrates that in Colorado the initiative is largely the domain of individuals and groups whose seek

policy changes that are opposed by entrenched interests in the legislature--whether it be other interest groups or the legislators themselves. Most of the sponsors were truly "policy entrepreneurs." They searched for a receptive policy making venue, they linked problems to solutions, and they framed issues by defining the substance of the initiatives. In most cases the sponsors interviewed were personally responsible for the decision to escalate conflict to the public via the initiative. The initiative sponsors sought or threatened to vertically escalate conflict over the heads of the legislators when they believed that attempts to challenge the status quo by setting the formal, legislative agenda were futile.

The legislators tend to view the initiative sponsors with suspicion. Many of those interviewed categorized the sponsors as "special interests," individuals or groups that are out to benefit themselves at the cost of the public. However, the key bureaucrats who interact regularly with the sponsors comment that the sponsors are generally concerned citizens who turn to the initiative because they feel they won't get a fair hearing in the legislature. And the sponsors see themselves as acting on behalf of the public interest, opposing the legislature when *it* is captured by special interests.

This research strongly supports the initiative literature's observation that the initiative process is often used by groups that have failed to achieve desired policy changes through the representative government. The initiative is sometimes used as a "bargaining chip" by groups who are not normally "shut out" of the legislative process, but who seek to influence the legislature's actions in a particular circumstance. However, for most sponsors, and for *all* of those who

truly seek to get their measures onto the ballot, the ultimate target of conflict escalation is the public. This research demonstrates that the initiative process is, indeed, an important political institution--for its ability to directly influence public policy change and for its indirect influence on the formal, governmental agenda.

This chapter examines who uses the initiative process, and for what ultimate purposes. It differentiates between those who use the initiative process for *horizontal* conflict escalation to gain the attention of institutional elites and those who use the initiative to escalate conflict *vertically* to the public. The initiative literature indicates that this institution of direct democracy appears to be used most often by those individuals or groups *after* they have attempted to work through the legislature. However, since hundreds of bills are not passed in the legislatures each year, failure to achieve policy change in the legislature may be a *necessary* determinant of the initiative agenda, but that it is not a *sufficient* determinant of the initiative agenda.

The first part of this chapter looks at several of the "null cases," groups who do *not* use the initiative process, in order to better narrow down the *sufficient* determinant(s) of initiative use. The second part of this chapter examines how the initiative process is used to escalate conflict *horizontally*. Many sponsors begin the initiative process but never even circulate petitions to put their measure on the ballot. This research indicates that some of these aborted efforts are the result of the sponsors' intentions to *threaten* the vertical escalation of conflict. They use the initiative as a "bargaining chip" when dealing with the legislature, or they propose an initiative to convince another group to withdraw their own petition.

The third part of this chapter examines the predominant use of the initiative--to escalate conflict *vertically* to the public. In most cases the ultimate "target" of conflict escalation was the *state* public. However, in a few cases the sponsors sought to use the initiative process in Colorado to set the broader, *national* agenda as well. This chapter begins to clarify why certain issues make it onto the initiative agenda in Colorado. It demonstrates that one of the determinants of the use of the initiative for conflict escalation is the sponsors' belief that, not only have they failed at changing the legislative agenda, but that their issues can not even expect fair consideration in the legislature because of the opposition of entrenched interests.

I. Groups that Don't Turn to the Initiative

Based on the legislative records from the 1990s, the Colorado legislators propose around 600 bills each year, about half of which pass. The other half are either voted down or "postponed indefinitely." Hence, in any given year there are bound to be numerous individuals and groups whose interests have not prevailed in the representative channels of government. During this same period an average of a few dozen titles are set for proposed initiatives each two-year election cycle. Out of these proposed initiatives a total of 26 measures qualified for the statewide ballot between 1992 and 1996. Obviously many groups that are unsuccessful in the legislature do *not* seek to escalate conflict, either horizontally or vertically, via the initiative process.

In an attempt to ascertain why some groups do not turn to the initiative process, this author interviewed representatives from six interest groups that have

actively engaged in lobbying in the state legislature over the past several years, but that have *not* recently used the initiative process. While it is a difficult task to examine “the dog that didn’t bark,” the goal was to gain some insights about whom this institution of direct democracy did *not* appeal to. The interest groups were selected from the list of groups who hire lobbyists to represent their interests in the legislature. In addition, they were selected to represent a variety of issues and constituencies. Those interviewed--from the Colorado Association of Commerce and Industry, the Colorado Association of Realtors, the Colorado Trial Lawyers Association, Colorado Mothers Against Drunk Drivers, the Colorado Child Care Association, and the Rocky Mountain Gun Owners’ Association--are certainly not representative of all of the several hundred groups who actively lobby the Colorado General Assembly. However, the varied nature of these groups makes the similarity of their remarks all the more noteworthy, and provides a good place to start in an attempt to pinpoint what might be “sufficient” causes for the use of the initiative.

Each of the groups’ representatives indicated that they had been actively engaged in the representative political process during the 1992 to 1996 time frame, and all of the representatives noted that their groups had experienced policy making disappointments in the legislature. However only two of these groups had even considered sponsoring their own measures.¹ Chris Snowberger

¹The Colorado Trial Lawyers’ Association filed a measure in 1992 in response to a measure filed by insurance companies, and withdrew their measure after the insurance companies withdrew theirs. The Colorado Association of Commerce and Industry (CACI) filed a measure in 1992 to counter Doug Bruce’s “tax and spending limitation” initiative, but failed to collect sufficient

of the Colorado Association of Realtors (CAR) commented that the costs associated with sponsoring an initiative and running an initiative campaign were a major deterrent. "It's too expensive and we don't have the money," she said (Snowberger 1997). Dave Diepenbrock of the Colorado Trial Lawyers' Association also commented that initiatives are "immensely expensive undertakings." The prevailing sentiment was that the groups did not feel it was necessary to go outside of regular channels because they were confident that the legislature would deal fairly with their concerns. In fact, four of the groups' spokespersons indicated that they often found themselves active in *opposing* initiatives proposed by others.

Ann Chandler of the Colorado Child Care Association (CCCA) indicated that CCCA is "continually educating legislators" about what daycare entails and the challenges faced by daycare centers in providing quality, affordable child care. She noted that the state was constantly imposing new paperwork and training requirements that threatens the daycare center businesses that CCCA represents. Similarly, Dudley Brown of the Rocky Mountain Gun Owner's Association (RMGOA) had been disappointed about several bills that imposed licensing or testing requirements on gun owners. However, both groups felt that the legislators were "coming around" as a result of significant efforts by their groups to educate the legislators about their constituents' concerns. When asked whether CCCA has been successful in the Colorado legislature, Ms. Chandler responded,

signatures to qualify for the ballot. CACI filed the measure after spending months attempting to

“Very much so” (Chandler 1997). When asked why the RMGOA had never turned the initiative, Mr. Dudley remarked that the initiative “should only be used for emergencies” (Dudley 1997).

Penny Streich of Colorado Mothers Against Drunk Drivers (MADD) indicated that her group had been working with the Colorado legislature for the past couple of years to strengthen laws against drunk driving and to strengthen seat belt laws. And the legislature did pass two different “zero tolerance” bills that MADD supported. However the bills, that would have changed laws to prohibit *any* level of alcohol in the bloodstream of those under 21 years old, were vetoed by Governor Romer both times. When this author asked whether Colorado MADD would consider going the initiative route after another veto by the governor, Ms. Streich indicated that their group generally went “the legislative route.” Even when the group’s interest were thwarted by the executive branch, they didn’t go outside of representative channels when they had support in the legislature.

Pat Boyle, a Colorado Association of Commerce and Industry (CACI) staff member and the group’s main lobbyist at the capitol, noted that CACI had fought hard for a legislative referendum to counter Doug Bruce’s “tax and spending limitation” initiative in 1992. When the referendum failed to pass by only two votes in the house, CACI did turn to the initiative. Mr. Boyle commented that he *knew* the legislators would regret it, but that the legislators just didn’t believe

marshal a counter-referendum through the state legislature. The referendum passed in the senate but failed by two votes to gain the 2/3 support required in the house.

Bruce's initiative would ever pass, because so many similar measures had failed in the past. On the other hand, he noted that on many occasions CACI had weighed in *against* others' initiatives, including the "worker's choice of provider" initiative (1994-#11, which he referred to as the "choose your own witch doctor" initiative), the "petition reform" initiative (1996-#13), and the "campaign finance reform" initiative (1994-#15).

In addition to CACI, the Colorado Association of Realtors, the Colorado Child Care Association, and the Rocky Mountain Gun Owners' Association also indicated that they often worked to prevent *others'* initiatives from being passed. The realtors group had supported the campaigns waged in opposition to several initiatives that they saw as threatening property rights and property values. For instance, Ms. Snowberger noted they were "watching very closely" the current measures by citizen activist Daniel Hayes that related to growth limitations and school finance. The child care group had opposed local ballot issues raising the minimum wage, although they had supported the 1992 "school voucher" initiative (1992-#7) that would have permitted the use of vouchers for day care facilities. Finally, Dudley Brown of the Rocky Mountain Gun Owners Association noted that his group opposed all of the so-called "pro-gun" initiatives, because they were still too restrictive of the constitutional "right to bear arms."

The records of these very different interest groups point to the conclusion that interest groups that believe that the legislature fairly considers their concerns do *not* turn the initiative process. As Dave Diepenbrock of the Colorado Trial Lawyers' Association noted, "Even bills we would love to have pass that don't

[pass] get pretty honest consideration” (Diepenbrock 1998). When asked why California had so many ballot measures sponsored by trial lawyers, he responded that both Michigan and California have had numerous trial lawyer initiatives over the past decade because in those states there was more of a “partisan lock” on the issue. Either there was such a partisan split between the legislative and executive branches that the groups feel that no laws get passed, or the trial lawyers feel that the legislature is only listening to the insurance companies and corporations *and* they believe that a “division of voting power in the legislature is different from the division of power in the public” (Diepenbrock 1998). On the other hand, in Colorado there was not a party-line split on the issue of insurance and tort reform, and he also believed that the legislature better reflected the general public on these issues.

It is notable that even when the Colorado Association of Commerce and Industry made a brief attempt at an initiative, they were not really going “over the heads of the legislators.” CACI’s actions were aimed against initiative sponsor Doug Bruce, and had the support of two-thirds of the senate and just shy of two-thirds of the members of the house. In fact, Mr. Boyle’s comments regarding his personal and professional views of the initiative process further support the conclusion that the initiative is the domain of interests that are not “heard” in the legislature. He said, “The people with money already have a process available to them [in the legislature]. For the petition to act as a check on the legislature...it should be an insurance policy against corruption.” But when this author commented that CACI would likely be considered one of those groups with the

resources to go through the legislature he remarked, “from a strictly CACI point of view, [the initiative] is an abomination. But from a ‘googoo’--good government--point of view, it’s necessary” (Boyle 1997).

In summary, the record of these six groups provides a preliminary indication that interest groups do *not* turn to the initiative process when they believe their concerns are fairly considered by the legislature--even when the legislature doesn’t legislate their way on a specific issue. Five of the six who addressed the issue indicated that they were generally satisfied that the legislature treated their interests fairly. They represent the “dogs that didn’t bark.” In fact, four out of the six groups, that were selected to represent diverse interests that are active in Colorado policy making, were actively involved in *opposing* initiatives proposed by others. It appears that in regards to the recent use of the initiative process in Colorado, the “dogs that didn’t bark” hadn’t been kicked.

II. The Initiative as a Means of Horizontal Conflict Escalation

In Part I of this chapter it was revealed that two of the groups that generally work within the representative institutions of government did briefly turn to the institutions of direct democracy. Both the Colorado Association of Commerce and Industry (CACI) and the Colorado Trial Lawyers Association (CTLA) indicated that their forays into the initiative process were in response to the actions of other groups, rather than any general dissatisfaction with the state legislature. Based on interview data and on official records the initiative process is often used in this manner, as a form of horizontal conflict escalation. While CACI ultimately did turn to the initiative as a means of vertical conflict escalation

when they were blocked by a minority in the legislature, CTLA sought to send a message to other interest groups that they had better sit down at the negotiating table. In the latter case the ultimate goal of the group was to set the agenda at the level where those involved usually interact, in the representative institutions of government. They escalated conflict horizontally by *threatening* to escalate it vertically. To use the terminology of Baumgartner and Jones (1993), the initiative was used to give notice that the public is a “slack resource” that might be mobilized, if necessary.

Many of the initiatives that are ushered through the process by “professional” sponsors appear to fit in this category, although a few of the sponsors who were personally motivated to act on their specific issues also indicated that they were using the initiative to gain leverage within the legislature. A review of the initiative status sheets and campaign finance reports, corroborated comments made in a few interviews about the significance of “professional” initiative sponsors and consultants active in Colorado. As several of the works in the initiative literature point out (see Chapter 3), the initiative process has spawned an initiative “industry” in many states, and Colorado is no exception.

A. The “Professional” Initiative Sponsors

There are several individuals whose names frequently come up in discussions about the Colorado initiative process, who appear in official records relating to a variety of initiatives, and who are often seen in the halls of the state capitol or in the Secretary of State’s office. A handful of the professional initiative consultants and sponsors are former state legislators. “Armstrong and

Associates” is a name that appears often in the records of expenditures in the campaign finance reports filed by issue committees with the Secretary of State. The name also appears in the Secretary of State’s listing of paid lobbyists who “work” the capitol. Former state legislators Vickie Armstrong and Jim Brandon appear in both places. Another former legislator and current lobbyist, Chris Paulson, is also active as an initiative consultant. Attorneys Tom Jackson and Mark Bender have also been the sponsors of record for different types of initiatives. What all of these paid initiative professionals have in common is their activity on a wide variety of measures, and their involvement on both the proponents’ and the opponents’ sides of various initiative campaigns. They are acting as “hired guns” rather than ideologically committed political activists.

This author attempted to contact some of the professionals who have been listed as the sponsors of initiatives in recent years. However, unlike most of the sponsors who were personally concerned about the issues at hand, the professionals were difficult to reach. Only one of the consultants listed as a sponsor, Mark Bender, answered the author’s request for an interview. Therefore, much of this information regarding the use of the initiative for the horizontal escalation of conflict had to be deduced from interviews with public officials, official records, and from other individuals who were interviewed.

The Initiative Status Sheets maintained by the Legislative Council staff indicate all of the measures submitted for review and comment, the names and contact information for the official sponsors of the measures, as well as their

status in the process. In addition to dates for the review and comment hearing, these records indicate whether/when a measure was submitted for a ballot title,

Table 5.1
Record of Statewide Initiatives in Colorado
1991 to 1996

Steps of the Initiative Process	1991 to 1992	1993 to 1994	1995 to 1996	TOTALS
Number of measures submitted to Legislative Council	67	95	119	281
Number of measures, excluding revised versions submitted	50	59	64	173
Ballot title set	45	30	34	109
Petition format approved	25	20	18	63
Submitted circulated petitions for Sec of State validation	16	9	7	32
Qualified for ballot	10	8	8*	26

*One measure, 1996-#18, qualified for the ballot in 1996 when the Colorado Supreme Court overruled the Colorado Secretary of State's disqualification of signatures that kept it off the ballot in 1994

Source: Data from the Colorado Legislative Council's and the Colorado Secretary of State's

status sheets for initiated measures, provided to the author by the Deputy Director of the Legislative Council, Stan Elofson, and the Secretary of State, Victoria Buckley.

whether/when there are title protests, whether/when a petition form was submitted for review, whether/when petitions were turned in to the Secretary of State's office in order to qualify for the ballot, and whether/when a petition was qualified for the ballot. An average of 94 measures went through review and comment hearings each two-year cycle, although a third to a half of those measures are revised versions of earlier measures.² However, between 1991 and 1996 only 43 of the measures made it to the petition form review stage (approximately 14 percent of all measures submitted), and circulated petitions were only turned in to the Secretary of State for 32 of the measures. That is only around 10 percent of the measures submitted to the Legislative Council to start the process ever "finished." From the official records (data summarized in Table 5.1) it is obvious that the vast majority of measures never make it to the title setting stage of the process. Furthermore, out of the 11 measures that were officially sponsored by "professionals" (Armstrong, Brandon, and Jackson) between 1993 and 1996, only four went on to get petition form approval, and none of these "campaigns" submitted circulated petitions.

[Table 5.1 about here]

Mark Bender is a professional initiative consultant. He has worked on approximately 40 initiative campaigns in several states across the country. Although he describes himself to be a "confirmed Democrat," he noted that he has worked for Republican candidates and that "a good lawyer, we work for anyone"

²For example, Douglas Bruce submitted 21 versions of one tax reduction measure in 1997 and Dan Hayes has submitted more than a dozen versions of both his "growth limitation" measure and his

(Bender 1997) His office is co-located with the two biggest lobbying firms in Colorado, Stealey and Associates and Hayes, Hayes, and Wilson, and he noted that he gets a lot of business as a result of his contacts with these two firms. "The lobbyists here...it's one of those things when their client, for example, fails in the legislature and wants to do an alternative" (Bender 1997). From Mr. Bender's statements it is apparent that many of those who hire professionals to sponsor initiatives for them are disappointed with the legislature.

The question is whether the "hired guns" are hired to actually qualify an initiative for the ballot and thereby escalate an issue to the mass public, or, whether professionals are hired to start the initiative process with the goal of spurring the legislature to action. Along those lines, Stan Elofson, the Deputy Director of the Legislative Council, Jack Hawkins, President of the Denver Area Labor Federation, and Neil O'Toole who is a Denver attorney who specializes in Workman's Compensation cases all commented that many of the measures that begin the initiative process are never intended to make it to the ballot, or the public. Hawkins noted that often times labor and business play the initiative "card" to get the legislators to act. The initiative is one means of making the legislators sit up and take notice.³

Given that Mark Bender himself noted that he could collect enough signatures to get *any* measure on the ballot--including making Hari Krishna the state religion--it would seem to be surprising that not a single one of these

³"school impact fee" measures.

professionally-sponsored initiatives has made it to the ballot. It seems unlikely that the individuals or groups who pay these “hired guns” to sponsor their initiatives for them are too poor to afford the petition process, particularly if they can afford the service of lobbying firms like Hays, Hays, and Wilson. It seems more likely that Elofson, Hawkins, and O’Toole are correct in concluding that these groups never intended to escalate their measures to the public.

Based on the failure of even *one* of roughly a dozen measures sponsored each election cycle by the “professionals” to qualify for the ballot, and based on Mr. Elofson’s, Mr. Hawkins’, and Mr. O’Toole’s familiarity with the process and with most of the professional initiative consultants, this author concludes that “professional” sponsors are most likely hired by those who seek to escalate conflict horizontally. As the next section discusses, three of the sponsors interviewed indicated that they *did* use the initiative for horizontal conflict escalation. The initiative allowed their interests to *threaten* the horizontal escalation of conflict as a means of making the legislature take notice of their concerns. The public is seen as a “slack resource,” rather than as the true target of conflict escalation.

B. The Ideologically-Committed Initiative Sponsors

The individuals who were ideologically committed to the substance of their initiatives were much easier to get interviews with. Whereas the “hired guns” did not return repeated calls, other sponsors were quite receptive to being

³Mark Bender recommended that this author speak to both Hawkins and O’Toole because of their familiarity with the initiative process. He considered them to be worthy adversaries with a

interviewed, and very open about their feelings about their issues and their experiences with the initiative process. Based on the interview data, the vast majority of this type of sponsor sought to use the initiative institution to escalate conflict to the mass public. These individuals and their measures are discussed in Part III of this chapter. However, three of these ideologically-driven sponsors (out of 38 interviewed) sought primarily to affect the *legislature* in regards to their issues. They used the initiative to escalate conflict horizontally.

Two of these sponsors, union official and labor activist Jack Hawkins and attorney Neil O'Toole, have collaborated on several initiatives. Unlike the representatives of the Colorado Chamber of Commerce and Industry and the Colorado Trial Lawyers' Association, these individuals did *not* believe that their voices, or their pro-labor point of view, were heard in the Republican-controlled Colorado General Assembly. When asked whether he had attempted to go through the legislature before he started his "workers' choice of care" initiative (1994-#11), Hawkins replied,

No. No. No. No. I wouldn't go there...it's kind of like asking the person who perpetuated a crime to report it. There was to be no relief at the legislature. The legislature as a whole, the majority, are convinced that every "comp" claim is fraudulent, regardless of how bloody the stump on the leg is (Hawkins 1997).

Asked the same question about whether he had approached the legislature with any of his measures, O'Toole answered very similarly,

No. For us, we represent a minority interest with little money. We have no clout in the legislature to be on the offensive, to try and get

thorough understanding of the initiative process in Colorado.

things done. We have none. So, when we have a chance we've attempted to take it to the people (O'Toole 1997).

Hawkins and O'Toole have, separately or together, submitted a "safe workplace" amendment (1991), the "workers' choice of care" amendment (1994-#11), a "safe work environment" amendment (1995), a "provider choice" amendment (1995), a "majority rule" amendment (1995), and a "testimony under oath" amendment (1995). However, only the 1991 "safe workplace" amendment and the "workers' choice of care" amendment (1994-#11) were taken to the petition circulation stage of the process. These two initiatives were attempted with the intent of escalating conflict vertically to the public. However, none of their other amendments were taken past the title setting stage. Hawkins and O'Toole commented that they also viewed the initiative as a means to force business, and business' allies in the legislature, to the negotiating table. Both felt that the persistent Republican control over both houses of the legislature "shut out" the interests of labor.

When you've got a majority in the house and the senate--the house is a high majority, the senate is less so--you really have *no* power. There aren't a lot of Republicans going to cross the aisle (O'Toole 1997).

Although they had some allies in the legislature, their allies were always in the minority and the majority has been disinclined to consider the labor side of issues. As Hawkins said,

All of [the initiatives] are filed to stir things up. All of them are filed for purposes of getting peoples' attention that we're not going to sit back and let you roll over us (Hawkins 1997).

With very little chance of gaining a pro-labor majority in the legislature, these two proponents for workers' rights use the initiative to escalate labor's point of view within the representative institutions of government.

The third sponsor who used the institution of direct democracy in order to affect the legislature's actions on an issue to which he was personally committed was Ken Shakeshaft. Shakeshaft is a Colorado Springs-based attorney who specializes in personal injury, workers' compensation, and insurance-type claims. He was the main sponsor of an "insurance reform" initiative that was also backed by several other local attorneys, doctors, and other concerned individuals. He began the effort in response to insurance companies having denied medical care to injured clients. The individuals' own doctors would argue that medical treatment was required, but the insurance companies were permitted by law to deny treatment on the basis of the opinion of "independent medical examiners." Several of these "independent" doctors in reality earned hundreds of thousands of dollars a year solely through rendering their "independent" medical opinion to insurance companies. Shakeshaft's measure was based on California's laws that had a stronger Division of Insurance that was more accountable to the consumers. His personal commitment to the cause of insurance reform was evident in his response when the Colorado Trial Lawyers' Association called him to say the insurance companies were making threats against *them* because they assumed that *they* were behind the measure, "You don't understand how many people are getting hurt, and how it's affecting people. Something needs to be done."

However, Shakeshaft is politically well-informed and he went into the initiative process with his eyes open. He resorted to the initiative only because he felt it was his only chance to change policy. He did not attempt to go through the legislature first.

Because the legislature, the majority leader in the Senate, Norton, is from Greeley, which is the headquarters of State Farm [Insurance Company] in our state. And his wife is a corporate attorney for a large corporation or insurance company. I don't remember which. So, legislative-wise it would've been difficult, because the insurance companies have so much pull. At least at that time (Shakeshaft 1997).

He also hoped that he would not have to take his initiative all the way to the ballot, because it was a complicated initiative, and because the insurance companies had already told him that they *would* spend millions of dollars to defeat the initiative. Knowing that they would face a committed and well-funded opponent, Shakeshaft and his supporters saw the initiative as a way to get some concessions.

So then we looked at, well, what's the best we can get out of it if we don't get on the ballot? We can get some public hearings out of it. We can get some statutory changes. Because the lobbyists did assure us, and they did work with us...at least two of the lobbyists did in trying to get some changes. And they said if there were legislative proposals that came out of this committee, everybody on the committee would support them, and the lobbyists would support them. They wouldn't try to kill them behind closed doors (Shakeshaft 1997).

While a bill on the topic, Senate Bill 1996-078, didn't pass until two years later, Shakeshaft believed that the law ultimately passed was so similar to his proposal that his efforts did, indeed, have an impact on the legislative process.

These interviews with individuals who openly state that they used the initiative in an effort to bring their issues, or their points of view of the issues, to the attention of the legislature demonstrate that the initiative process is sometimes used to escalate conflict horizontally. In the eyes of these proponents, the initiative process does increase the clout of groups that are normally not influential in the legislature. It gives them a "bargaining chip" to use when they confront interests that are entrenched in the partisan-based political institutions.

Furthermore, based on the statements made by some of the state legislators, the initiative process does, indeed, have an impact on the legislature. Current Senate majority leader Ray Powers related how citizens were "fed up with taxation" and the legislature responded, albeit too late, by passing a statute that limited government spending just before the 1992 "tax and spending limitation" initiative (1992-#1) passed.

It so happens that [the legislature's statute] kicked into place before Amendment 1 did, so we did respond. However, I contend that we responded because of the threat of the initiative--the threat that was out there in '88 and '90, knowing that it might come in '92. The General Assembly responded at that point (Powers 1993).

And several other legislators also commented that the initiative process is one way that they find out what the public is thinking.

The good impact [of the initiative] is that you have to listen closer to the people...so maybe we need to work a little faster on some of the things to satisfy our constituency, because change is happening faster now than it used to (Aglar 1994).

Yes, I do think there are some advantages to the initiative process because sometimes the elected officials don't have the pulse of the

people. So there may be issues that the public is concerned about that we turned up our nose at (Kerns 1994)

The initiative is the best opportunity for elected officials to understand what the electorate is saying. Campaigning and polling gives us a general reading, but not an accurate reading (Foster 1993).

Four legislators said that the initiative process served as a “check” on the legislature (Foster, Kerns, Mendez, and Norton). Representative Grampsas called the initiative as the “only hammer” of the people, and described the impact of the initiative process on the state legislature in this way:

It’s basically making the representative government more in line with...we know that the initiative process can be brought in at any time (Grampsas 1993).

In summary, several of the legislators confirm what the initiative sponsors believed to be the case. The initiative institution has an indirect, but significant effect on the representative institutions of government in Colorado.

This research has only been able to directly demonstrate that three of the initiative sponsors used the initiative process with the goal of escalating conflict horizontally, in the representative institutions of government. In addition, several legislators who hold leadership positions within both major parties indicated that they believe that the legislature is affected by the existence of the initiative process. In particular, their comments indicate that it tends to make the legislators more responsive to their constituents. This research is unable to cite equally direct statements from the “professional” sponsors, the initiative campaign consultants who often help marshal measures through the first stages of the initiative process. The author cannot prove that they too use the initiative on

behalf of individuals and groups who seek *horizontal* conflict escalation.

However, others who are familiar with these professionals indicate that this is the case, and the official record further supports this conclusion. And, since the professional initiative consultants are often professional lobbyists, they are likely to recognize what the legislators themselves recognize. The initiative process does impact the state legislature. So, either a bunch of foolish people are paying a lot of money to only half-heartedly promote their initiatives each year, or some very knowledgeable people are paying a lot of money because they achieve what they *want* to achieve--the horizontal escalation of conflict within the representative channels of government.

III. The Initiative as a Means of Vertical Conflict Escalation

The vast majority of the initiatives that were sponsored by individuals that were interviewed, 35 out of 38 proposed measures, were attempted in order to escalate conflict on the issues vertically, to the public. The sponsors of these measures were personally committed to their "causes," and all but a few of them personally made the decision to escalate their causes to the public via the initiative. With one notable exception, they believed they were acting to achieve the general public good when the legislature would not or could not do so. However, the data show that only a handful of the initiatives were true "grassroots" efforts, in the sense of relying on volunteer efforts or on financial contributions from members of the general public. The sponsors believed they were acting on behalf of the public and with the tacit approval of most of the

public. However, in escalating their issues to the public, they rarely relied on the efforts or the funding of the public at large.

Still, the data do support the conclusion that the initiative campaigns are usually waged against interests that have a great deal of clout in the representative institutions of government, particularly in the legislature. The governor, a Democrat, was behind three of the initiatives that sought to bypass the perennially Republican legislature and take issues directly to a public vote. According to his co-sponsor and sponsors he chose to head initiative efforts, Governor Romer, like the other sponsors, believed that the measures would pass if the public had a chance to rule on them. The sponsors believed that the legislature was captured by entrenched interests--either their own or those of groups that their political careers depended upon. Several sponsors and legislators commented that the legislature was unable to deal effectively or fairly with these "conflict of interest" issues and "hot potato" issues. They remarked that the initiative process is an important institution of "last resort," a "safety valve" when the representative institutions of government are not sufficiently responsive to the will of the people.

The following discussion of the use of the initiative to escalate conflict vertically will first review who the sponsors are and where the financial backing of both proponents' and oppositions' campaigns comes from. This will provide a better understanding of who uses the initiative process to escalate conflict, and who they are fighting against. The second section will discuss how this institution of direct democracy is seen as a means of vertically escalating conflict on "conflict of interest" and "hot potato" types of issues. The final section looks at

how “high” the initiative entrepreneurs seek to escalate the conflict. It reveals that in some cases the *ultimate* target of conflict escalation via the state’s initiative institutions is the *national* public, and the ultimate goal is sometimes changes in public policy on a *national* scope.

A. Who Proposes and Who Opposes these Initiatives?

1. The Sponsors

Nine out of the 13 Colorado legislators who had *not* sponsored statewide ballot initiatives categorized at least a portion of the initiative sponsors as representatives of “citizens movements,” as citizens voicing opinions on specific issues, as citizens who are frustrated and unhappy with government, or as citizens who are dealing with issues that the legislature is afraid or unable to deal with. However, four of the legislators concluded that many, if not most, initiatives are sponsored by individuals or groups concerned with their *own* welfare, rather than the *public* welfare.

I think it’s a very sneaky way of advancing hidden agendas (June 1993).

The distinguishing feature of the initiatives are their angry tone, special interest agendas, and ability to sell the issue to the public in 30 seconds. Initiatives tend to be more extreme and severe, and they all have greed in common. Greed for some particular interest or cause. The legislative process tones down the greed and has a dissipating or balancing effect (Johnson 1993).

I think that proponents of certain initiatives have found fertile economic territory in this process. They have found that they can make money and be more effective in fostering personal agendas, than [they can] with the legislature that is more skeptical (Cassidy 1993).

The initiative process is more oriented around special interests that have the money to pass their policy issue because initiatives do not have the debate (Norton 1993).

These statements reveal a significant degree of skepticism amongst the state legislators regarding the motives of groups and individuals for making use of the initiative process.⁴

Five of the legislators attribute the perceived proliferation of “special interest” use of the process to the use of paid petitioners. They criticize the 1988 US Supreme Court decision, *Meyer v. Grant*, that overruled states’ restrictions on the use of paid petition circulators to gather the signatures to put an initiative on the ballot. They argue that the Court’s free speech-based ruling has taken the process away from the people. Five out of fifteen legislators when asked what they would do to improve the initiative process in Colorado stated that they would get rid of or limit the use of paid petitioners.⁵ Paid petitioners are seen as detrimental to the process because any well-funded interest can get its issue on the

⁴The legislators tended to use the term “special interest” rather freely. Senator Terry Considine remarked that “you could argue that all interests are ‘special’” (Considine 1997). Indeed, the legislators’ categorizations of initiatives varied widely. For instance, Representative Faatz judged the initiative curbing the hunting of bears (1992-#10) as a citizens effort and an example of the proper promotion of an issue through volunteer efforts, whereas Representative Agler referred to the same initiative as “certainly special interest” (Agler 1994). Even with one person the definition can vary. Although Senator Powers had remarked in 1993 that the “citizens were on target to some extent about taxation,” (Powers 1993) in a recent *Wall Street Journal* interview (Milbank 1997) Senator Powers questioned the motives of the sponsor of that tax limitation initiative, Douglas Bruce. (Mr. Bruce had also challenged Powers for his seat in the Republican primary in 1996). Powers stated, “I think he’s making good money out of the amendment process....This is not a citizen’s initiative any longer; it’s a business. With advertising and a sexy title they can pass just about anything.”

As discussed in chapter 3, this author uses the term “special interest” in the sense it is used by noted American scholar James Q. Wilson (1974, 1995), to specifically denote groups actively seeking benefits that will go almost exclusively to their members, “selective incentives,” rather than benefits that will accrue to the public at large.

⁵The five legislators that said they would prohibit or limit the ability to use paid petition circulators include Senators Weissman and Wright, and Representatives Faatz, Foster, and Johnson.

ballot, instead of relying on the support of committed citizens. Representative Faatz's statement summarizes the point made by several of her colleagues:

[The US Supreme Court decision] just absolutely appalled me. And to me it means that whoever is the richest can buy his way onto the ballot...If that ruling had not come up, I think that I would not have the reservations I have now, because it thwarted the interested citizens kind of attitudes that the initiatives were there to preserve (Faatz 1994).

These legislators see paid petitioners as undermining the citizen action that was previously required to get an issue on the ballot, and opening up the initiative process to "special interests."

On the other hand, the four key bureaucratic officials who deal regularly with the initiative sponsors indicated that the majority of the sponsors are "ordinary citizens," rather than greedy, self-serving special interests. Each official described the initiative process in Colorado as an important "right of the citizens." And one of the primary concerns of these four individuals was to assist these ordinary citizens in working through the process. The following comments made by the Secretary of State and the Solicitor General reveal the general sentiments expressed by all four of these non-legislative elites.

The Solicitor General said the following in regards to the patience that the title setting board demonstrates:

Well, you *have* to be. You see most of the people who appear before us are not lawyers. These are citizens--non-lawyer lay people--a lot of whom are very sophisticated, but many of whom are not sophisticated. And it's our job to acknowledge that situation, the context, and to be as friendly...not in the sense of pals, but more of the concept of being user-friendly, to try to be a friendly process. So that it works. So that we are not, in fact, some government bureaucracy that you have to work through, but that we are facilitating the initiative process. That's our role, to facilitate the process (Westphal 1997).

The Secretary of State commented on dealing with most of the initiative sponsors:

Unfortunately, because they aren't attorneys and they really don't understand the process--and it is more involved than just going out and collecting signatures and getting it to the ballot--they become very disappointed in the process. And how do you go through an educational process....you find yourself really wanting to have a one-on-one with everybody, and you can't. And I really haven't come up with a way to make the process easy. And it isn't easy (Buckley 1997).

There was a general consensus amongst these four officials who have key roles in the initiative process, and who interact regularly with the initiative sponsors, that most of the sponsors are well-intentioned citizens, rather than representatives of "special interests" motivated by personal gain.

This author's interviews with 33 individuals who attempted to sponsor more than 38 statewide initiatives in Colorado between 1992 and 1997 revealed that most of the sponsors were committed issue advocates and political activists. Excluding the five sponsors of gambling initiatives, all 19 of the other sponsors interviewed whose measures made it onto the ballot (and the sponsors of 14 initiatives that did not make it to the ballot) had been associated with their issues for a number of years, often through their affiliations with interest groups, although a few sponsors began their issue advocacy with the initiative process. And while the desirability of the proposed initiatives is a matter of personal interpretation, with only two exceptions the initiative sponsors acted in the *belief* that they were working for the state public's benefit. The sponsors saw

themselves as promoters of the public good, acting in opposition to self-interested “special interests.”⁶

As the initiative literature recognizes (see Chapter 3), a wide variety of groups turn to this institution of direct democracy when they are unsuccessful in the representative institutions of government. From 1992 to 1997 individuals sponsored initiatives on behalf of groups organized around issues ranging from the environment and animal rights to school vouchers and “good government.” Although the majority of the initiative campaigns were waged through the efforts of pre-existing interest groups,⁷ most of the sponsors were, indeed, initiative “entrepreneurs.” The sponsors were the individuals who decided to escalate conflict via the initiative, and there would almost certainly not have been any initiative campaign except for their efforts in 19 out of 24 initiatives that made it onto the ballot.⁸

⁶The initiative process in Colorado is apparently not used to any great extent as a means of promoting candidacies for public office. With the exception of Governor Romer, no other public official sponsored an initiative that made it to the ballot during the 1992-1996 time frame. Barry Arrington (1994-#16) did run for elective office two years following his sponsorship of the “local control of obscenity” initiative, however, he was asked to lead the effort by a local group with which he had been associated in the past. One-time candidate for the US Senate, Terry Considine, emphatically denied that his sponsorship of the “term limits” initiative in 1990 had anything to do with his candidacy. And, indeed, his involvement with the term limits movement has continued long after he left the political arena and returned to his successful real estate businesses. And Doug Bruce’s candidacy in 1996 was, by his own admission, a hopeless attempt, although he did enjoy aggravating the incumbent, Senator Ray Powers.

⁷Fifteen of the 26 initiatives on the ballot between 1992 and 1996 were waged on behalf of, and with the backing of, pre-existing interest groups. These included: 1992-#6, #8, #10; 1994-#1, #11, #12, #15, #16, #17; and 1996- #12, #13, #14, #15, #16, #17. This includes interest groups that were formed as a result of previous years’ initiative campaigns, such as the TABOR (Taxpayers’ Bill of Rights) organization that was mobilized by Doug Bruce in 1990 and is still active in current issue campaigns at the state and local levels.

⁸The 24 cases include all but two of the initiatives on the ballot between 1992 and 1996. Two cases are not included because the author was unable to locate the sponsors. The five sponsors interviewed who were not personally responsible for the decisions to turn the the initiative were: Delay (1996-#17); Levinson (1994-#1); Wright (1996-#16); Gardner (1992-#6); and Daily (1992-#8). The last three were sponsors on measures that were instigated by Governor Romer.

The strong association of the use of the initiative with pre-existing interest groups would tend to indicate that the issues addressed by the initiative sponsors are driven by their own personal concerns, rather than the concerns of the public at large. This is indeed the case. Based on the interview data, only the “tax limitation” initiative (1992-#1) and the effort to promote open space through the “state trust lands” initiative (1996-#16) appear to have been a response to any concerted public call for revised public policy. That is, the sponsors were motivated by their belief that the public was very concerned about their issues in only 5 percent of the cases. When he explained his tax limitation initiative, Doug Bruce spoke of “the people’s call for reform,” and the legislature’s failure to respond. Ruth Wright and Brian Buzby explained that the “state trust lands” initiative was Governor Romer’s response to one of the top concerns that Colorado citizens expressed in a series of meetings he held on “smart growth” around the state. However, most of the sponsors explained their involvement with an issue in terms of how their own experiences convinced them that current public policy needed to be changed because it was immoral and/or because it was not serving the public interest.

Regarding their sponsorship of an anti-trapping initiative (1996-#14):

We’ve been involved in it for most of our lives, I suppose, in one way or another....Bob is a biology professor, and of course is aware of animals and aware of the fact that they can suffer, and has, as a human being always been opposed to animal suffering (Angell 1997).

Regarding his Medicaid reform initiative that was intended to reduce teen pregnancy and the associated poverty:

It's my idea, after seeing hundreds and hundreds of Medicaid patients in my office...that one of the worst curses that can befall a child is to be born in a Medicaid environment (Berg 1997).

Regarding his proposal to make non-profits pay property taxes:
I'm an atheist and I agree with the ACLU that it's unconstitutional to give churches an exemption and make those who don't go subsidize them (Bridges 1997).

Regarding how he became involved with term limits:
I said I propose that we limit how long people stay in office...it needed doing (Considine 1997).

Regarding the motivation behind the Safe Workplace Amendment:
It's personal, and not only that, it's the right thing (Gail 1997)..

Regarding the proposal to prohibit minors from possessing tobacco:
To me the greatest evil in the entire world is smoking, because it kills so many people yet it is still, for the most part, accepted just about everywhere you go (M. Cole 1997).

In other words, most sponsors' *motivations* for changing public policy derived from their personal convictions that current public policy was not serving the public interest, not from any overwhelming public outcry against current laws.⁹ As Table 5.2 summarizes, 84 percent of the sponsors interviewed indicated that they had a long term involvement with an issue prior to the initiative. In other words, the initiative agenda in Colorado is greatly affected by issue advocates and political activists who are personally committed to a particular issue or cause.

[Table 5.2 about here]

⁹The sponsors of four of the gambling initiatives (1992-#4, 1992-#5, 1994-#13, and 1996-#18) admitted that they were acting on behalf of a small part of the state public. Major Dave Beasley of Parachute and Mayor Robert Fabec of Trinidad were both reluctant sponsors of initiatives that would have permitted gambling in their towns, because they felt there was no other way to save their towns from economic ruin. On the other hand, Paul Nielsen (1992-#4) and Robert Randolph (1994-#13) indicated that they were primarily motivated to propose their gambling initiatives

However, it is important to also note that the sponsors sought to escalate conflict to the public because they believed that the public would naturally support their proposals.¹⁰ This will be discussed in detail in regards to the “timing” of the initiative agenda (See Chapter 6).

2. Campaign Support

It is not surprising, given the extent to which the sponsors have demonstrated long term affiliations with interest groups, that interest groups are particularly important in providing both the manpower and financial support of many of the initiatives. Only a handful of the initiatives can truly be called “grassroots” efforts when both the petition circulation efforts and the financing of the campaigns are considered. The majority of initiatives in Colorado were put on the ballot entirely or primarily through the efforts of professional petition circulators. And the majority of these petition circulators and other campaign expenses are paid for by large (>\$999) contributions from individuals and interest groups. On the other side, a majority of the funding for the campaigns staged in opposition to initiatives comes from large donations from corporations and/or

because it would be highly profitable, although neither one saw gambling as vice that the government should be worried about.

¹⁰There were two exceptions to this belief that the public would naturally favor the proposed initiatives. Robert Randolph, sponsor of the “limited gaming in Manitou Springs and airports” initiative, believed that he could buy a reversal of public opinion with an advertising blitz. And Luther Bridges, sponsor of the “eliminate property tax exemptions for non-profits” initiative (1996-#11) said that he was attempting to raise the public’s awareness in 1996, and win in 2000.

Table 5.2
Initiative Sponsors' Involvement on Initiative Issues

Ballot Year	Sponsor Involvement with Issue Prior to Initiative	Sponsor Involvement with Issue Begins with Initiative	TOTAL
1992	#1, 2, 6, 8, 10 N=5	#3, 4, 5 N=3	N=8*
1994	#1, 11, 12, 15, 16, 17, 18 N=7	#13 N=1	N=8
1996	#11, 12, 13, 14, 15, 16, 17 N=7	#18 N=1	N=8
Measures not making it to ballot	All except Bender** N=12	Bender N=1	N=13
Totals in each category:	31 84%	6 16%	37

Source: Data from interviews with sponsors of 24 measures that made it onto the ballot between 1992 and 1996 and with sponsors of 13 measures that did not make it onto the ballot. See Appendix A for list of respondents and issues.

*No interview data for 1992-#7 and 1992#8.

**Reference Appendix B list of the initiative sponsors interviewed whose measures did not qualify for the ballot.

interest groups. Interest groups are key on both sides of the issues. From the campaign finance records it does appear that the initiative sponsors were competing against interests that are likely to have a great deal of clout in the legislature.

a. The Petition Process

The 1988 US Supreme Court decision, *Meyer v. Grant*, transformed initiative campaign strategies through its ruling that states could no longer prohibit the use of paid petition circulators. Prior to 1988 it was a felony to pay anyone to circulate a petition in Colorado, so initiative sponsors had to have at least a small, dedicated corps of volunteers in order to collect the 50,000 + signatures required.¹¹ Since 1988 initiative entrepreneurs have had the option of relying in whole or in part on “professional” petitioners. In practice, few campaigns rely entirely on volunteers to circulate petitions, particularly because so many of the initiatives have less than six months to collect signatures by the time the ballot title challenges make it through the state supreme court.¹² Not surprisingly, the petition process was mentioned as a significant challenge primarily by the sponsors who relied on volunteer petitioners; those who could

¹¹In 1996, 54,242 valid signatures of registered Coloradans had to be collected in order to qualify for the ballot (Analysis of Ballot Proposals 1996, 1). In practice about 25 to 35 percent (and in some cases, such as with 1996-#18, up to 50 percent) of the submitted signatures are disqualified for one reason or another. As a result, the proponents generally attempt to collect at least 70,000 signatures to qualify for the ballot.

¹²The “time crunch” for circulating petitions results from the limited time frame for ballot title-setting (December through May if the proponent begins the process in an odd-numbered year before a general election), the 2-3 months the courts usually take to decide a title challenge, and the necessity of turning in all petitions 3 months before the election date. It is risky to circulate a petition prior to a court determination after a ballot title protest has been filed; if the court decides the title needs to be revised, all of the signatures gathered are worthless. (See the following footnote for an example.)

afford to pay \$70,000 to \$100,000 for petition circulators did not view the petition process as particularly onerous, even when protests cut severely into the six-months allowed for petition circulation.

Table 5.3 summarizes how much the initiative campaigns relied on volunteers or paid professionals to collect the signatures to get their initiatives on the ballot. Based upon campaign finance spending records, on information in the voter information pamphlets (Blue Books), and on the interview data, five campaigns relied entirely on volunteer petitioners: "taxpayers' bill of rights" (1992-#1); "no protected status for homosexuals" (1992-#2); "school sales tax" (1992-#6); "no spring bear hunt" (1992-#10), and; "prohibited methods of taking wildlife" (1996-#14). Five others collected most of the required signatures with volunteers, but supplemented with paid circulators: "election reform" (1994-#12); "campaign finance reform" (1994-#15); "local control of obscenity" (1994-#16);¹³ "term limits" (1994-#17) and; "campaign finance reform" (1996-#15). The remaining 16 initiative campaigns relied primarily on paid petition circulators.¹⁴

¹³According to Representative Barry Arrington, tens of thousands of signatures were collected by volunteers, but those signatures were invalid after the Colorado Supreme Court upheld a ballot title challenge. When the proponents, Coloradans for School Choice, found themselves with 28 days to collect signatures with the new petition forms they hired paid petition circulators who collected approximately half of the 84,000 signatures turned in to the Secretary of State to qualify for the 1992 ballot (Arrington, 2).

¹⁴The existence of the committed grassroots support necessary to stage an all-volunteer petition campaign did increase the chances that an initiative would have the type of broad public support necessary to pass. Six out of the ten initiatives put on the ballot through the efforts of volunteer or mostly volunteer petition circulators passed: 1992-#1, 1992-#2, 1992-#10, 1994-#17, 1996-#14, 1996-#15. Two others (1992-#6 and 1994-#15) garnered 45 percent of the votes, and led in the early public opinion polls. However, the commitment of a cadre of volunteer petitioners was not a guarantee of success. "Election reform" (1994-#12) lost with less than 23 percent of the popular vote, and "local control of obscenity" (1994-#16) lost with less than 27 percent support. Still, the "grassroots" initiatives were more than three times as likely to pass as initiatives put on the ballot primarily through the use of paid petitioners between 1992 and 1996. Six out of 10 (60 percent) "grassroots" petition efforts passed, while only 3 out of 16 (18.75 percent) of the initiatives put on

Ten of the 26 initiative campaigns demonstrated significant “grassroots” support through their volunteer petition efforts.

[Insert Table 5.3 about here]

Contrary to the conclusion in much of the initiative literature, that direct democracy in the states is dominated by wealthy interests that buy their way onto the ballot, almost 40 percent of the initiatives on the ballot in Colorado in the last few elections qualified primarily due to the efforts of volunteer petition circulators. There are still a significant number of “grassroots” initiative campaigns.

b. The Sources of Campaign Funding

Since 60 percent of initiatives qualified for the ballot primarily through the efforts of paid petition circulators, at a cost of well over \$100,000 for several campaigns, money has to be considered as an agenda setting factor. The campaign finance records provide another indication of the nature of support for and opposition to proposed initiatives. Table 5.4 provides an overview of total campaign contributions and the types of sources of those contributions for campaigns on both sides of the issues. Table 5.5 summarizes this data and clearly illustrates that there are some differences in the types of support for the “pro” and “con” sides. Large individual contributions make up a majority share, or part of

the ballot through the efforts of paid petition circulators passed: 1992-#8 (Great Outdoors Colorado), 1996-#12 (state trust lands), and 1996-#12 (term limits).

Table 5.3
Volunteer versus Paid Petition Circulators*

INITIATIVE	ALL VOLUNTEER CIRCULATORS	MOSTLY (>50%) VOLUNTEER CIRCULATORS	MOSTLY (>50%) PAID CIRCULATOR
1992-#1	X		
1992-#2	X		
1992-#3			X
1992-#4			X
1992-#5			X
1992-#6	X		
1992-#7			X
1992-#8			X
1992-#9			X
1992-#10	X		
1994-#1			X
1994-#11			X
1994-#12		X	
1994-#13			X
1994-#15		X	
1994-#16		X	
1994-#17		X	
1994-#18			X
1996-#11			X
1996-#12			X
1996-#13			X
1996-#14	X		
1996-#15		X	
1996-#16			X
1996-#17			X
1996-#18			X
Total number of cases	N=5 (19%)	N=5 (19%)	N=16 (62%)

Source: Information based on Analysis of Ballot Proposals, Campaign Finance Reports filed with the Colorado Secretary of State's office, and interviews with the initiative sponsors. Bold-faced type identifies those initiatives that passed.

*Categorizations of initiatives based upon the percentages of petition signatures gathered by paid or volunteer petitioners for each initiative.

the majority with one other type of contribution, in 42 percent of the pro-initiative campaigns. However, large individual contributions are not a significant source of funding for anti-initiative campaigns. The other big difference in campaign support is in the area of large corporate contributions. They are important in less than a quarter of the pro-initiative campaigns, but in more than half of the anti-initiative campaigns. On the other hand, large interest group contributions are of comparable importance on both sides, and small individual contributions are a major source of funding in relatively few initiatives on either side. These differences provide some evidence of the mobilization of bias of the initiative process in Colorado.

[Table 5.4 and Table 5.5 about here]

1) Small Individual Contributions

At first glance it would appear that the pro-initiative campaigns were only slightly more dependent on small individual donations than the anti-initiative campaigns. However, a closer examination of the campaigns and campaign finance records reveal that small individual contributions were much more important to the pro-initiative campaigns.

Although only six of the pro-initiative campaigns received a major share of their financial support from individual donations of less than \$1000, if the value of the volunteer petitioners' services were to be considered analogous to small individual contributions, another four of the initiatives would be listed under this category. The two "campaign finance reform" initiatives (1994-#15

Table 5.4: Sources of Campaign Funding*

5.4A: 1992 Colorado Initiatives

INITIA-TIVE	TOTAL CONTRIBUTIONS	SOURCE OF MAJORITY OF CAMPAIGN FUNDS	LARGEST CONTRIBUTORS (STATE OF ORIGIN IF NOT CO))
1992-#1: For	\$ 294,346	Large Individual/ Small Individual	\$123K V. Bickel \$10K Iowans for Tax Relief
Against	\$ 648,283	Large Corporate/ Large Interest Group	\$10K Shearson Lehmen \$7.5 CO Assoc of School Executives (CASE)
1992-#2: For	\$ 391,500	Small Individual	\$13.5K W. Perkins loan \$2.5K Individual loan
Against	\$ 748,061	Large Corporate/ Small Individual	\$58K Radiant Energy \$20K David Geffen (CA)
1992-#3: For	\$ 804,589	Large Corporate/ Large Individual	\$185K Donna Leasing \$150K Barry Slawsky
Against***	\$ 303,247	Large Corporate	\$134K Central City Casinos \$116K Black Hawk Casinos
1992-#4: For	\$ 195,445	Large Corporate/ Small Individual	\$12K Cmtee for Garden City Gaming \$5K Dan's Cajun Seafood
Against***	(See 1992-#3)	Large Corporate	(see 1992-#3)
1992-#5: For	\$ 371,994	Large Individual	\$50K individual \$50K individual (SC)
Against***	(See 1992-#3)	Large Corporate	(See 1992-#3)
1992-#6: For	\$ 715,809	Large Interest Group/ Large Corporate	\$55K CO Educ Assoc \$26K CASE
Against	\$ 149,930	Large Corporate/ Large Interest Group	\$50K Car Dealer \$25K x 2 Car Dealers
1992-#7: For	\$ 552,734	Large Individual	\$50K x3 indiv (out-of-state) \$50K x3 indiv
Against	\$ 517,105	Large Interest Group	\$323K CO Educ Assoc \$25K CO Assoc School Execs
1992-#8: For	\$ 327,559	Large Corporate/ Large Interest Group	\$55K Nature Conserv (VA) \$30K Cmtee for Tim Wirth
Against	\$ 86,725	Large Corporate/ Large Interest Group	\$15K CO Contractors Assoc \$5K Philip Morris USA
1992-#9: For	\$ 127,267	Large Individual	\$70K Individual \$27K Individual
Against***	(See 1992-#3)	Large Corporate	(See 1992-#3)
1992-#10: For	\$ 133,076	Large Interest Group/ Small Individual	\$8K Humane Society US (DC) \$33K Fund for Animals (NY & MD)
Against	\$ 113,427	Large Interest Group	\$25K Nat'l Rifle Assoc.(DC) \$10K Wildlife Legis. Fund (DC)

*Based on Colorado Secretary of State's (SOS) records for 1992 ballot initiatives and campaign finance disclosures filed with the SOS. Totals exclude fund transfers made to other issue committees for that same initiative. If a conflict existed between the two sources, campaign finance reports' figures were used. Bold-faced type indicates initiatives that passed. See Appendix A for initiative subjects.

**Interest group, corporate, and individual contributions are categorized as "large" if they are over \$999. Type(s) of contributions listed accounted for more than 50 percent of the total funds for that campaign.

***Several committees organized and collected \$303,247 to oppose all four gambling initiatives.

Table 5.4: Sources of Campaign Funding*

5.4B: 1994 Initiatives

INITIATIVE	TOTAL CONTRIBUTIONS	SOURCE OF MAJORITY OF CAMPAIGN FUNDS**	LARGEST CONTRIBUTORS (STATE OF ORIGIN IF NOT CO))
1994-#1: For	\$ 267,073	Large Interest Group	\$23K Amer Lung Assoc of CO \$20K Amer Heart Assoc of CO
Against	\$ 8,090,947	Large Corporate	\$7.56M Tobacco Instit (DC) \$118K Philip Morris USA (VA)
1994-#11: For	\$ 228,468	Large Interest Group	\$72K CO AFL-CIO \$13.5 Chiropracter (CO)
Against	\$ 1,013,223	Large Corporate	\$74K Amer Insur Assoc (DC) \$27K Continental Casualty (IL)
1994-#12: For	\$ 193,734***	Small Individual	\$5K Colorado Concern \$3K Nat'l Taxpayer Union (DC)
Against	\$ 994,664****	Large Interest Group/ Large Corporate	\$54K Tobacco Institute (DC) \$40K CO Educ Assoc [CEA]
1994-#13: For	\$ 155,075	Large Corporate	\$154K ARPRT (CO)
Against	\$ 123,200*****	Large Interest Group/ Large Corporate	1/3 @ by Blackhawk, Central City and Cripple Creek Casino Owners Association
1994-#15: For	\$ 75,769	Large Interest Group	\$32K CO League Women Voters \$19K CO Common Cause
Against	\$ 875,925*	Large Interest Group/ Large Corporate	(See 1994-#12)
1994-#16: For	\$ 110,928	Large Individual	\$70K W&V Pauls \$15K P. Anschutz
Against	None on File	None on File	None on File
1994-#17: For	\$ 17,860	Large Individual	\$10K C. Williams \$4K US Term Limits (DC)
Against	None on File	None on File	None on File
1994-#18: For	\$ 120,790	Large Individual	\$115K D. Berg (sponsor)
Against	\$ 6,430	Large Corporate	\$2.5K Loretto Motherhouse (KY) \$1K Provenant Health Care

*Based on Colorado Secretary of State's summary records for 1994 ballot initiatives and individual issue committees' campaign finance disclosure reports filed with the Secretary of State. If a conflict existed between the two sources, the campaign finance reports' figures were used. Bold-faced type indicates initiatives that passed. See Appendix A for initiative subjects.

**Interest group, corporate, and individual contributions are categorized as "large" if they are over \$999. Type(s) of contributions listed accounted for more than 50 percent of the total funds for that campaign.

***A total of \$193,734 was spent by the TABOR Committee both in support of 1994-#12 and in opposition to 1994's Referendum A.

****"Coloradans for Responsible Reform" raised \$875,925 to support 1994's Referendum A and to oppose initiatives 1994-#12 and 1994-#15.

*****A total of \$123,200 was spent in opposition to 1994-#13 and 1994-#14. The latter did not appear on the ballot until 1996 as Amendment 1996-#18.

Table 5.4: Sources of Campaign Funding***5.4C: 1996 Initiatives**

INITIATIVE	TOTAL CONTRIBUTIONS	SOURCE OF MAJORITY OF CAMPAIGN FUNDS**	LARGEST CONTRIBUTORS (STATE OF ORIGIN IF NOT CO)
1996-#11: For	\$ 114,504	Large Individual	\$59K Murphy (sponsor) \$14K Bassart
Against	\$ 795,914	Small Individual/ Small Interest Group	\$5K CO Easter Seal \$2.5K Temple Sinai
1996-#12: For	\$ 128,026	Large Interest Group	\$45K US Term Limits (DC) \$42K Coalition Citizen Legis (NM)
Against	\$ 1,939	Small Individual	\$500K Individual (CO)
1996-#13: For	\$ 179,894	Large Individual	\$152K TABOR Committee (sponsor)
Against	\$ 569,935	Large Interest Group/ Large Corporate	\$50K Businesses for Better Govt \$44K Colorado Realtors Assoc
1996-#14: For	\$ 184,890	Small Individual	\$15K Amer Humane Assoc (CO) \$10K Individual (MA)
Against	\$ 39,515	Large Interest Group	\$11K CO Trappers \$2K CO Bowhunters
1996-#15: For	\$ 40,218	Large Interest Group	\$20K Clean Water Action \$10K Colorado Common Cause
Against	None on file.		
1996-#16: For	\$ 329,953	Large Corporate	\$25K Vail Resorts \$15K Union Pacific Railroad
Against	\$ 33,602	Small Individual	\$500 Individual (CO)
1996-#17: For	\$ 480,608	Large Interest Group	\$410K Of the People (VA) \$50K Individual (IN)
Against	\$ 372,720	Large Interest Group	\$50K CO Education Assoc \$20K Planned Parenthood
1996-#18***: For	\$ 59,876	Large Corporate	\$25K Rocky Plains Invest Co (SC) \$10K Griego Insurance
Against	\$ 90,028	Large Interest Group/ Large Corporate	\$35K Cripple Creek Casino Assoc \$20K Blackhawk Casino Assoc

*Based on Colorado Secretary of State's summary records for 1996 ballot initiatives and individual issue committees' campaign finance disclosure reports filed with the Secretary of State. If a conflict existed between the two sources, the individual disclosure reports' figures were used. Bold-faced type indicates those initiatives that passed. See Appendix A for initiative subjects.

**Interest group, corporate, and individual contributions are categorized as "large" if they are over \$999. Type(s) of contributions listed accounted for more than 50 percent of the total funds for that campaign.

***Data reflects total campaign contributions from 1994 through 1996 for the committees registered for and against the Trinidad gaming initiative.

Table 5.5
Summary of Major Sources of Initiative Campaign Funding
for 26 Initiatives on the Ballot 1992-1996*

SOURCES	PRO-INITIATIVE CAMPAIGNS	ANTI-INITIATIVE CAMPAIGNS
Small (<\$1000) Individual Contributions (% of 26 initiatives on ballot)	6 (23%)	4 (15%)
Large (>\$1000) Individual Contributions (% of 26 initiatives on ballot)	11 (42%)	0 (0%)
Large (>\$1000) Corporate Contributions (% of 26 initiatives on ballot)	6 (23%)	14 (54%)
Large (>\$1000) Interest Group Contributions (% of 26 initiatives on ballot)	9 (35%)	11 (42%)

*Summarizes information from Table 5.4. Type(s) of contributions are listed when they account for more than 50 percent of the total funds for the issue committees organized in favor of or in opposition to an initiative. Two types of contributions are listed for some initiatives, when they comprised the largest two sources of funds but neither one alone accounted for more than 50 percent of the total funds. (As a result, a total of figures in each column reflect a total greater than the total 26 initiatives that were on the ballot between 1992 and 1996.)

and 1996-#15), the "local control of obscenity" initiative (1994-#16), and one of the "term limits" initiatives (1994-#17) relied on dozens of volunteer petitioners to collect the signatures to qualify for the ballot. Based on the figures cited by initiative sponsors in interviews, the value of these volunteer efforts amounted to more than \$100,000. In other words, the \$100,000 worth of individuals' donations of time would dwarf the \$10,000 that accounted for over 50 percent of the pro-term limits campaign's contributions, and it would also overtake the contributions by individuals and interest groups in the other three initiatives cited above.

There are no comparable non-monetary "contributions" to opposition campaigns, because outside of the volunteer petitioners, all other "gifts in kind" have to be reported to the Secretary of State. And a closer look at anti-initiative campaigns reveals that in two of those cases, 1996-#12 and 1996-#16, the total contributions were received from a handful of individuals in the first case and from less than 50 individuals in the second case.

Out of the six initiatives that drew a major share of their campaign funding from small, individual donations, the most broadly-based pro-initiative campaigns, as far as funding goes, were run by the proponents of the "taxpayers' bill of rights" initiative (1992-#1), the "prohibited methods of taking wildlife" initiative (1996-#14), and the "no protected status for homosexuals" initiative (1992-#2). The tax limitation campaign had over 1300 individual contributors, the initiative to restrict the trapping of animals had about 2000 contributors, and the effort to ban protected status to homosexuals had over 5000 contributors--by

far the largest number of donors to any of the issue committees in the 1990s. The vast majority of donations for 1992's Amendment 2 were for amounts of \$100 or less from individual Coloradans. All three of these initiatives were passed by the voters. One initiative that appeared to have had significant "grassroots" support yet still lost was Doug Bruce's 1994 "election reform" initiative (1994-#12). This initiative was put on the ballot by volunteer petitioners and garnered over 1100 small donations, that is donations of less than \$1000, but it lost badly at the polls with 77.5 percent of the voters opposed to it.

There were two *opposition* campaigns whose campaign funding demonstrated broad, public support. The opposition to 1992's Amendment 2 had over one thousand individual contributors to the two major opposition political committees. Most of the anti-Amendment 2 contributions were a combination of large in-state corporate donations and smaller donations from Coloradans, although there were also dozens of donations from individuals outside the state. One other committee that was very broadly-based in terms of financial support was the committee formed in opposition to 1996's Amendment 11, the initiative that sought to take away the tax exempt status of non-profits. Over 2000 Colorado individuals, churches, and other non-profit organizations donated smaller amounts to raise the \$700,000 used to campaign against that initiative.¹⁵ Apparently it is possible to mobilize members of the mass public against an initiative, if they feel the stakes are important enough.

¹⁵Table 5.4 indicates that the sources of the majority of funds for 1996-#12 and 1996-#16 were also "small individual" donations, however, because literally a handful of individuals contributed

Based on campaign finance records the pro-initiative campaigns were three times as likely to have broad “grassroots” support as the anti-initiative campaigns. If the campaign finance statements were to include the value of volunteer petitioners in the total amount of campaign contributions, then the pro-initiative campaigns were five times as likely to have broad support from individual citizens’ small contributions.

2) Large Individual Contributions

However, as Table 5.5 shows, the largest percentage of initiatives, 42 percent, relied on a small number of *very* committed individuals for their funding. There were several examples where individuals donated tens of *thousands* of dollars to the pro-initiative campaigns. For example, Dr. Dal Berg spent over \$120,000 of his personal savings to almost single-handedly fund his “Medicaid reform” initiative (1994-#18), and Doug Bruce personally donated over \$100,000 to the “petition reform” initiative (1996-#13) through the TABOR committee. Although volunteers collected tens of thousands of signatures in order to put the “local control of obscenity” initiative on the ballot, one Colorado couple alone donated \$70,000 to the campaign. In addition, three of the gambling initiative campaigns (1992-#3, #5 and 1994-#13) and \$123,000 of the “tax and spending limitation” initiative were bankrolled by large individual donations. In the latter cases it may well be that the individuals stood to benefit financially if the initiatives passed. However, in the other cases a pecuniary motive is not readily

to the former and around 50 contributed to the latter, they are not considered to demonstrate “broad-based” support.

apparent, and the sponsors interviewed indicated that the large individual donations were made by individuals who believed that a personal sacrifice was necessary for the public good to be realized.¹⁶

As Table 5.5 shows, the opposition campaigns did not benefit from any similar involvement of individuals committed to “shooting down” the proposed initiatives. Based on campaign finance reports, this institution of direct democracy is well-suited for use by those interests that enjoy the support of wealthy individuals.

3) Large Interest Group Contributions

Nine of the pro-initiative campaigns (35 percent) drew a large part of their campaign finances from interest group contributions of \$1000 or more (see Table 5.3). For instance, the “campaign finance reform” initiative campaigns (1994-#15 and 1996-#15), both of which relied primarily on volunteer petition circulators, received most of their campaign funds from Colorado-based interest groups, namely the Colorado League of Women Voters, Colorado Common Cause, COPIRG, and Clean Water Action. Similarly, the “no spring bear hunt” initiative

¹⁶At least one of the legislators has stated that he thinks Doug Bruce-- proponent of the “tax and spending limitation” initiative (1992-#1) and the “election reform” initiative (1994-#12), and a primary financial backer of the “extending petition rights” initiative (1996-#13)--uses the initiatives to benefit his own pocketbook (Millbank 1997). However, other sponsors and bureaucrats that spoke of Mr. Bruce noted that he believed that he was on a crusade against the legislature after having been ill-treated in his earlier attempts to work within the representative institutions of government. Based on her interview of Mr. Bruce and on a few casual conversations with Mr. Bruce when she saw him at public hearings for other initiatives, this author has concluded that his primary motivation for personally spending around \$500,000 on various initiatives is his distrust of representative government. He spoke of “fascists” in the legislature who only seek power for themselves, and noted that the government is a “Frankenstein,” out of control. Richard Daily (1992-#8) noted that when he told Mr. Bruce that he acted as if he were on a “mission from God,” Mr. Bruce only responded, “So?” Mr. Bruce sees his efforts as serving a cause greater than himself.

(1992-#10) had hundreds of donations of from \$5 to \$100, but over 50 percent of the funds came from interest groups such as the Humane Society of the United States and the American Society for the Prevention of Cruelty to Animals. Four of these measures (1992-#6 and #10, 1994-#15, and 1996-#15) relied heavily on volunteers for much of the campaign effort, but when they needed money they approached those who had previously mobilized around the interest, rather than seek to raise funds from the public at large.

Based on the campaign finance reports, most of the interest groups organized in support of initiatives tended to be “membership interests” (Wilson 1995, 226) whose members are individual citizens. For example, in 1992 large contributions were made to pro-initiative campaigns by The Nature Conservancy and the Humane Society and in 1994 large contributions were made by the American Lung Association of Colorado, the League of Women Voters, and Colorado Common Cause. However, there were also other large interest group contributions that may have received significant funding from other organizations, such as the Colorado Education Association and US Term Limits. On the other hand, the interest groups organized in *opposition to* initiatives tended to be “institutional interests” (Wilson 1995, 225) whose members are other organizations. Examples of institutional interests include The Tobacco Institute that contributed \$7.64 million against the “tobacco tax” initiative (1994-#1), and the casino owner’s associations that organized in opposition to all of the proposed gambling initiatives.

Large interest group contributions were the major sources of funding for the opposition campaigns on 14 out of the 26 cases studied (54 percent). In a majority of the cases the interest groups organized in *opposition to* the proposed initiatives represent interests that were more likely to be favored in Colorado's Republican-controlled legislature. For instance, in 1996 Amendment 11 faced the considerable opposition of members of organized religious groups and charities. Amendments 12 (term limits) and 13 (petition rights) conflicted with the interests of the legislators (see the following Section B). Amendment 14 (prohibited methods of taking wildlife) and Amendment 16 (state trust lands) were largely opposed by hunting, trapping, and ranching interests who, according to former House Minority Leader Ruth Wright, are recognized as virtually controlling the House and Senate Agricultural Committees. All of the gambling initiative sponsors noted that it would take a miracle for any expansion of gambling to pass via the legislature or the governor, given the amount of money the casino owners' associations pour into candidate campaign coffers.¹⁷

4) Large Corporate Contributions

Other than a few of the gaming initiatives (1992-#3, 1994-#13, and 1996-#18) where a pecuniary motive for corporate contributions is quite clear, the three pro-initiative campaigns that received significant corporate support were those started by Governor Romer (1992-#6, 1992-#8, and 1996-#16). The governor

¹⁷Exceptions to this might include the "no special status for homosexuals" initiative (1992-#2), the "school vouchers" initiative (1992-#7), the "local control of obscenity" initiative (1994-#16), the "reform state medical assistance" initiative (1994-#18), and the "parental rights" initiative (1996-#17). However, as will be discussed in the following section "B" of this chapter, these issues might well fit under the "hot potato" type of issues that the legislators are reluctant to consider.

appears to have had little difficulty in getting large corporate donations for “his” initiatives. As one of sponsors of the “state trust lands” initiative (1996-#16) stated when asked about the numerous large corporate donations:

A lot of that support, I think, that’s due to Roy Romer. He’s capable of just making a few phone calls and saying, “This is a good initiative. How about helping support it financially?” (Wright, 1997).

Similarly, Governor Romer’s hand-picked sponsors on both the “education sales tax” initiative (1992-#6) and the “Great Outdoors Colorado” initiative (1992-#6) explained that the governor has considerable fund-raising capabilities. The education initiative sponsor explained the large amount of funds (over \$700,000) in support of their campaign by saying, “I think there were some favors called in. And I also think we did a lot of fundraising” (Gardner 1997). Richard Daily, proponent of the “Great Outdoors Colorado (GOCO)” initiative (1992-#8), also remarked that “Amendment 16 relied very, very heavily on Romer’s personal skills as a fund-raiser....” (Daily 1997). The initiative institution has evidently provided a forum where conflicts between members of the representative institutions of government can be expanded. Having a popular governor as an active backer of an initiative apparently helped to attract large donations from a broad range of companies--many of which had no clear business interest in the particular initiative.¹⁸

¹⁸The corporate donations for the environment-related initiatives (1992-#8 and 1996-#16) included some made by groups with interests somewhat related to the measures, such as ski resorts, but also from businesses without closely related interests, such as the real estate development company from Mission Viejo, California, the Union Pacific Railroad, the Colorado Rockies professional baseball team, and Gates manufacturing of Denver. Similarly, the Education Sales Tax initiative (1992-#6) predictably had the support of the Colorado Education Association and the Colorado

An interesting contrast between Colorado and the observations in much of the literature (see Chapter 3) is that the proponents of the initiatives raised more money than the opponents of the initiatives on 16 out of the 26 initiatives on the ballot between 1992 and 1996, although only a handful of pro-initiative campaigns had significantly higher spending (see Chapter 7, Tables 7.4 and 7.5). The proponents' funding exceeded the opponents funding by over \$100,000 on one of the gambling initiatives (1992-#3), on all three of the governor-backed initiatives (1992-#6 and #8, 1996-#16), on three initiatives that faced no real organized opposition (1994-#16, 1994-#18, 1996-#12), and on two initiatives that drew a great deal of funding from out-of-state interest groups (1996-#14 and 1996-#17). However, in the cases where the opposition had a very evident pecuniary motive for opposing a proposed initiative--most of the gambling initiatives (1992-#4, #5, #9, 1996-#18), the "tobacco tax" initiative (1994-#1), the "workers' choice of medical provider" initiative (1994-#11), and the "taxing non-profits" initiative (1996-#11)--the opposition greatly outspent the proponents. There was also overwhelming spending by corporate opponents on initiatives that "reformed" the campaign processes--the first initiative that proposed campaign contribution limits (1994-#15) and on the initiatives that proposed to make the initiative process easier to use (1994-#12, 1996-#13).¹⁹ At least in terms of

Association of School Executives (over \$80,000 from these two groups); but it also received thousands of dollars from United Airlines, Kemper Securities, Hewlett-Packard, Jones Intercable and many other businesses (Secretary of State: Campaign Finance Records).

¹⁹According to Pat Johnson, proponent of both "campaign finance reform" initiatives, representatives of the corporate opposition to her first initiative (1994-#15) stated that they "weren't even going to bother" staging opposition to the 1996 initiative, because they were so sure that it would pass despite any campaign they might run.

corporate spending, it appears that "special interests" are much more apt to weigh in heavily *against* initiatives than in support of them.

The campaign finance reports reveal that even if individuals and groups are motivated to use the initiative process because they believe they are acting in the best interests of the public, they usually do not rely on financial support from the general public to run their campaigns. A majority of the initiative proponents depended heavily on very large donations from interest groups and a few very committed individuals. Significant corporate funding generally weighed in against initiatives, particularly when corporate earnings or corporate influence on the policy making process are threatened. Corporations were significant contributors to the proponents' side under two circumstances--when the governor backed the initiative and when new gambling interests sought the constitutional change necessary to compete with existing gambling interests. There is also a pattern of the funding of opposition campaigns by interest groups that are favored, if not entrenched, in the Republican-controlled legislature.

Overall, the funding behind the campaigns waged on both sides of the initiatives corroborate the interview data by demonstrating that the initiative process is usually resorted to by individuals who have the backing of organized interest groups, but who confront opposition that is favored by a majority in the state legislature. A little more than a third of the initiatives on the ballot between 1992 and 1996 made it to the ballot through "grassroots" type, volunteer-circulated petitions, 10 out of the 26 measures. But the campaign finance reports reveal that the competition is overwhelmingly funded by previously existing

interest groups and a few very committed individuals, rather than by members of the public at large. The sponsors may promote their initiatives on behalf of the general public, but very few wage their campaigns through the efforts of the general public.

B. Vertical Escalation of “Conflict of Interest” and “Hot Potato” Issues

As will be discussed in some detail in Chapter 6, the vast majority of initiative sponsors turned to the initiative as a last resort, when they believed that they had no chance to succeed in getting policy change through the legislature. The following discussion reveals that many of the initiative sponsors and the legislators perceived a systematic weakness in the representative institutions of government that leads citizens and groups to turn to the initiative, an institution of direct democracy. All of the initiative sponsors and several of the state legislators commented on the inability of the legislature to deal fairly, or in some cases to deal *at all*, with certain types of issues. In particular, interview data from legislators, bureaucrats, and initiative sponsors indicates that the legislators tend to be institutionally constrained from being responsive to the public on issues that deal with their professional interests--“conflict of interest” issues, and on issues that are “too hot” to deal with because the issues will draw significant opposition by politically powerful, organized groups--“hot potato” issues.

The lack of legislative responsiveness to the citizens was a common theme in the interviews of both legislators and initiative sponsors. With only three exceptions (on 1992-#2, 1994-#13 and 1996-#11), the initiative entrepreneurs indicated they were pushing for policy change via the initiative, because they

“knew” that the public was, or would be, on their side if they could “only get our story out.” However, they ultimately concluded that the legislature was not interested in dealing with their issues. As Table 5.6 illustrates, over and over again the sponsors, explaining their rationale for going the initiative route, commented on the inability of the legislature to deal, or to deal fairly, with certain issues.

[Table 5.6 about here]

Several of the legislators observed the same phenomenon. The elected officials themselves noted that the state legislature is not as responsive to the people of Colorado as the officials think it should be. Sometimes they attributed this lack of responsiveness to legislators’ lack of awareness of what the public is thinking.

Yes, I do think there are some advantages to the initiative process because sometimes the elected officials don’t have the pulse of the people, so there may be issues that the public is concerned about that we turned up our nose at (Kerns 1994).

Table 5.6
Relationship Between Respondents' Views of Legislative Fairness
and Use of the Initiative

Assessment of CO Legislature's Ability to Deal Fairly with and Issue	Attempted an Initiative	Did NOT Attempt an Initiative
Legislature deal fairly with issue	0 (0%)	5 (83%)
Legislature NOT deal fairly with issue	34 (92%)	0 (0%)
No comment on fairness of legislature	3* (8%)	1 (7%)
TOTALS	37	6**

Source: Data from interviews with sponsors of 24 measures that made it onto the ballot between 1992 and 1996, with the sponsors of 13 measures that did not make it onto the ballot, and with spokespersons for 6 interest groups that generally do not use the initiative. See Appendix A for list of respondents and issues.

*This cell includes the sponsor of the "Manitou gambling" initiative (1993-#13), the "parental rights" initiative (1996-#17) and a measure sponsored by Mark Bender on behalf of a client whose motivations he did not address.

**This category represents the 6 interest groups that have not recently sponsored an initiative.

The legislature doesn't have a good pulse on the people (Mendez 1993).

I think there is a need to [have] a check and balance...I do think voters need to have an avenue to put their concerns on the ballot... (Kerns 1994).

The initiative is the best opportunity for elected officials to understand what the electorate is saying. Campaigning and polling gives us a general reading, but not an accurate reading (Foster 1993).

However, several legislators indicated that the institutions of direct democracy sometimes serve as a necessary "check" on the legislature when the legislators fail to act in accordance with the *known* views of the public:

I think it [tax limitation by initiative] was a very predictable reaction to the legislature's behavior. Either lack of behavior, or behavior that is not positive in the eyes of the people. It's a checks and balances kind of thing (Mendez 1993).

[The initiative process] provides an effective check on the legislature--really a fourth branch of government. Also the initiative allows the public a voice in politics and policy making (Foster 1993).

I believe in the initiative process. I think that our forefathers in Colorado and in a number of those western states that preserved the initiative process had an excellent philosophy--when government thwarts the citizens and the citizens try to go through normal processes and the government is not responsive, then the initiative process is the ideal way to solve it (Faatz 1994).

It is one of the only ways to promote change in an institution that doesn't like change. Clearly, the only way to change the priorities of the legislative branch (Weismann 1993).

The initiative allows the citizen to adopt policies that are stalemated year after year by the legislature (Mendez 1993).

In several of the legislator and initiative sponsor interviews the terms "conflict of interest" and "hot potato" were used to explain the benefits of having

the initiative process. Table 5.7 summarizes how often the sponsor of ballot initiatives used terms like “hot potato” or “conflict of interest” to explain why they turned to the initiative process. The following discussion illustrates how legislators and initiative sponsor gave similar explanations for why certain issues appeared on the initiative agenda.

[Table 5.7 about here]

This author has classified the respondents’ explanations into the “hot potato” or “conflict of interest” categories. The two terms correspond to the explanations that were given in the interviews. Initiatives were classified as “hot potatoes” when the respondents described the issues using terms like “hot potato” or “too hot to handle,” or when they explained that the legislators were “afraid” to address issues because of the potential harm to their political careers if they made the wrong groups angry. The issues were classified as “conflict of interest” issues when that term was used, or when the respondents discussed the issues as reducing the power or prerogatives of the legislature or political parties. The director of Colorado Common Cause described “conflict of interest” issues as those dealing with “how the legislature itself operates” (Bainter 1997).

It should be noted that while “conflict of interest” issues can be relatively easily identified as issues dealing with specific legislative powers and prerogatives, “hot potatoes” are defined by context--they are “hot” at a specific

Table 5.7
Respondents' Explanations for Why the Colorado Legislature
Was Not Capable of Dealing Fairly With Their Issue

Year	"Hot Potato"	"Conflict of Interest"	No Data	TOTALS
1992	#2, 3, 4, 5, 6, 10 N=6	#1, 8 N=2	#7, 9* N=2	10
1994	#1, 11, 16, 18 N=4	#12, 15, 17 N=3	#13** N=1	8
1996	#1, 14, 16, 18 N=4	#12, 13, 15 N=3	#17** N=1	8
TOTALS	14 (54%)	8 (31%)	4 (15%)	26

Source: Data from interviews with ballot initiative sponsors. Responses categorized by the author as "hot potato" when the respondent indicated in the interview that the legislature would not deal fairly with their issue because of the electoral consequences/fear of alienating powerful constituencies/fear of alienating large contributors to their campaigns. Responses categorized as "conflict of interest" when the respondent indicated in the interview that the legislature would not deal fairly with their issue because it adversely impacted their power as legislators.

*No interview data for initiatives 1992-#7 and #9.

**The sponsors of initiatives 1994-#13 and 1996-#17 did not discuss the legislature's ability to treat their issues fairly.

time and place. Although the term “hot potato” is not used in the agenda setting literature, the concept is recognized in the literature’s discussion of how the formal, governmental agenda is affected by the issues that politicians see as being advantageous or politically disadvantageous to deal with (Baumgartner and Jones 1993; Carmines and Stimson 1989). For example, while “affirmative action” programs were untouchable a few years ago, the Republican party has deemed that this former “hot potato” now presents a potentially winning electoral issue.

“Hot Potato” Issues

The theme of political “hot potatoes”—that legislators are afraid to act on some issues for fear of alienating powerful constituencies—was evident in more than half of the ballot initiative sponsor interviews (see table 5.7). The following comments made by initiative sponsors illustrate this point:

On Medical Assistance (Medicaid) Reform:

And of course that’s the main reason I did the initiative, because there are “hot potato” issues that are too hot for the politicians to handle. They know it’s right, but they’ll never touch it...there are issues that the populous can take to the initiative and speak their will that the politicians won’t touch (Berg 1997).

On why the legislature would not replace education funding cut through other actions until late 1994:

We were going into an election year. If it hadn’t been an election year, I don’t think it would’ve been a problem [getting it through the legislature]. But that was an election year and taxes were...in 1993 that was a problem (Gardner 1997).

On the “prohibited methods of taking wildlife” initiative (1996-#14:

The other side was the side that had the ear of the legislature (Angell 1997).

On whether he had considered going through the legislature to curb bear hunting:

Not seriously, because the legislature has such a history of knocking down anything connected with wildlife that could be read as progressive or changing the status quo. The flaw in the legislature is that all of that legislation that has the word “wildlife” in it has to first clear the House or Senate Ag[riculture] Committee. And that’s basically the kiss of death for anything that the agricultural community decides it doesn’t like. And certainly the agricultural community in Colorado didn’t like the idea of not hunting bears as often as they had in the past (Smith 1997).

On why he never sought a legislative sponsor to propose a bill to tax churches and non-profits through the legislature:

The issue was so politically charged, there was no way it would go anywhere [in the legislature] (Bridges 1997).

These five sponsors, as well as five of the gambling initiatives’ sponsors, believed that the legislature could not deal fairly with the issues at stake because of *political* considerations. Whether or not that was the case is not directly ascertainable, for there are other reasons that the legislature may not have acted on the issues—for example, the legislators may have believed that the public supported the existing policies. However, it is interesting to note that the first four out of the five initiative sponsor quotes above pertain to issues that were soon dealt with by the legislature (Medicaid reform and school funding) or subsequently passed by initiative (limiting trapping and bear hunting). It is also interesting to note the similar conclusions expressed by a couple of the state legislators.

Some things you simply cannot get done [in the legislature] ...like for instance the motorcycle helmet law may never get passed through the legislature. We may have to just at one point put it on the ballot and let people tell us, as they tell us in polls, that 80 percent want motorcycle helmet laws enforced. But you can’t get it through the legislature, because they have such a powerful lobby. Things like that. (June 1993).

I think the legislature is apparently afraid to take on some of the tough issues for political reasons, and for that reason I think the initiative process assists those legislatures that don't want to take on those political hot potatoes. 'Cause it's more of a bi-partisan, non-partisan, apolitical process—the initiative process. Whereas a legislative process sometimes does get bogged down with politics. People are thinking, “Can I get reelected?” and “How does this affect my district?”—even though it may be good for the state (Rizzuto 1993).

Fourteen of the initiative sponsors and at least a few of the state legislators believe that public officials who are worried about being reelected are loathe to take on “hot” issues that may hurt their political careers. As discussed in the agenda setting literature (Chapter 2), it appears that politicians in Colorado also tend to avoid addressing issues that may hurt them politically. And the biggest threat is posed by issues that have well-organized constituencies.

“Conflict of Interest” Issues

Eight sponsors also identified the lack of legislative responsiveness to the public's views as being related to considerations of personal power and the power of the legislative institution (see Table 5.7). Elected officials were seen as jealously guarding the power and the prerogatives of their institution, at the expense of their *representative* duties. Many of those who turned to the initiative process to change public policy perceived an inherent “conflict of interest” of the legislature on certain issues:

On Colorado Common Cause's “good government” initiatives:
In our issues our feeling is that a lot of times we bump up against an inherent conflict of interest the legislators have. Certainly campaign finance reform. But also with things like the GAVEL amendment...how the legislature itself operates. They're very territorial about those issues. [They think] *they* should be the ones deciding how *they* conduct *their* business. Our attitude is that it's

the people's business and it's bigger than them. But things like...anything that affects the core political process, how people are elected, how the legislature does its business—the political people who inhabit the legislature, they think that's their domain (Bainter 1997).

On why he proposed tax limits via the initiative:

They only want more power for themselves....Politicians are the problem, and not the solution (Bruce 1997).

On why he proposed term limits:

The second question is that when people are in office you want them to think of the public good, or the common good. And you want them to think of it from the perspective of the people being governed. Which is to say, they need to see themselves as returning to that group, not as being forever a separate and elite class (Considine 1997).

On why the legislature so vehemently opposed committing lottery revenues to parks, recreation, and open space as originally stipulated when the Colorado lottery was approved by the voters:

A guy named Mat Jones, who was a legislator, used the metaphor of cocaine. This is free money, and it gets habit-forming; it gets addictive. Because it's there and when [former governor] Federico Pena runs into a problem with getting a convention center built in Denver, can't get it financed, and he comes to the state legislature looking for help, they can say, "Well, my boy, we can help you out! Funny thing, but we're going to call it the Colorado Convention Center, and not the Denver Convention Center, just because it's *our* money that's making a difference here. And where are we going to get the money? We don't have to go to the taxpayers—we've got lottery here!" (Daily 1997).

Initiatives on all four of these issues—campaign finance reform, tax limitations, term limitations, and taking away the legislature's control over lottery revenues—were passed by the Colorado electorate. While other "political reform" initiatives during this period failed at the polls,²⁰ the success of these

²⁰There were seven "conflict of interest" or "political reform" type of initiatives on the ballot between 1992 and 1996, four of which passed (1992-#1 Tax Limits; 1994-#17 Term Limits; 1996-#12 Term Limits; 1996-#15 Campaign Finance Reform). The three that failed at the polls

initiatives further supports the legislators' own conclusions that they have difficulty dealing with certain conflict of interest-type issues that have broad, public support—even those that may be in the public interest to support.

There are issues that concern legislators' careers or the partisan political process that the legislature will never be able to make objective judgments about. Voters are less partisan and more issue oriented than legislators are. I think it is absolutely appropriate that people vote over campaign finance reform or term limitation (Cassidy 1993).

There are some things the legislature is unable to do, for example campaign finance reform...I do not think the legislature will ever be able to do meaningful campaign finance reform. It affects us all too personally and closely (Weismann 1993).

The legislature refuses to deal with some tax issues—which is the main advantage of the initiative. If the government is unresponsive, or will not address an issue that certain groups feel is important, they have an alternative or way of circumventing the legislature (Johnson 1993).

Taken together the initiative sponsor and legislature interview data paint a portrait of a legislative institution that is very reluctant to deal with issues that negatively affect the power of the legislature or the major political parties (“conflict of interest” issues such as campaign finance reform, term limits, or tax and spending limitations) or the political futures of the individual legislators (politically sensitive issues such as animal rights, abortion, motorcycle helmets). The initiative sponsors and several state legislators view the initiative institution as providing an alternate political agenda for issues that are “too hot” for legislators, who act within the partisan political system, to handle themselves.

included: 1994-#15 Campaign Finance Reform (that was slightly modified when it passed in 1996); 1994-#12 Election Reform; and 1996-#13 Petition Reform.

C. The Ultimate Goal of Vertical Conflict Escalation Via the Initiative

Finally, it is important to differentiate between three distinct goals that the initiative sponsors had when they sought to escalate their issues to the public. As mentioned previously (and as will be discussed at some length in Chapter 6), the vast majority of the sponsors interviewed who truly sought to get their measures on the ballot did so with the expectation that they would win. They believed that public would naturally support their initiatives. However, there was one initiative sponsor who indicated that he viewed the initiative process primarily as a means of getting the public to consider an important issue, and there were several initiatives whose sponsors viewed their efforts as part of a *national* effort to change public policy.

Table 5.8 summarizes what the sponsors identified as the ultimate target of their efforts to vertically escalate conflict via the initiative. The interview data indicates that in almost 80 percent of the cases the Colorado public was the ultimate target of escalation. The sponsors' ultimate objective was to get the Colorado voter to change public policy in the state of Colorado. However, four sponsors indicated that they sought to reach the national public and to affect national policy *by means of* setting the policy agenda in Colorado.

[Table 5.8 about here]

Table 5.8

**Ultimate “Audience” or Target of Vertical Escalation of Conflict
by Ballot Initiative**

Year	State Public	National Public	No Interview Data
1992	#1, 2, 3, 4, 5, 6, 8, 10 N=8	N/A N=0	#7, 9* N=2
1994	#1, 11, 12, 13, 15, 16, 18 N=7	#17 N=1	N/A N=0
1996	#13, 14, 15, 16, 18 N=5	#11, 12, 17 N=3	N/A N=0
Totals (% of 26 ballot initiatives)	20 (77%)	4 (15%)	2 (8%)

Source: Data from interviews with the ballot initiative sponsors.
See Appendix A for a list of sponsors and initiative issues.

*No interview data for initiatives 1992-#7 and #9. However, predominance of out-of-state funding on both sides of the 1992-#7 “school vouchers” initiative would seem to indicate that the ultimate target of conflict escalation was the national public. The “limited gambling in Denver” initiative (1992-#9) would seem to have been aimed at the state public, due to the limited scope of the initiative.

Dr. Dan Bridges, a geologist, indicated that he sponsored his initiative to eliminate property tax exemptions for churches and other non-profit organizations (1996-#11) despite his belief that the initiative would not pass. He made a conscious decision not to go through the legislature, because the issue was “so politically charged there was no way it would go anywhere.” He believed the legislators were too reliant on these non-profit groups’ political action committees to touch the issue. But while his co-sponsor, John Murphy, believed the initiative could pass in 1996, Bridges said his objective was “to get it on the ballot and see what was going to happen.” He thought that the issue would need to be out in front of the public for a longer period of time, before it would pass, and he intends to get a slightly modified initiative on the ballot in 2000. Like the policy entrepreneurs in the agenda setting literature (see Chapter 2), Bridges is “softening up” the policy making community. He sought to use the initiative process to get the public to think about the issue.

Bridges, along with a handful of the other sponsors was also seeking to ultimately reach a broader, national public with his initiative. Like the “term limits” initiatives (1994-#17 and 1996-#12), the “school voucher” initiative (1992-#7), and the “parental rights” initiative (1996-#17), he believes that his measure is a national issue, and that once it passes in one state it is likely to pass in other states too. While Bridges did not have any luck attracting out-of-state support, these other initiatives did received significant financial and organizational support from groups not based in Colorado.

Leah Delay sponsored the “parental rights” initiative on behalf of the Virginia-based group, “Of the People.” In fact, over 95 percent of the funding for the campaign came from this group that had originally “targeted a lot of states.” Of the People contributed over \$400,000 to the Colorado initiative campaign once it became clear that Colorado was the only state where the initiative would make it onto the ballot. According to the sponsor, Of the People saw Colorado as a particularly good “testing ground” for the initiative, because of the relatively liberal initiative process and because of the partisan mix of the citizenry—1/3 Republican, 1/3 Democrat, and 1/3 independents. Ms. Delay personally supported the content and the message of the initiative, and noted that she was very surprised when it didn’t pass. The first goal was to keep the support of the voters in Colorado. However, the secondary goal was to start a trend that would move across the nation.

The two “term limits” initiatives (1994-#17 and 1996-#12) sponsored by Dennis Polhill were also part of an effort to promote an issue nationally. The term limits movement, however, has been very successful both in Colorado and on a national scale. The parent organization, US Term Limits, is based in Washington DC, but it is unlike the Of the People group that sponsored the “parental rights” initiative. Where Of the People basically bought an initiative campaign in Colorado, US Term Limits coordinates the efforts of volunteer organizers in nearly 30 states in order to push for consistent laws and policies across the states. The national organization does provide funding to the various states’ initiative campaigns when they face significant opposition, but it places a great deal of

emphasis on using the initiative to raise grassroots support for their national movement. The President of US Term Limits, Howie Rich, stated that "There wouldn't *be* a term limits movement without the initiative process."

The "school vouchers" initiative (1992-#7) is a final case where the initiative process in Colorado was used by individuals who apparently sought to set the national agenda. The campaign finance reports for the issue committees organized on both sides of the campaign make it quite apparent that those involved saw more at stake than education policy in Colorado. Among the several large individual donors to the pro-initiative side, individual citizens from Chicago, San Francisco, San Antonio and South Carolina contributed \$50,000, \$50,000, \$10,000 and \$5,000 respectively. And the opponent's campaign attracted \$1000 to \$10,000 contributions from various education associations from 10 states across the country. Apparently groups such as the Wisconsin Education Association (\$10,000) and the New Jersey Education Association (\$5000) believed that the success of this Colorado initiative campaign could have national repercussions.

Indeed, even initiatives that are not intended as springboards for other states and/or national policy often do have an impact that goes beyond the state where the issue appears on the ballot. Colorado's nationally-known Amendment 2 (the 1992-#2 "no special rights for homosexuals" initiative) has apparently led to similar efforts in other states, such as Oregon and Maine. And based on several other initiative sponsors' comments about similar or related initiative campaigns that are going on in other states, Colorado's own initiative agenda is sometimes

affected by the measures that appear on the ballots in other states. “Tax and spending limitations” and “animal rights” issues are examples of two types of issues that appeared in other states before they appeared on the ballot in Colorado. The initiative is used to escalate conflict to the public at the state and at the national levels.

Conclusions

This data presented in this chapter reveal that the initiative process is an important agenda setting tool in Colorado, and also nationally. This chapter provides some basic insights into how the initiative agenda is set and why the initiative process is used. The initiative institution of direct democracy provides a means of escalating conflict horizontally within the institutions of representative government and vertically to the public. The data demonstrate that individuals and groups use the initiative to gain access in the legislature by “threatening” the escalation of issues to the public. Furthermore, the comments of initiative sponsors, the legislative records, and the legislators themselves reveal that the initiative is sometimes successful in “forcing” the legislature to address issues that might not otherwise address due to the opposition of entrenched interests—either the legislators’ or those of other interest groups.

Why do individuals and groups turn to the initiative process to achieve their policy goals? The data show that the initiative has a direct impact on public policy by providing an alternate, quasi-formal agenda for issues and policy proposals that the legislators are loathe to address for political reasons. It facilitates the vertical escalation of conflict to the voters’ agenda, particularly for

interests that are “shut out” of the state legislature. Both the legislators and the initiative sponsors recognize that the initiative process serves some important functions, allowing the public to deal with “conflict of interest” and “hot potato” issues that legislators, as elected officials, neglect to deal with because of their concern for the powers associated with their elected offices or for their political careers (see Table 5.7).

How is it that certain issues make it onto the ballot--the initiative agenda? The data also reveal that initiative sponsors are motivated to change public policy on issues that are of primary concern to them, rather than on issues that are necessarily of primary concern to the public. Furthermore, campaign finance data reveal that the initiative proponents' campaigns are largely funded by large contributions (\$1000 or more) from interest groups and individuals. About 40 percent of the measures that made it onto the 1992 to 1996 statewide ballots were put there primarily through the efforts of volunteer petition circulators (see Table 5.3), but only 23 percent of the initiative campaigns depended primarily on grassroots financial support (see Table 5.5). Based on this chapter's review of conflict escalation, the most important political actors in setting the agenda of this institution of direct democracy are interest groups, political entrepreneurs, and the public. The institutional elites are basically on the sidelines, and the media usually do not enter into the equation, as far as making the decision to escalate conflict goes.

This chapter also provided insights into the role of the public in determining how the initiative agenda is set. The role of the public in the

sponsors' calculations about horizontal conflict escalation via the initiative is very similar to the role it plays in the representative agenda setting process when the initiative sponsor's goal is to escalate conflict horizontally. In those cases the public is a "slack resource" that the legislators know could *potentially* be mobilized on the issue. However, the role of the public is quite different in the initiative process when the goal is to escalate conflict vertically, and that is the goal most of the time. In cases of vertical conflict escalation via the initiative, the public is the *ultimate* audience. The public must sign the petitions to put an issue on the agenda, and the voting public will determine the outcome of that agenda access. In terms of setting the initiative agenda, the ballot, the institutional elites are truly on the sidelines while the voting public "takes the field."

Chapter 6 examines the timing of proposed initiatives, with the purpose of determining the "necessary" and "sufficient" conditions under which a failed bill will be the subject of an initiative. This provides further insights as to why individuals and groups turn to the initiative process. We've seen that the sponsors' belief that the legislature will not act on their measures is one determinant of the initiative agenda, but we will examine more closely the relationship between public opinion, campaign finances, and the initiative agenda. Chapter 7 then looks at the determinants of the framing of the initiatives themselves, providing more answers about how specific policy proposals appear on the initiative agenda. This chapter pays particular attention to how the public, the media, and other interest groups affect the final form of the initiatives.

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Chapter 6

The Timing of Initiative Petitions

Chapter 5 revealed that the initiative process is used for both horizontal and vertical conflict escalation. Those who use the initiative process for horizontal conflict escalation, to influence the actions of state legislators or the actions of other interest groups working through the legislature, use this institution of direct democracy as a "bargaining chip." They threaten to take an issue to the public as a means of getting the legislature to consider their concerns, and to convince other groups that they had better negotiate within the institutions of representative government--while they have the chance. Individuals and groups that use the initiative process with the intent to escalate conflict vertically to the public do so because they are already convinced that the legislature will not act on their concerns. Many of the sponsors of initiatives that made it to the ballot in recent years remarked that their concerns would not even be given a fair hearing in the legislature, because their proposals are directly or indirectly conflicted with the vested interests of the legislators. The sponsors had decided that the legislators had a "conflict of interest" resulting from their interests in preserving their legislative power, or that their proposals were "hot potatoes" that the legislators were afraid to handle because they might alienate other organized interests to the detriment of the legislators' political careers. As a result, Colorado initiatives were usually proposed after bills failed in the General Assembly.

However, while hundreds of bills fail each year, only 60 or so different initiatives (not counting different versions of an initiative) are even submitted to

the first stage of the initiative process, and only a few dozen make it as far as the title setting stage. Obviously, a lack of legislative responsiveness to the concerns of various groups and individuals is not *sufficient* to explain the timing of ballot initiatives. Indeed, we saw in Chapter 5 that several interest groups' representatives indicated that they do not use the initiative, even when their policy proposals fail to pass in the legislature. Their groups do not use the initiative process, because they believe that they are given a fair hearing in the legislature, and they see the legislature as generally responsive to their concerns. Unlike the initiative sponsors, these groups believed that their concerns received due consideration in the legislature.

This chapter examines what are the *sufficient* determinants of the timing of initiatives--why groups or individuals turned to the initiative process when they did. In the course of the interviews, each of the sponsors was asked why they sponsored their initiative, and why they sponsored their initiative at a particular time. The following discussion looks at the data from the interviews and from the summary of bills proposed in the Colorado General Assembly between 1991 and 1996. It demonstrates that there are two predominant determinants of the timing of initiatives--the action or inaction of the legislature and the sponsors' perceptions of public opinion. Although, the few sponsors interviewed who used the initiative for the horizontal escalation of conflict seemed somewhat less concerned with public opinion. In addition, amongst the initiative sponsors who used the initiative for vertical conflict escalation a few also indicated that factors such as leadership, volunteer support, and funding were important considerations

when they were deciding whether or not to go forward with an initiative at a given time.

I. The Action or Inaction of the Legislature

The individuals who sponsored the initiatives were very clear on the point that their measures were a reaction to events or circumstances in the Colorado General Assembly. When asked the question, "What led you to sponsor an initiative?" the vast majority of proponents replied along the lines that "There was no other way to do it" (Angell 1997). They saw the process as an extremely onerous and costly alternative to the legislative arena. Those who ran volunteer-based campaigns were particularly emphatic about the cumbersome nature of the initiative process.

To ask somebody like me if I wanted to go through *that* again!
(Angell 1997)

It's a lot of gut-wrenching hard work...a painstaking process
(Witmer 1997).

The requirements in Colorado are so crazy as to make it impossible to accomplish it (Golyansky 1997).

Even individuals who indicated that they felt they were well-versed in the process after a few attempts at getting a measure on the ballot commented that the initiative process is not for the faint-hearted.

It's not easy. I love hearing these monkeys...how "easy" it is. I went from nice brown [hair] to grayer than hell in the course of three years from doing these things, because they're very grueling. The hearings. All the crap you go through (Hawkins 1997).

If they're not hostile, you try to get [a constitutional amendment] through the legislature, because that's *vastly* preferable. It solves an awful lot of problems and you get a boost of five or maybe more

percentage points in terms of likelihood of favorable votes—under *any* circumstances...And it's very expensive to get a measure on the ballot...The fundamental premise of this thing is most initiatives occur because the legislature didn't, wouldn't, do it. That's just an unassailable fact. Because you don't go through this brain damage just for the sake...why would you go through this public exhibitionism? It's very expensive. It's very painful (Daily 1997)

As noted in Chapter 5, several of the state legislative leaders agreed that initiatives tend to result from the legislators' failure to either know what the public is thinking or their failure to act in accordance with the public's views. The latter is particularly true on "conflict of interest" and "hot potato" issues. The following comments by the Secretary of State and the Deputy Director of the Legislative Council, each of whom has worked with initiative sponsors for over a decade, provide further confirmation that the initiative is commonly used by those who feel that their concerns will not be heard in the legislature.

The Secretary of State said the following when asked about the types of issues or proponents that she has seen over the years: Most of them [the initiatives], of course, especially the ones that I call truly "citizen's issues," are "community emotional" issues that you're seeing. True citizen's initiatives, that I call the emotional issues, that come forward...most of those people are not attorneys. They just know that something needs to be done. The process needs to be corrected, and their voice isn't necessarily being heard at the General Assembly. So they figure that this is the way that they can get their issue to the citizens of Colorado (Buckley 1997).

The Deputy Director of the Legislative Council explained the types of individuals who use the initiative process: Wherever they come from, whether it's vegetarianism or eat more beef, they distrust the legislature. There's a great deal of distrust of the legislature. That is probably one of their great motivating factors in getting volunteers or people in their organizations ready to go out and do some work for their proposal. It's to make sure, because they believe the legislature is never going to address their concerns. And they may be right. On bear hunting [1992-#10], for

example, it's very likely if a bill were introduced on the spring bear hunt, it probably wouldn't go very far. Or that "reform" of the initiative process, I mean "change" rather than being an improvement. That reform of the initiative process is not going to take place by the legislature. They're too vested in the current system, and they don't like the initiative. I've never asked any legislators what they think of the initiative, but in our [Blue Book] hearings it comes out fairly plain that they don't cotton too much to it. (Elofson 1997).

It is not surprising, then, that the majority of sponsors did attempt to go through the legislature *before* they turned to the initiative process. Table 6.1 summarizes the data from interviews with the sponsors of 24 of the 26 initiatives that made it to the ballot between 1992 and 1996 and on the official records of bills considered in the Colorado General Assembly (Daily Status Sheets, 1991-1996). The proponents of 15 out of 25 of the initiatives (60 percent) resorted to the initiative process after they (or others known to them) had failed in their efforts to pass similar proposals through the Colorado state legislature. In most of these cases, those who tried the legislative route first made very little headway in the General Assembly--usually failing to get out of legislative committees. For instance, the proponent of the "tobacco tax" initiative (1994-#1) said that the attempts to put this initiative on the ballot began after three years and three failed bills in the legislature, and after a sympathetic legislator had indicated that a tobacco tax bill would never even make it out of committee (Levinson 1997). The proposed tobacco tax was a "hot potato." And the Colorado General Assembly's records show that between 1990 and 1996 11 out of 17 campaign finance reform bills, and 7 out of 11 proposed tax and spending limitation bills were "PI-ed,"

postponed indefinitely. That is, almost two-thirds of these “conflict of interest” measures did not even get as far as a committee vote.

[Table 6.1 about here]

Another initiative sponsor, who was very familiar with the Colorado legislative process as a lobbyist who had worked through the bill drafting process, also determined that the legislature could not be expected to seriously consider the governor-backed “Great Outdoors Colorado” initiative (1992-#8) after it failed to make it out of committee. He concluded that the legislature had become “dependent” on lottery funds and was dead set against putting funds into parks and recreation as had originally been stated when the voters had approved the state lottery in the 1980s.

So, a guy named Mat Jones who was a legislator used the metaphor of cocaine. This is free money, and it gets habit forming. It gets addictive. Because it's there and when [former governor] Federico Pena runs into a problem with getting a convention center built in Denver, can't get it financed, and he comes to the state legislature looking for help. They can say, “Well, my boy, we can help you out! Funny thing, but we're going to call it the Colorado Convention Center, and not the Denver Convention Center, just because it's *our* money that's making a difference here. And where are we going to get the money? We don't have to go to the taxpayers; we've got lottery here!” (Daily, 1997).

Table 6.1
The Timing of Initiatives in Relationship to Attempts
to Change Policy through the Legislature

Year	Initiative followed failure of legislature to act	Initiative after unsatisfactory action of legislature	Initiative in anticipation of legislative inaction	Legislature not discussed as timing factor	Totals
1992	#1, 3, 4, 5, 6, 7, 8 N=7 (78%)	#2 N=1 (11%)	#10 N=1 (11%)	N/A N=0 (0%)	9*
1994	#1, 15, 16, 17 N=4 (50%)	#12 N=1 (12.5%)	#11, 18 N=2 (25%)	#13 N=1 (12.5%)	8
1996	#12, 15, 16, 18 N=4 (50%)	#13, 14 N=2 (25%)	#11 N=1 (12.5%)	#17 N=1 (12.5%)	8
Totals	15/25 (60%)	4/25 (16%)	4/25 (16%)	2/25 (8%)	25 (100%)

Source: Data from interviews with ballot initiative sponsors. See Appendix A for a list of sponsors and initiative subjects.

* No interview data and insufficient data from records of legislative bills to categorize initiative 1992-#9.

He noted how during the Capitol Construction Committee's review of the first draft of the initiative, the chairman of the joint legislative committee, Senator Tom Norton, turned to him and said, "Mr. Daily, you're stealing our money!" Daily perceived that the legislators resented the imposition of limitations on the use of lottery funds because the legislators believed it was *their* money, not the citizens'.

Eight initiatives (32 percent of 25 measures for which data are available) were never attempted in the General Assembly because their measures were either a direct reaction to the legislature's actions, or because they believed such an effort to be hopeless, based on the legislature's record on similar issues (see Table 6.1). For example, Colorado for Family Values proposed its "no protected status for homosexuals" constitutional amendment (1992-#2) after noting that over the previous few years the Colorado legislature had been moving closer towards passing a "hate crimes" bill that would provide this very same "protected status" to homosexuals (Witmer 1997). The 1994 "election reform" initiative (1994-#12) and the 1996 "petition rights" initiative (1996-#13) were proposed in *response to* several legislators' proposals of bills and referendums that attempted to make the process more difficult for potential initiative sponsors (Bruce 1997; Polhill 1997). The measure to limit the trapping of animals (1996-#14) was begun after the animal rights group, Colorado People Allied with Wildlife (PAW), found out that farmers were working with the Senate Agricultural Committee to pass a bill. Even without knowing the content of the bill, the sponsors believed that if the

Agricultural Committee was involved it would be hostile to “animal rights.” And, indeed, the bill proposed and subsequently passed expanded trapping rights (Angell 1997). In addition, two of the sponsors who used the initiative as a “threat,” for the horizontal escalation of conflict (Shakeshaft 1997; O’Toole 1997), indicated that they had anticipated that any attempts in the legislature would be hopeless, due to the entrenched interests of insurance companies and business in general (see Chapter 5 under “horizontal conflict escalation).

Finally, three sponsors also indicated that while the legislature eventually did pass some type of bill on their issue, after their initiative campaigns were well underway, the enacted reforms were merely attempts to forestall true reform. As Patricia Johnson from the League of Women Voters commented,

The legislature wanted to pass legislation, sort of just to turn us off at the pass (Johnson 1997).

This appeared to be the case on both “tax limitation” (1992-#1) and on “campaign finance reform” (1994-#15 and 1996-#15). There were seven attempts by legislators to pass concurrent resolutions to put a tax and spending limitation amendment on the ballot as a referendum in the two years before Doug Bruce’s initiative passed. He considered the *bill* that did pass to be entirely inadequate. There were more than 15 bills proposed on campaign finance reform between 1990 and 1996, one of which passed. However, Colorado Common Cause, COPIRG, and the Colorado League of Women Voters were not convinced that the legislature’s bill did much to “clean up” campaign finances, so they went ahead with their initiative.

Well, we did ask [the legislature]. What happened was Ken Wood introduced legislation which was similar to our initiative, but his stuff never got out of committee, so there was no full debate, no full consideration. And we gave them their chance. And what they wanted to do was make it all go away...and this is what they get (Johnson 1997).

In conclusion, the initiatives that are aimed at escalating conflict to the public usually do come after failed attempts at change in the legislature. Based on the sponsor interviews and on the records of bills introduced in the legislature, it appears that about 60 percent tried to promote policy change through the regular, representative institutions of government for two to four years before they turned to direct democracy. Richard Bainter, head of Colorado Common Cause and sponsor of two initiatives on campaign finance reform, noted that his organization had proposed several initiatives over the past 20 years, but that they viewed the initiative as a last resort.

We generally try to go through the legislature first. We just think that's good public policy. That's what the legislature is there for. And actually the initiative is...our opinion of it is that it's kind of a "safety valve." That it's there for times when the legislature *won't* act (Bainter 1997).

For those groups that do try to go through the legislature first, the "safety valve"--the initiative process--is used to release pressure after a few years of failure in the legislature.

However, another 16 percent of the initiatives were proposed by individuals and groups that did *not* try to get their measures through the legislature. They turned to the initiative process because they *anticipated* that the legislature would not be responsive to their views. Those who sponsored

initiatives on issues related to issues such as pro-labor, consumer protection, animal rights, and taxing non-profits during this time frame indicated that they “knew” they would be unsuccessful due to the Republican Party’s control of both houses of the legislature and the clout that the opposing interests--business, farmers and ranchers, and the “Christian right”--had in the committees or the legislature as a whole.

The use of the initiative in this “preemptive” fashion makes it next to impossible to predict up to one fifth of the initiative agenda. However, the following section of this chapter demonstrates that another determinant of the timing of initiative is public opinion. The initiative was referred to as a “safety valve” or a “release valve” by several initiative sponsors, including Richard Bainter, Terry Considine, Dennis Polhill, Gregory Golyansky and Richard Hamilton. The following section reveals that, as far as the initiative sponsors are concerned, the “pressure” that is released via the initiative is the pressure that builds up when representative government fails to act in accordance with the views of the public.

II. Public Opinion

The discussion in Chapter 5 revealed that the impetus for initiative entrepreneurship generally comes from the sponsors’ personal interest on that issue, and the first section of this chapter discussed how individuals and groups use the initiative process for the vertical escalation of conflict when they believe that the legislature will not deal, or will not deal fairly, with their concerns. The sponsors are the central figures in setting the initiative agenda, often with the

support of established interest groups. The institutional elites in the legislature comprise a hostile environment that “forces” the entrepreneurs and interest groups to pursue policy change by circumventing representative government channels. But if the public does not play a large role in motivating sponsors to pursue policy change in the first place, it plays a *pivotal* role in the entrepreneurs’ decisions to attempt a ballot initiative.

None of the sponsors claimed that their measure dealt with the most pressing concerns of the public. However, with only a few exceptions they stated that they believed that the public supported their proposals for change, or that the public *would* support their proposal as long as they could “get the word out” about problems with existing policy. The following discussion demonstrates that in the vast majority of cases the initiative sponsors sought to take their policy proposals to the public when they believed that the public, unlike the public’s elected representatives, *would* support the proposed policy changes. Furthermore, most were convinced that the public support for their initiatives was “natural.” That is, they were convinced that public opinion would *start out* on their side of the issue. The limited polling data published in local papers on the 1992 through 1996 initiatives provides some support for the sponsors’ perceptions of public support, although it appears that several sponsors were incorrect in their assumptions that the public would “naturally” support their measures. The following discussion on the role of public opinion in the calculations of initiative sponsors provides part of the answer to why the sponsors turned to the initiative process.

A. The Entrepreneurs’ Assessments of Public Support

With two exceptions out of the 24 ballot initiatives whose sponsors were interviewed, the sponsors indicated that at the outset of the campaign they believed that their initiatives would be approved by the public (see Table 6.2). Dr. Luther Bridges felt that the majority of the public was at that time strongly opposed to his proposal to tax non-profits (1996-#11), although he noted that his co-sponsor did believe that they could win. He went ahead anyway, however, “just to see what was going to happen” (Bridges 1997). In addition, the sponsors of the hotly-debated amendment to prohibit “protected status for homosexuals” (1992-#2) were unsure about their chances of winning, but felt compelled to try based upon their religious convictions (Bransford 1994, 141).¹ In all of the other cases, 92 percent of the time, the sponsors indicated that they only attempted the process because they thought they would win. As current state representative Barry Arrington stated when asked whether he expected his initiative on local control of obscenity (1994-#16) to pass, “Sure, why else do it?”

[Table 6.2 about here]

The sponsors based their expectations of public support on a few different “measures,” including public opinion polls, voting results on previous initiatives,

¹When the author interviewed Jim Witmer, one of the two paid staff that had worked on the “no protected status for homosexuals” initiative (1992-#2), he indicated that she should refer to Stephen Bransford’s book, *Gay Politics vs. Colorado and America*, as an authoritative account of the campaign. Mr. Bransford served as a media advisor for the campaign, and he includes a great deal of background on the initiative proponents and their campaign.

Table 6.2
Ballot Initiative Sponsors' Expectations of Electoral Success/Failure

Year	Initiatives whose sponsors anticipated success at polls	Initiatives whose sponsors anticipated failure at polls	Initiatives whose sponsors were uncertain about electoral outcomes	Totals
1992	#1, 3, 4, 5, 6, 8, 10 N=7	N/A N=0	#2 N=1	8*
1994	#1, 11, 12, 13, 15, 16, 17, 18 N=8	N/A N=0	N/A N=0	8
1996	#12, 13, 14, 15, 16, 17, 18 N=7	#11 N=1	N/A N=0	8
Totals	22/24 (92%)	1/24 (4%)	1/24 (4%)	24 (100%)

Data from interviews with ballot initiative sponsors. See Appendix A for a list of initiatives and Appendix B for a list of initiative sponsors. Bold-faced type indicates initiatives that passed.

*No interview data for initiatives 1992-#7 and 1992-#9.

and personal contacts. The sponsors of nine out of 24 initiatives relied to some extent on public opinion polls in arriving at their conclusions that they were proposing initiatives that had the popular approval of the public (see Table 6.3). Governor Romer's co-sponsor on the "education standards and sales tax" initiative (1992-#6) believed that the governor had considered polling data in addition to the public inputs at town meetings he held across the state. The sponsors of the "Great Outdoors Colorado" initiative (1992-#8) and the "state trust lands" initiative (1996-#16) seemed to indicate that Governor Romer believed that the general pro-environmental stance of the Colorado voters would lead these measures to victory. Other sponsors also remarked on the importance of public opinion polls in their decisions to turn to this institution of direct democracy.

On the factors the League of Women Voters and Common Cause considered when they were deciding whether to go ahead with their second attempt at campaign finance reform (1994-#15 and 1996-#15) in two years:

Attempting an initiative is a serious business. It's a big commitment. You've got to raise money. And so then we talked about money, and where we were going to get the money...and other considerations were time--how many people would be willing to work on this if we were going to actually mount a petition drive. Chances of success. We had looked at our polling data, and it looked pretty good (Johnson 1997).

When asked whether they expected their anti-trapping initiative (1996-#14) to pass:

Yes. Because during the course of the stakeholders' meeting the Division of Wildlife had commissioned the Human Dimensions in Natural Resources group at CSU [Colorado State University] to do a survey on Coloradans' attitudes towards trapping. And the survey came up with the information that 91 percent of people in Colorado disapproved of recreational trapping, 87 percent disapproved of commercial trapping to sell furs, and that 62

percent of the population just disapproved of trapping altogether. But then there was another question asked that showed that 67 percent of the population, when asked to refine that, said, yes, they approved of some trapping for farmers and ranchers to alleviate predator damage. So, with that information in mind, we figured we could get a majority of people to vote for an initiative that got rid of recreational and commercial trapping, but still allowed some trapping for predator damage management in situations where ranchers are sustaining intractable animal damage (Angell 1997).

Pat Miller, proponent of the "parental notification of abortion" measure that was removed from the ballot by the courts in 1994 said that the group backing the initiative, Coloradans for Responsible Government:

...had polls that showed that well over 80 percent of the people agreed [the proposed measure] should be law (Miller 1997).

[Table 6.3 about here]

The sponsor of the "term limits" initiatives (1994-#17, 1996-#12) also relied on public opinion polls that showed national support for term limits at about 75 to 80 percent, but he also alluded to the overwhelming victory of the first term limits initiative in Colorado in 1990. Similarly, Pat Johnson of the League of Women Voters noted that even with the overwhelming spending of a well-organized opposition campaign, her 1994 "campaign finance reform" initiative (1994-#15) had 46 percent support at the polls, which led her to believe that her slightly modified initiative (1996-#15) would win in 1996. The results of earlier initiative campaigns also convinced the four sponsors of the measures to expand gambling that the Colorado public would be likely to support their initiatives. This was strengthened by their assessment that their gambling initiatives were

Table 6.3
Summary of Bases for Sponsors' Assessment of Public Opinion*

Year	Sponsors Looked at Public Opinion Polls	Sponsors Looked at Record on Previous Initiatives	Sponsors Relied on Personal Contacts/ Common Sense	Totals
1992 Initiatives (% of '92 initiatives)	#6, 8 N=2 (25%)	#3, 4, 5 N=3 (37.5%)	#1, 2, 10 N=3 (37.5%)	8**
1994 Initiatives (% of '94 initiatives)	#13, 15, 17 N=3 (37.5%)	#17 N=1 (12.5%)	#11, 12, 16, 18 N=4 (50%)	8
1996 Initiatives (% of '96 initiatives)	#12, 14, 15, 16 N=4 (50%)	#12, 15, 18 N=3 (37.5%)	#11, 12, 13, 17 N=4 (50%)	8
Totals (% of 24 ballot inits)	9/24 (37.5%)	7/24 (29%)	11/24 (46%)	24 (112.5%)

Source: Data from interviews with ballot initiative sponsors. See Appendix A for a list initiative subjects and Appendix B for a list of initiative sponsors.

*The three sources of sponsors' assessment of public opinion are not mutually exclusive. Some sponsors mentioned more than one source. As a result, total of all column percentages is greater than 100%.

**No interview data for initiatives 1992-#7 and 1992-#9.

really “local control” issues, a cherished principle of Coloradans (see Cronin and Loevy 1993).

On how a groups of citizens in Trinidad and other towns decided to attempt to get first a referendum and then an initiative to allow limited gaming in several Colorado towns (1992-#3) after another gaming initiative passed in 1990:

As soon as [the 1990 gambling initiative] passed, people in this town said, “We’d just be perfect for this.” So we started on that and then we tried to get on the ballot by a referral method, and contacted our representative and so forth, and went up there [to Denver]. When we got up there were other towns who were also interested so they threw us all in a room and said, you people figure out what you want to do, because we’re not going to deal with 13 separate towns. So we all got together and made a proposal and drafted language for the legislature and the senate to pass--put us on by referral--and they wouldn’t do that (Klodzinski 1997).

On the Gateway Gaming initiative (1992-#4) to allow several rural towns vote on whether to allow limited stakes gaming:

The amazing part of it is, let me tell you something else. Any gambling issue that had ever gone previous to 1992, any gambling issue that’s ever gone before the voting public has always passed (Nielsen 1997).

Robert Fabec, sponsor of the most recent Trinidad gambling initiative that was removed from the ballot in 1994, but then reinstated by the courts in 1996 (#18), indicated that his initiative called for “local control” which is generally favored by Coloradans, and that:

The thing that caused us to work for an initiative in 1994, and therefore 1996, was the fact that people in Trinidad voted in favor of the initiative in 1992. Without that having happened, we would not have come forth with the initiative. And it’s very unlikely that we’ll ever come forward with one again, because of what took place [the loss] in 1996 (Fabec 1997).

The gaming initiatives are different from the other initiatives proposed during this period, by virtue of the fact that the proponents of these measures were primarily motivated by *local* rather than *statewide* considerations. For three of these sponsors gaming was seen as a way of revitalizing local economies in their

struggling rural towns. The proponents were forced to go the initiative route because the expansion of gambling required the revision of the state constitution, and while a majority of the legislature had supported a referendum to extend gambling to several rural towns, they did not have the 2/3 of both chambers required to place expanded gambling on the ballot as a referendum.

Four of the six sponsors of gaming initiatives (Beasley, Fabec, Klodzinski, and Nielsen) indicated there was a potential for success based on two facts. First, it is widely acknowledged that Coloradans are great supporters of the concept of "local control," meaning that the people in an area have the right to make policy that affects them locally. Second, the voters had approved limited-stakes gaming in 1990, so they had already demonstrated that they would approve it under some circumstances (historic preservation and rural development in the 1990 case). Their four gaming initiatives (1992-#3, 1992-#4, 1992-#5, 1996-#18) were formulated with these two facts in mind.²

The sponsors of 11 out of the 24 initiatives (46 percent) indicated that they "just knew" the public would support their issues, based on personal contacts, "common sense," and "gut feelings." They did not rely on public opinion polls,

²One gambling proponent, Robert Randolph, proposed to *impose* gambling on a town that had voted overwhelmingly against a local gaming initiative. Randolph was one of two sponsors who began the initiative process when he believed that he did *not* have public opinion on his side. (The other sponsor was Bridges on his "taxing non-profits" initiative, 1996-#11.) He stated that, "From the very beginning we felt public opinion was somewhere around four to one or five to one against it, [however], we felt we could offset that with a huge war chest...You can change public opinion if you spend enough money" (Randolph 1997). All of the other gaming proponents interviewed believed that public opinion would favor their measures. Notably, Randolph's measure lost with over 91 percent of the voters voting against his measure (1994-#13), while the measures proposed by others interviewed lost with a negative vote between 68 and 72 percent..

but rather their own contacts and their own estimations of the prevailing views of Colorado voters.

On what factors he considered when deciding whether to go forward with his "worker's choice of care" initiative (1994-#11):
We were fairly sure, and the polling shows that we were correct too, we were fairly sure that this was an issue of concern to people, and that it would have broad and wide support. The first poll that came out...mind you we couldn't afford any polls, so we had to rely on opposition polls, and they were great. The first opposition poll that came out showed 80 percent support of the public. As we got 10...13 days out, we were up 2 to 1. Sixty-six to 27 [percent] (Hawkins 1997).

Family practice physician Dal Berg on why he thought his Medicaid reform initiative (1994-#18), aimed at getting fathers of illegitimate children to pay the state back for the costs of Medicaid-funded births:

I didn't do any survey. I just know that people are sick and tired of Medicaid and seeing these people living off the government when they're the healthiest people on earth. They're teenagers and 20 year olds (Berg 1997).

Leah Delay indicated that Colorado was selected as the "test case" for the issue of "parental rights" (1996-#17), because everyone thought that the conservative voters would pass it. When asked whether she had personally believed that it would pass, she responded:

Yes. Absolutely. Absolutely. [Based on] going out every single day and listening to peoples' responses when you showed it to them, or when you gave speeches, or just the general reaction was... "Of course. Of course we want this." We went from "Why are you even asking me, of course I'm going to vote for this," to "Thank goodness. This is what happened to me" (Delay 1997).

Former state senator Terry Considine stated he expected his first "term limits" initiative (in 1990) to pass because, "Everyone's for it." When asked whether he had done any polling, he responded:
No. But I know it. I know it's fundamental to the American view of political organization. And I know it's resonant in American constitutional experience...You can get a poll to prove anything or say anything...Polls just don't tell you very much. They give you a snapshot of something (Considine 1997).

These “measures” of public support were certainly the least “scientific.”

However, the discussion in the following section of this chapter demonstrates that most of their measures (88 percent) were, indeed, favored early on.³

The proponents interviewed had some logical and fairly sound justifications for their predictions of success, as well as some less scientifically-based rationales. Twenty-nine percent considered public opinion polls before they proposed their measures. Twenty-five percent considered the results of similar initiatives in the previous election. However, it was the forty-two percent that based their conclusions of public support on personal contacts that were most likely to be correct. In 7 out of 8 cases for which public opinion polls were published, they were, indeed, ahead in the early polls. Only Robert Randolph (1994-#13) indicated that he thought that he could “buy” a victory at the polls. The other sponsors who thought they would win believed that public opinion was starting out in their favor. The timing of initiatives was largely determined by their perceptions of existing public opinion, particularly in those cases where the sponsors intended to get the measure on the ballot. The sponsors attempted (or threatened) to escalate their issues to the public when they believed that existing public opinion was on their side of the issue. However, the following section demonstrates that public opinion polls did not always support their assessments.

B. Public Opinion Polls

³Early polling data was available for 8 out of these 10 measures. Seven out of 8 (88 percent) were ahead in the early polls. 1992-#1, #6; 1994-#1, #11, #15, #17, #18 were ahead in the polls. 1994-#16 was behind in the polls. No early polling data was available for 1996-#12 and 1996-#15. See Table 6.4.

A great deal of public opinion research has commented on the volatility of public opinion as expressed in public opinion polls. Changes in the way a question is framed, the respondents' perceptions about what are socially acceptable answers, and even the order in which questions are asked can lead to varying responses. In addition, the results of public opinion polls often change dramatically over time. That is clearly the case for electoral contests, as respondents pay closer attention to candidate issues as elections near. Furthermore, due to the state-dependent nature of initiative politics, there is very limited data available on public opinion on specific initiatives.

Due to all of these considerations, the polling data considered in this section are used only as a means of approximating the levels of public support for initiatives. They provide a "sanity check," a means of corroborating the interview data. Therefore, the public opinion polls published in the two leading newspapers in Colorado, *The Rocky Mountain News* and *The Denver Post*, are taken as an indication, not as proof, of the levels of public support in the state for the policy changes proposed by initiatives.

Based on the patterns of spending and advertising revealed in the interviews and campaign spending reports, both the proponents and opponents of initiatives placed all or most of their advertising in the mass media in the two to four weeks prior to the election. Given the paucity of unpaid media coverage on most initiatives (see Chapter 7) and considering that the limited data on the patterns of public knowledge about the initiatives demonstrates that the public is rarely familiar with the specifics of initiatives much before the elections (see

Chapter 3), this author uses public opinion polls from one month or more before the election as an indication of the “natural” levels of public support for the *general* idea behind the policies proposed by the initiatives. The election results are used as an indication of the levels of public support for the initiatives after the public has been exposed to advertising and taken more of the specific provisions of the initiatives into consideration.

However, while public opinion polls provide a means of judging the extent to which sponsors’ perceptions of public support were correct, the conclusions are only tentative due to the limited availability of polling data.

While the entrepreneurs may have had logical reasons for believing the public would support their initiatives, the polling data published by the two largest newspapers in Colorado on the initiatives on the ballot in the 1992, 1994, and 1996 provide only tentative support for the entrepreneurs’ conclusions. The polling data in Tables 6.4 and 6.5 reveal that in 11 out of the 17 cases for which early polling data were available on the specific initiatives, the public favored passage of the measures when the earliest polls were published (at least a month or more before the elections)--approximately 65 percent of the time. This percentage increases to 73 percent if you do not include the two measures, 1992-#2 and 1994-#13, whose sponsors *expected* to be behind in the polls. In 13 out of 17 cases the sponsors’ perceptions of “natural” public support were apparently

correct. Still, four of the initiatives apparently started out without the support of the majority of the public, despite the sponsors' perceptions to the contrary.⁴

[Insert Table 6.4 and Table 6.5 about here]

The available polling data indicate a general trend of declining support for initiatives. With a few exceptions, on most of the initiatives for which there is polling data at least a month before the election, the percentage of potential voters polled who indicated that they would vote for the measure if the election were held at that time decreases as the election approaches. The only case in which an initiative came from far behind to win was the "no protected status for homosexuals" initiative in 1992. Several of the sponsors commented on this trend. For example, the proponents of the "prohibited methods of taking wildlife" initiative in 1996 attended a seminar on "how to run an initiative campaign" when they were about to start the petition process. They were told,

It is a rule of thumb in political campaigns that during the course of a campaign you are likely to lose 10 percent of your support, if opposed at all...because once the opposition gets after you, you're going to lose some people who had an original position on your side (Angell 1997).

⁴ There was no early polling data published for seven initiatives in 1996--#11, #12, #13, #14, #15, #16, and #18. However, based on the fact that proposals similar to 1996-#12 on term limits (see 1994-#17), 1996-#13 on petition reform (see 1994-#12), and 1996-#15 on campaign reform (see 1994-#15) enjoyed very high levels of public support early on in the 1994 campaigns, early public support for these three initiatives would seem likely. Based on the trend of public opposition to gaming initiatives in the previous two elections, it would be unlikely that 1996-#18 had much statewide support, even early on in the campaign.

Table 6.4
Polling Data: Public Opinion Trends on the Initiatives
Table 6.4A: Polling Data on 1992 Initiatives

INITIATIVE #	EARLIEST POLL (DATE) % FOR % AGAINST % UNDECIDED	9/30/92 POLLS % FOR % AGAINST % UNDECIDED	11/3 ELECTION RESULTS % YES % NO
1992-#1 Tax Limits	(12/4/91) 64% For 31% Against 5% Undecided	65% For 29% Against 6% Undecided	53.7% Yes 46.3% No
1992-#2 No Protected Status for Homosexuals	(8/16/92) 36% For 54% Against 10% Undecided	36% For 52% Against 12% Undecided	53.4% Yes 46.6% No
1992-#3 Gambling: Towns in West and South	(8/16/92) 42% For 53% Against 5% Undecided	29% For 65% Against 6% Undecided	29.7% Yes 70.3% No
1992-#4 Gambling: Towns in East and South	(5/21/92) 37% For 54% Against 9% Undecided	36% For 58% Against 6% Undecided	27.6% Yes 72.4% No
1992-#5 Gambling in Parachute	(5/21/92) 48% For 45% Against 7% Undecided	30% For 62% Against 8% Undecided	27.6% Yes 72.4% No
1992-#6 School Sales Tax	(5/7/92) 52% For 44% Against 4% Undecided	51% For 45% Against 4% Undecided	45.6% Yes 54.4% No
1992-#7 School Vouchers	(9/8/91) 35% For 47% Against 18% Undecided	37% For 52% Against 11% Undecided	33.3% Yes 66.7% No
1992-#8 Great Outdoors CO	None Available	49% For 40% Against 11% Undecided	58.2% Yes 41.8% No
1992-#9 Gambling in Denver	(5/21/92) 27% For 64% Against 9% Undecided	21% For 72% Against 7% Undecided	19.6% Yes 80.4% No
1992-#10 No Spring Bear Hunt	None Available	62% For 27% Against 11% Undecided	69.7% Yes 30.3% No

Source: Polling data from *The Denver Post*, 11/1/92 and dates noted. Margin of error
+ or - 4.9%

Bold-faced type identifies those initiatives that passed.

Table 6.4B: Polling Data on Polls on 1994 Initiatives

INITIATIVE #	EARLIEST POLLS (DATE) % FOR % AGAINST % UNDECIDED	10/1/94 POLLS % FOR % AGAINST % UNDECIDED	11/8 ELECTION RESULTS % YES % NO
1994-#1 Tobacco Tax	None Available	48% For 47% Against 5% Undecided	38.5 Yes 61.5 No
1994-#11 Workers Choice of Care	None Available	60% For 28% Against 12% Undecided	33.6 Yes 66.4 No
1994-#12 Election Reform	None Available	61% For 27% Against 12% Undecided	22.5 Yes 77.5 No
1994-#13 Gambling in Manitou Springs	(5/21/92) 32% For 58% Against 10% Undecided	(10/17/94) 13% For 82% Against 5% Undecided	9.3% Yes 91.7% No
1994-#15 Campaign Finance Reform	None Available	60% For 27% Against 13% Undecided	46.3% Yes 53.7% No
1994-#16 Local Control of Obscenity	None Available	(10/17/94) 27% For 57% Against 16% Undecided	36.7% Yes 63.3% No
1994-#17 Term Limits	None Available	72% For 23% Against 5% Undecided	51.0% Yes 49.0% No
1994-#18 Reform State Medical Assistance	None Available	(10/17/94) 48% For 40% Against 12% Undecided	31.9% Yes 68.1% No

Source: All polling data from *The Denver Post*, 11/5/94 and dates noted. Margin of error

+ or - 4.9%.

Bold-faced type identifies those initiatives that passed.

Table 6.4C: Polling Data on 1996 Initiatives

INITIATIVE #	EARLIEST POLLS (DATE) % FOR % AGAINST % UNDECIDED	11/5 ELECTION RESULTS % YES % NO
1996-#11 Taxing Non-Profits	(10/24/96) 20% For 73% Against 7% Undecided	17.6% Yes 82.4% No
1996-#12 Term Limits	None Available	54.1% Yes 45.9% No
1996-#13 Extending Petition Rights	None Available	31.4% Yes 68.6% No
1996-#14 Prohibited Methods of Taking Wildlife	(11/2/96) 44% For 42% Against 14% Undecided	52.4% Yes 47.6% No
1996-#15 Campaign Finance Reform	None Available	65.8% Yes 34.2% No
1996-#16 State Trust Lands	(11/2/96) 37% For 33% Against 30% Undecided	51.9% Yes 48.1% No
1996-#17 Parental Rights	(Sep 96, reported 11/2) 76% For 11% Against	42.7% Yes 57.3% No
1996-#18 Gambling in Trinidad	(11/2/96) 31% For 53% Against 16% Undecided	31.9% Yes 68.1% No

Source: All polling data from *The Rocky Mountain News* newspaper on dates noted.

Margin of error + or - 4.0%.

Bold-faced type identifies those initiatives that passed.

Table 6.5
Summary of Public Opinion Poll Data:
Initial Public Support for Initiatives

Year	Initiatives Starting Out Ahead in the Polls	Initiatives Starting Out Behind in the Polls	Initiatives with No Early Polling Data	Totals
1992 Initiatives (% '92 inits)	N=5 (50%)	N=5 (50%)	N=0 (0%)	10
1994 Initiatives (% of '94 inits)	N=5 (62.5%)	N=1 (12.5%)	N=2 (25%)	8
1996 Initiatives (% of '96 inits)	N=1 (12.5%)	N=0 (0%)	N=7 (87.5%)	8
Totals (% out of 26 inits)	11/26 (42%)	6/26 (23%)	9/26 (35%)	26 (100%)
(% out of 17 inits for which polls available)	11/17 (65%)	6/17 (35%)		17 (100%)

Source: Information derived from Table 6.4, based on earliest polls available for an initiative that are conducted at least one month prior to the election.

In other words, you don't escalate conflict via the initiative unless the public is overwhelmingly on your side, particularly if you anticipate any organized opposition campaign.

Sponsors such as Daily, Johnson, Hawkins, Levinson, Smith, and Shakeshaft noted that it is difficult enough to win an initiative campaign when you start out with even overwhelming support. The public opinion polls on Hawkins' "workers' choice of care" initiative (1994-#11) and Levinson's "tobacco tax" initiative (1994-#1) reveal just how volatile voters' opinions of the initiative can be. In the first case, public opinion polls published approximately 5 weeks before the election indicated that there was 60 percent support for the measure, and 28 percent opposition (see Table 6.4). The sponsor indicated in the interview that they were ahead by this amount just two weeks before the election. However, when the results came out they had lost with 66 percent voting *against* their measure.

Almost every sponsor who faced organized opposition remarked on the key role of advertising in shifting public opinion against their measures. This will be discussed in terms of "issue framing" in Chapter 7. However, in terms of assessing the initiative sponsors' *perceptions* of public opinion, it is noteworthy that most of the sponsors whose initiatives were voted down at the polls still contend that their measures were in conformance with public opinion.

Out of the 15 sponsors interviewed whose initiatives failed, 11 sponsors (73 percent) cited the media when asked to explain the lack of public support at the polls--either the lack of fair coverage or their inability to counter the negative

messages in their opposition's paid advertising campaigns.⁵ Governor Romer's co-sponsor on the "education sales tax" initiative said that the timing was wrong, because of the many other issues, such as tax limitation, that distracted supporters of their measure. So, even those who lost still maintained that the public *would* have voted for their measures, if only they had been better informed. The entrepreneurs *still* thought their proposals "fit" the public.

The following quotes illustrate how the sponsors believe that their proposals were, in fact, in line with public opinion. The responses came when they were asked to explain the outcome of the vote on their initiatives. Those who won generally attributed their victories to their success in informing the public what the issues were, and with a few exceptions those who lost attributed the outcome to their inability to tell their side of the story, particularly when they faced a well-funded opposition campaign.

On why the anti-trapping initiative (1996-#14) passed:

Again, I think the explanation is that people see it as cruel and indiscriminate. That was our message and I think we got it across. It was the truth and I think the people recognized that (Angell 1997).

On the passage of the Greater Outdoors Colorado (GOCO; 1992-#8) initiative that dictated that lottery funds be spent for parks and recreation:

GOCO passed because the people were persuaded, I think, that we had indeed adopted the lottery for that purpose, and the legislature should not have done what it did and reallocated that money (Daily 1997).

⁵The sponsors who believed that mass media coverage (news or advertising) ultimately led to their losses were: Arrington; Beasley; Berg; Bruce (1994-#12); Delay; Fabec; Hawkins; Johnson (1994-#15); Klodzinski; Levinson; Nielsen.

On why the proposal to permit local control of obscenity to the limits protected by the US Constitution (1994-#16) did not pass: Not enough money to tell our side of the story (Arrington 1997).

On why the Trinidad gaming initiative failed in 1996: I'd say a misunderstanding on the part of the state electorate. A misunderstanding was promoted by the press, by their governor, and by the gaming council themselves...and those from Trinidad, that on account of their moral persuasion, religious persuasion, were opposed to that type of industry in this community. And the inability of us to overcome that (Fabec 1997).

On why the Workers Choice of Care" initiative (1994-#11) failed: The fact that we couldn't keep up media-wise. We couldn't respond (Hawkins 1997).

What the sponsor of the volunteer-run Spring Bear Hunt initiative (1992-#10) thought was the most difficult part of the initiative process:

Trying to do it on a shoestring, as far as budget goes. And wondering if we were going to have enough money to get our message out. Worrying about how much money was going to come into the other side to knock it down, because there's a history of these sorts of initiatives, and the NRA and the Wildlife Legislative Fund of America get large amounts of money in and essentially buy the reversal of public opinion on that issue very late in the game (Smith 1997).

While public opinion polls would indicate that a few of the sponsors had less latent support from the public than they thought they had at the outset of the campaigns, the interview data indicate that the sponsors proposed their initiatives based on the *perception* that public opinion was on their side, or would naturally be on their side once the public was more informed about their issue.

III. Other Determinants of Timing

The previous discussion demonstrated that the action or inaction of the state legislature, and the sponsors' perceptions of public support for their issues, were the major determinants of timing, as revealed in the data from interviews and

legislative records. However, several of the sponsors noted a few other considerations when they were asked why they proposed their initiatives in a particular year.

Leadership and volunteer support were important considerations for the proponents of the “term limits” initiatives (1994-#17 and 1996-#12) and the “campaign finance reform “initiatives” (1994-#15 and 1996-#15). In addition, funding was mentioned as a concern related to timing on the “campaign finance” initiatives, and four of the sponsors indicated that if they were to propose *another* initiative, they wouldn’t do so until they had sufficient funding lined up, although that had not been a major consideration when they had begun their initiatives.⁶

Finally, two of the proponents (Berg and Bridges) noted that they wanted to get their measures on the ballot during a general election year, because they wanted the higher turnout. And Patricia Johnson indicated that she personally pushed for the League of Women Voters to re-sponsor the “campaign finance reform” initiative in 1996, in order to have the reforms in place for the 1998 state elections when there would be many open legislative seats because term limits would first go into effect. In terms of voter turnout, Dr. Berg just wanted a large number of voters to consider his measure regarding the “reform of state medical assistance” (1994-#18). On the other hand, Dr. Bridges wanted his measure on “taxing non-profits” (1996-#11) to be voted on during a general election year because the turnout of liberal voters would probably be higher, and he assumed

⁶The four sponsors who indicated that the *next* time they would line up more funding ahead of time were Arrington, Fabec, Levinson, and Hawkins.

liberals would be more likely to approve his measure. In fact, he stated that he would likely run a modified version of the initiative in the next general election in 2000.

IV. Conclusion

This chapter's examination of the timing of initiatives speaks to the reasons why individuals and groups turn to this institution of direct democracy to enact public policy. In the vast majority of cases the policy entrepreneurs see the initiative process as a means to escalate conflict to the public when the state legislature is perceived as being hostile to the policy proposals *and* when the public is perceived as supporting the proposed policy goals. Sixty percent of the initiatives were sponsored *after* the proponents or others known to them had failed to make headway in the legislature (see Table 6.1). Ninety-two percent of the initiative entrepreneurs indicated that they believed they had the support of the majority of the public at the outset (see Table 6.2). They used the initiative on issues that were highly salient to themselves when they believed that the representative institutions of government are not representative of the public will on these issues. The public opinion polls that are available corroborate the sponsors' perceptions about the levels of "natural" public support for their initiatives in 13 out of 17 cases, 76 percent of the time.

The initiative agenda provides a means of escalating conflict, or of threatening to escalate conflict. It moves issues to the top of the Colorado public's agenda and onto a quasi-institutional agenda at the same time. The timing of initiatives was demonstrated to be largely a function of government

action (or inaction), as well as of the entrepreneurs' assessments of when the public mood was conducive to their policy proposals.

However, initiative sponsors also indicated that the availability of resources--such as their own time, volunteers, and money--are also important considerations. The sponsors were truly entrepreneurs in the sense that, except for a few cases, there would have been no initiative except for their leadership. Interest groups are a factor in the timing of initiatives because money is particularly important when an initiative is likely to face well-organized and well-financed opposition. As the following chapter on issue framing discusses, the initiative campaigns largely revolve around the attempts of both proponents and opponents of the proposed measures to "get their side of the story" out to the public.

In contrast to the experience of California that is documented in the existing initiative literature (see Chapter 3), the initiative process in Colorado is not generally used by candidates for office. There were no candidate campaign-driven initiatives in the 1992 to 1996 period in this study. As a result, candidate campaigns and the preferences of elite politicians are not a major factor in the timing of initiative agenda change in Colorado, except in the three initiatives originally conceived of by Governor Romer. As was discussed in the preceding chapter on conflict escalation, institutional elites play a passive role in determining what issues will be escalated via the initiative, or when they will be escalated.

The media appear to play a different role in determining the timing of the initiative agenda in Colorado than they do in the timing of agenda change in representative government. The agenda setting literature portrays the news media as both an initiator of agenda change and as a transmitter of issues that significantly affects the elected officials' perceptions of what issues need to be addressed at a given time. Based on interviews with the initiative sponsors, the media play a more circumspect role in the timing of initiative agenda change in Colorado. Members of the media have not sponsored initiatives, and as discussed in Chapter 5 the sponsors' ideas for policy proposals usually came from their personal concerns. However, while many of the sponsors relied on personal contacts to assess public opinion, most of the sponsors who mentioned public opinion polls were referring to polls published by the mass media. And it is also likely that their perceptions of the levels of public support for their measures are at least partly derived from the mass media. But, as far as the timing of initiative change goes, the policy entrepreneurs and the public seem to determine the timing of agenda change.

As was found to be the case in setting the formal, government agenda through the representative institutions of government, agenda change is often not so much caused by changes in objective conditions, as it is by the efforts of individual policy entrepreneurs. The "triggering event" for most of the initiatives was sometimes the action of government, and at other times the inaction of government over a two to four year period. However, instead of waiting for an opportune time determined by the interests of institutional elites, the initiative

entrepreneurs circumvent the “strategic politicians,” when they perceive that public opinion is on their side. The answer to “Why the initiative?” is that the sponsors turned to the initiative when the legislature is reluctant or unable to act on an issue that they perceive has the support of the majority of the public.

Chapter 7

Framing the Initiatives and the Public's Perceptions of the Initiatives

The agenda setting literature (see Chapter 2) emphasizes that “issue framing” is critical to agenda setting in the representative institutions of government, because the terms and symbols used to explain an issue affect whether that issue is perceived to be a “problem” that the government can and should address. The way an issue is framed also determines who is deemed to be responsible for solving that problem. This, in turn, has a significant effect on what policy alternatives are considered. The research emphasizes the important role played by policy entrepreneurs in the conventional policy making process. They facilitate agenda change by framing the issues in a way that makes it appealing for members of the institutional elite to promote their addition to the government agenda. Under the representative institutions of government the entrepreneurs usually redefine the issues to appeal directly to the elites, as part of the process of “venue shopping,” or horizontal conflict escalation. Although, the entrepreneurs sometimes redefine issues to appeal to the public, in order to influence elected officials indirectly.

The agenda setting literature notes that while the media’s attention to “new angles” on existing issues sometimes makes them the instigator of the new framing of an “old” issue when it comes to conventional, representative political institutions, the media is usually a conduit of others’ issue framings. However, the media are run as businesses which leads to an additional, unintended effect on problem definitions; they have a bias towards the coverage of issues that will

attract an audience. The media look for fresh, clear-cut issues that affect a large part of their potential audience. The literature notes that as a result, those who seek media coverage, whether they be policy entrepreneurs or politicians, tend to promote issues and issue framings that are novel and non-technical, and that have some “personal” significance to many people.

This investigation into how the *initiative* agenda is set in Colorado demonstrates that issue framing is also a major concern of those who seek to use this institutional venue to escalate conflict vertically, to the general public. However, as the following discussion makes clear, when an entrepreneur turns to the initiative process to obtain policy change, she must be aware of the framing of the policy solution, as well as the public’s perception of the issues involved. The initiative sponsor is setting the agenda of issues *and* specifying the policy solution. And, when it comes to direct democracy, the sponsors are primarily concerned with the *public’s* views and perceptions, and to a lesser extent with the views of the media and other interest groups that may organize an opposition campaign. Contrary to the conventional agenda setting process under representative government, once an individual or group has decided to pursue the initiative, the institutional elites are not a very significant factor, although they do have some impact on “framing” the issues in two official public documents, the “Blue Book” and the ballots. In the majority of cases in this study, the objective was to gain *public* approval for agenda access and passage of the specific policies proposed. Only a small number of institutional elites are involved in framing the

issues for public through preparation of the ballot titles and the voter information pamphlets.

This chapter will examine these two aspects of issue framing--the form of the policy solution proposed in the initiative itself, and the manner in which the initiatives are framed by those who seek to affect the public's perceptions of the initiatives. The first part of the chapter, on how the substance of the initiatives is determined, examines what factors the sponsors take into consideration when they write their measures. This clarifies how specific policy proposals make it onto the initiative agenda. The second part of the chapter examines four ways in which the public's perceptions of the issues are affected--through the ballot title and the voter information pamphlet ("Blue Book"), and through both unpaid and paid media coverage. It clarifies how the different political actors seek to control the outcomes by framing the public's perceptions of what is on the agenda.

I. Framing the Initiative Itself

There are two major concerns related to the form of initiatives. The first concern regards whether the initiative is proposed as a statutory change or a constitutional amendment. In the first case, the Colorado legislature has the ability to amend or repeal the substance of the initiative at any time. In the second case, the legislature must seek the citizens' approval of a referendum to amend or repeal the substance of the initiative. The second concern is the wording of the initiative--the specific policy proposal. Contrary to the agenda setting process that predominates under the representative institutions of government, under the

institutions of direct democracy the policy entrepreneur promotes both the agenda issue *and* a particular policy solution.

A. Statutory Changes versus Constitutional Amendments

Ten out of 13 Colorado legislators who had not sponsored initiatives believed that constitutional initiatives should be harder to pass than statutory initiatives. The legislators' rationale for making constitutional amendments more difficult to pass generally had to do with the inclusion of "inappropriate" subjects in the state constitution or the danger of including statutory-type provisions in the constitution.¹ Their concern also seems to derive from their perception that the initiative process is often dominated by "special interests" and that the public is generally ill-informed about the measures on the ballot. On the other hand, individuals who have sponsored initiatives, including three one-time state legislators, overwhelmingly oppose the idea of making constitutional amendments more difficult to get on the ballot or to pass. They argue that initiatives are proposed as constitutional amendments because the sponsors do not trust the legislators to abide by the will of the people as expressed in the elections.

While they have found no way to deal with the problem of "special interest" use of the initiative, the legislators proposed two referendums to deal with uninformed voters and overly-complex initiatives. In 1994 the voters passed Referendum A, that limited initiatives and referenda to a single subject, and Referendum B, that required that the state-prepared voter information pamphlet ("Blue Book") be mailed to the home of each registered voter. And to promote the use of statutory initiatives, the legislature proposed Referendum A in 1996. It

¹Notably, the three legislators who had also served as initiative sponsors did *not* favor making constitutional initiatives more difficult.

sought to increase the votes needed to amend the state constitution from a simple majority to 60 percent of the votes cast, but it lost by a wide margin. However, the legislators are still working on promoting the use of statutory initiatives. In 1997 another concurrent resolution was introduced in the Senate, SCR-5, that would have again required a supermajority (60 percent) of votes in order to pass a constitutional amendment via the initiative or the referendum. Despite its seventeen sponsors, it did not survive a vote of the entire Senate. And currently, in March of 1998, the House passed a resolution for a referendum that seeks to motivate sponsors to pursue statutory initiatives, by decreasing the number of signatures required for a statutory initiative and increasing the number of signatures required to get a constitutional amendment on the ballot.

Based on the interviews with Colorado legislators (see Chapter 5, Part IIIA), the rationale for these legislative efforts is to make it more difficult for voters to enact "permanent" policy changes via the initiative process is that the legislators believe that the voters are being taken advantage of by "special interests." However, the initiative sponsors have a different view altogether, because they see direct democracy as a tool used by citizens such as themselves to counter the "special interests" that are entrenched in the legislature. As discussed in Chapter 5, the sponsors and several of the legislators viewed the initiative as an important means of coping with "conflict of interest" and "hot potato" types of issues that are difficult for politicians to deal with. The sponsors see the constitutional initiative as the only guaranteed way of ensuring that the legislators will abide by the "will of the people" as expressed in democratic elections. The

example of the “limit spring bear hunt” initiative (1992-#2) was cited by a few of the sponsors who were asked why they had proposed a constitutional initiative.

1992-#2 was a statutory initiative that passed with 69.7 percent “yes” votes, carrying 34 out of 35 state senate districts and 63 out of 65 house districts.

However, in the following legislative session Representative Lou Entz proposed a bill to overturn the initiative.

While that one case was cited as an “object lesson” by three initiative sponsors, even in the 30 years prior to 1992 there was always a preponderance of constitutional initiatives.² Based on the interviews conducted for this research some of the initiatives were just “naturally” constitutional, but many of the recent initiatives were proposed as constitutional amendments because the sponsors distrusted the legislature so much they feared their efforts would be overturned even if they won.

As Table 7.1 shows, eleven out of 19 sponsors that discussed their reasons for proposing constitutional amendments noted that they *had* to propose constitutional amendments. This was the case for the five who proposed initiatives that need to change the constitutional provisions that prohibited gambling in all but three towns. Similarly, Dennis Polhill noted that his two “term limits” initiatives were revisions to the political institutions and therefore belonged in the constitution (Polhill 1997), and Leah Delay’s “parental rights”

²In the 1994 and 1996 elections only 1 out of the 16 initiatives proposed was a statutory initiative. This “campaign finance reform” initiative (1996-#15) was originally proposed as a constitutional amendment in 1994 (#15). The sponsor, Patricia Johnson, noted that she felt it was a risk to propose a statutory initiative. However, the argument that the original initiative was “messing up

initiative sought to add one clause to an existing constitutional provision listing inalienable rights of Coloradans (Delay 1997). If the sixth gambling measure (1992-#9) whose sponsor was not interviewed is counted, 12 out of 26 measures on the ballot (46 percent) were constitutional by their very nature.

[Table 7.1 about here]

On the other hand, out of the remaining 14 measures only three were proposed as statutes—the “limit spring bear hunt” initiative (1992-#10), Governor Romer’s “school sales tax” initiative (1992-#6) and the second “campaign finance reform” initiative (1996-#15) sponsored by the League of Women Voters and Common Cause. The sponsor of the “reform state medical assistance” initiative (1994-#18) did not realize that you could propose statutory changes by initiative. However, at least seven out of the remaining ten initiatives were proposed as constitutional amendments rather than as statutory initiatives because the sponsors believed it was necessary to keep the legislature from “tampering” with their measures (see Table 7.1). Even the *first* “campaign finance reform” initiative (1994-#15) proposed by the League of Women Voters and Common Cause was a constitutional amendment. Pat Johnson of the League stated that they felt it was “a risk” to propose it as a statute, but that they did so in 1996 because the opposition had argued that they were “cluttering up” the constitution, and the proponents wanted to eliminate that argument against their measure (Johnson

the constitution” had been forwarded by the opposition in the 1994 election, and she wanted to neutralize that argument (Johnson 1997).

Table 7.1
Sponsors' Rationales for Proposing Initiatives
as Constitutional Amendments
(versus Statutory Changes)

Year	Const'l Amendment Required/Proper	Sponsor Distrusted the Legislators	Other	Totals*
1992	#2, 3, 4, 5 N=4	#1, 8 N=2	N/A N=0	6
1994	#13, 16, 17 N=3	#1, 12, 15 N=3	#18** N=1	7
1996	#12, 16, 17, 18 N=4	#13, 14 N=2	N/A N=0	6
Totals	11 (58%)	7 (37%)	1 (5%)	19 (100%)

Source: Data from interviews with ballot initiative sponsors. See Appendix A for a list of initiatives and Appendix B for a list of initiative sponsors. Bold-faced type indicates initiatives that passed.

*Initiatives 1992-#6, 1992-#10, and 1996-#15 were proposed as statutory initiatives. No interview data for 1992-#7 or 1992-#9. (However, 1992-#9 needed to be proposed as a constitutional amendment due to the existing constitutional prohibition on gambling in all but three Colorado towns.) The sponsors of 1994-#11 and 1996-#11 did not indicate their rationale for proposing their initiatives as constitutional amendments.

**The sponsor of 1994-#18 indicated that he was not aware that there were statutory initiatives (Berg 1997).

1997). Her co-sponsor, the director of Colorado Common Cause, discussed the decision to propose a constitutional amendment versus a statutory initiative:

It's really not an easy decision...I think with any of the issues where people go through the process of putting something on the ballot, I think most of those folks have already tried the legislative route and it hasn't worked. So then you *know* that the legislature is going to be somewhat hostile to what you've done, and its a hard thing to do to go through all that work and do it as a statute and know that the legislature is going to, or at least has the ability to, make drastic changes to what you've just done. Which is why most initiatives are constitutional in Colorado (Bainter 1997).

This common sentiment was also echoed by Arnold Levinson, the sponsor of the "tobacco tax" initiative and a former board member of Colorado Common Cause:

...there is a legitimate question to ask whether going to the constitution is a sensible thing to do for a large variety of measures that really are not constitutional in stature. the reason that anybody does that is because nobody trusts the legislature to leave initiated statutes alone. If there was some sort of a safeguard for initiated statutes, I think you would see far fewer constitutional amendments proposed (Levinson 1997).

Based on the comments of the initiative sponsors, it is unlikely that many will see fit to rely on statutory initiatives. The initiatives are framed as constitutional measures for two reasons. Almost half of the initiative policy proposals either require constitutional changes, or they deal with issues that are clearly constitutional in nature. The other constitutional initiatives were framed in that way in order to prevent the legislature from "tampering" with voter-approved changes. The initiative sponsors tend to distrust the legislature. So, until such time as there is more protection against legislative "tampering" with the policy changes enacted by statutory initiative, constitutional initiatives will likely

continue to predominate even when the policies are not necessarily constitutional in stature.

B. Framing the Policy Solutions

The vast majority of the sponsors recognized the framing of the proposed problem solutions, the substance of their measures, as their greatest challenge and the ultimate source of their victories or defeats. The proponents of the various initiatives, although convinced that the majority of the voters would “naturally” favor their positions on the issues (see Chapter 6), realized that the outcome of the elections rested largely on the specific wording of their initiatives. Unlike the conventional lawmaking process under the representative institutions of government, there is no occasion for compromise or correction once the petition has been circulated. The initiative process does not necessitate “choosing” an issue that is amenable to vertical conflict escalation (see Chapter 2), because the sponsors do not need to “mobilize” the public to get their issue onto the agenda. They only need to get the public to agree to let their issue be considered by signing their petitions. However, one of Cobb and Elder’s (1981) characteristics that facilitate issue expansion was a major concern to the initiative sponsors. Most of the initiative sponsors did seek to make their initiatives as simple as possible, based on the perception that the voters are unlikely to *pass* an initiative that is too complex.

1. Compromise in the Policies Proposed

Most of the proponents of the initiatives *that passed* drafted their initiatives with public opinion and the opposition’s potential arguments as

primary considerations when they determined the wording of the proposed changes to the laws or the constitution. Based on the sponsor interviews, out of the 9 initiatives that passed between 1992 and 1996 only the two term limits initiatives (1994-#17 and 1996-#12) were developed without the Colorado electorate specifically in mind (see Table 7.2). However, the sponsor indicated that while these initiatives were developed with coordination at the national level as part of the national term limits movement, they were proposed based on the knowledge that the Colorado voters had overwhelmingly approved the first term limits initiative in 1990 (Polhill 1997). Doug Bruce's "tax and spending limitation" initiative was one of several iterations proposed by others and himself, however, while he indicated he proposed the measure because the public wanted it, he did not specifically comment on whether or not there was any "compromise" involved in its design.

[Table 7.2 about here]

The interview data revealed how the other six successful initiatives were crafted to "fit" the Colorado public. For example, the "prohibited methods of taking wildlife" initiative (1996-#14) was crafted based upon the Division of Wildlife's survey of Coloradans attitudes to trapping. Acknowledging that 67 percent of the public approved of trapping for farmers and ranchers, the initiative was written with a 30-day exclusion for predator control, despite the proponents' preference of a complete ban on trapping (Angell 1997). The "no protected status for homosexuals" initiative (1992-#2) was written as a "narrow Colorado

amendment rather than a sweeping law” in order to garner maximum support, given the likely arguments of the opposition (Bransford 1994, 39). The

Table 7.2
Compromise on the Substance of Initiatives

Year	Sponsor Compromised on Substance to Increase Public Support in CO	Sponsor Did NOT Compromise on Substance with Colorado Public Specifically in Mind	No Data on Extent of Compromise	Totals
1992	#2, 3, 4, 5, 6, 8, 10 N=7	N/A	#1, 7, 9 N=3	10
1994	#11, 15 N=2	#1, 17 N=2	#12, 13, 16, 18 N=4	8
1996	#13, 14, 15, 16, 18 N=5	#11, 12, 17 N=3	N/A N=0	8
Totals (% of all measures)	14/26 (54%)	5/26 (19%)	7/26 (27%)	26 (100%)
(% of 20 measures for which data available)	14/19 (74%)	5/19 (26%)	N/A	19 (100%)

Source: Data from interviews with ballot initiative sponsors. See Appendix A for a list of initiatives and Appendix B for a list of initiative sponsors. Bold-faced type indicates initiatives passed.

proponents of the 1996 “campaign finance reform” initiative (#15) took the opposition’s main arguments against their previous effort (1994-#15)--that it should not be a constitutional amendment and that it created “another layer of government,” changed the offending provisions, and put it before the voters again. The opposition didn’t even try to campaign against it the second time around, and it passed easily with 66 percent support.

The “Great Outdoors Colorado” initiative (1992-#8), that sought to keep the legislature from diverting receipts from the lottery to non-recreational programs, was also written by individuals who saw the necessity of compromise in drafting of their initiative. Those who worked on drafting the initiative recognized that if they sought to immediately make all lottery funds go to outdoors programs, the opposition (i.e. the legislators) would have a strong argument with which to campaign against them, given the outstanding commitments made by the legislature for future lottery receipts:

We made some key decisions. One was we concluded that we could not sell this amendment to the public if the amendment destroyed or harmed the state’s credit rating, because that would have cost us the editorial backing of the state’s newspapers. So what we did was say, look, the state has made these “moral” pledges of lottery revenues through the year 1998...and GOCO will only get what is left over...We worked with numbers, we worked with projections, what the lottery stream might bring, and finally everybody agreed that something was better than nothing. Even if you don’t get everything you want right away....(Daily 1997).

In addition, the sponsors of eight out of 14 of the initiatives that failed also indicated that public opinion was a primary consideration in framing the substance of their initiatives (see Table 7.2). Four of the five gambling sponsors

interviewed, all of whose initiatives failed, revealed that they were particularly concerned about the voters' perceptions when they specified the tax and revenue formulas for gambling proceeds (Klodzinski 1997; Fabec 1997; Nielsen 1997; Beasley 1997). Polhill (1997) discussed how his "petition rights" initiative (1996-#13) was a "toned down" version of an initiative attempted in another state. Gardner, Governor Romer's co-sponsor on the "school sales tax" initiative (1992-#6) indicated that she told Governor Romer that based on her contacts with members of the Parent Teacher Organization (PTO) across the state, they would have to propose a sales tax, rather than a property tax, or their measure would not stand a chance of passing (Gardner 1997). The unsuccessful "campaign finance reform" initiative (1994-#15) and the "worker's choice of care" initiative (1994-#11) also crafted policies in order to appeal to the public. The sponsor of the former, Pat Johnson, stated that the people of Colorado were not ready for what really needed to be done to reform the campaign process--public financing of campaigns (Johnson 1997).

In essence, contrary to the criticisms made by Colorado State legislators and in the initiative literature, there *is* an element of compromise in the initiative process. In recent Colorado experience over half of the sponsors specifically indicated that they had compromised in drafting their measures. The compromise occurs early on in the process, when the sponsors define the specific language of their initiatives. The sponsors recognized that the public is often not willing to go as far as they would like to go when it comes to changing policies, and so they

“tone down” their initiatives, always keeping in mind what policy proposal could win the support of the majority of the public.

Out of five of the sponsors who did *not* indicated that they had compromised on the substance of their initiatives, who did not think ahead about what the opposition’s arguments and the public’s concerns would be, three sponsors cited this as a “lesson learned.” They indicated they wouldn’t make the same mistake if they were to use the process again.

About how she would change her “parental rights” initiative (1996-#17) if she were to run her campaign again:

We’d change the language. I’d get the word “discipline” out of there, and not have to deal with the word “child abuse.” I would change that, and I would take the focus so the focus could not be on child abuse. So that it was more to what we were really trying to do, which was to make sure that parents are able to have the rights and responsibilities of health...And I’d put additional language in there that would basically force any opposition to [answer] “Are you against parents?” So that way you could really see what the opposition is all about. I would put it so that it’s up to them to try and defend *their* position, as opposed to us having to defend ourselves (Delay 1997).

On how he would change his “tobacco tax” initiative (1994-#1), that was opposed by an issue committee campaign that focused on the creation of a new government bureaucracy that was to be created to disperse the tax receipts for health and education programs:

I would propose a tobacco tax as a substitute for property tax. And I think that frankly you could pass that without spending a penny. Property tax is so unpopular that it would probably be almost impossible to defeat an amendment like that (Levinson 1997).³

Commenting on why his “taxing non-profits” initiative (1996-#11) failed the first time around, and that the next time they would tailor

³Attorney Mark Bender, a lawyer who worked for the tobacco companies’ campaign to defeat the “tobacco tax” initiative (1994-#1), commented along similar lines that this initiative would probably have passed if it had merely proposed that the money collected would go into a general fund, rather than getting into creating new state organizations to use the receipts for anti-smoking education programs (Bender 1997).

the initiative to exclude some of the less wealthy non-profits from being taxed:

We bit off a little more than we could chew the first round (Bridges 1997).

A major challenge for the entrepreneurs was to frame their initiatives' policy proposals so that they would be in line with Colorado public opinion, and so they would give the least possible leverage to organized opposition.

Considering the 19 initiatives for data on compromise is available, almost 75 percent of the sponsors determined at the beginning of the process that compromise had to come early. These sponsors indicated that because the initiative language is set once the ballot title is set, they *did* compromise up front. Several who did not found themselves contemplating the necessity to compromise the next time...if they were willing to go the initiative route again.

2. Keeping the Initiatives "Simple"

The interview questions did not specifically ask the sponsors to explain how they drafted their proposals, but in answering other questions the issue of keeping the initiatives as simple as possible was addressed by nine of the 33 initiative sponsors interviewed. Much as Cobb and Elder proposed (see Chapter 2), at least some of the entrepreneurs perceived the difficulty in holding the public's or the media's interest on a complex proposal. The sponsors were aware that long, technically-involved initiatives would not be as appealing, and therefore not as likely to pass, as those that were easier to understand. Pat Johnson, sponsor of the two "campaign finance reform" initiatives noted that the issues surrounding the issue were complex, so they attempted to give the press specific information so that they could present the issues in a thoughtful way (Johnson 1997). Other

sponsors also indicated that they understood that when it comes to escalating conflict to the public, it pays to keep it simple.

On whether he ever got as far as printing up petition forms for his "insurance reform" initiative that never went past the title setting stage:

No. One of the things was we knew right off that they [the insurance companies] could outspend anything we could come up with. I know from prior experience that their PR people can twist a lot of things. And this was a complicated initiative. When it's that complicated it's very easy to throw out, "Well there's this problem, and this problem, and this problem." And the public looks at it and goes, "This is too complicated" (Shakeshaft 1997).

On what she would do differently next time, based upon what she learned about the initiative process from co-sponsoring the "school sales tax" initiative (1992-#6) with Governor Romer:

Learn more about what the local issues are and, in turn, explain to [the voters] more of a statewide issue, and how statewide issues impact them locally. You've got to personalize it. Any issue. How it's going to affect *my* home and *my* children (Gardner 1997).

On the media coverage on the "state trust lands" initiative (1996-#16):

I thought there wasn't as much coverage on the issue, because in some ways it was a little bit confusing, because it was changing this mission. People really got more into the details in the media. They wanted to analyze every little bit of the initiative, and really just didn't focus on the bottom line--that we're just changing an outdated law to fit today's needs...We didn't really get a lot of television coverage, because this wasn't as sexy an issue as some of the other initiatives on the ballot (Buzby 1997).

On the problem with his 1996 "petition reform" initiative (#13):

On the sales side, ours was probably not perceived as less extreme [than an earlier Oregon initiative] because I think ours had too many words. That's something to learn from, so that when we do it the next time (Polhill 1997).

Two sponsors of one-line initiatives (1994-#11 and 1996-#17) indicated that their experiences demonstrated that initiatives can be *too* short and *too* simple, giving the opposition the opportunity to prey on them because of

ambiguity (Hawkins 1997; Delay 1997). However, even these sponsors indicated, along the lines of those quoted above, that they still believed that the more detailed an initiative was, the more likely it was that the opposition could find some minor aspect of the measure to focus its campaign against. Contrary to the legislators' perceptions, a large number of the initiative sponsors sought to avoid overly-complex policy proposals, although at times the issues were so complex that they could not avoid it. The "devil was in the details" for the initiative sponsors because, as the initiative literature notes, there appears to be a tendency for voters who are uncertain about an initiative to vote "no."⁴

II. Framing the Public's Perceptions of the Initiatives

As discussed in Chapter 6, with only a few exceptions the initiative sponsors indicated that they believed that the public would naturally approve of their proposed ballot measures. However, they also indicated that one of their major concerns throughout the process was to "get the word out" so that the public would understand the issues involved. These policy entrepreneurs turned to the initiative because they believed that the public policies that had been promulgated through the representative institutions of government were not representative of the will of the majority of the citizens in Colorado. Still, the sponsors did not assume that the public would be well-informed about the existing policy just because they themselves were intensely interested in it. Precisely because many of these issues are *not* preeminent concerns of the public, the

⁴There is only limited data available on voter behavior on initiatives. Most of the data is based on surveys done in California (see Magleby 1984 and Schmidt 1989). However, the generally low

process of framing the initiatives for public “consumption” *is* a preeminent concern for the proponents and the opponents of initiatives.

This part of the chapter describes how the different political actors attempt to frame the public’s perception of the issues and the policies proposed by the initiatives. The first section examines the processes by which the ballot titles are set and the language in the voter information pamphlets (“Blue Books”) is developed. The second section examines how initiatives are covered by the news media. Finally, the role of paid advertising in framing the initiatives for the public is reviewed.

A. Official Sources of Issue Framing

The two official sources of issue framing for the initiatives are the ballot title and the Blue Book that is distributed to the household of each registered voter. According to interviews with the initiative sponsors and key bureaucrats, the language that is developed by the institutional elites in these two steps of the initiative process are very significant concerns for initiative sponsors and for those who oppose their measures.

As discussed in Chapter 4, the title setting hearings at which the language that will appear on the top of the initiative petitions and on the ballot is determined are heavily attended. A major concern of the sponsors is to keep the titles as short and as simple as possible, in order to avoid “turning off” voters with too much “legalese.” However, the opponents of initiatives attempt to push for

success rate for initiatives (around 33 percent nationally and in Colorado) support the conclusion that voters who are uncertain do vote “no.”

the inclusion of a clause on every single aspect of an initiative, increasing the length and the complexity of the ballot titles. Two of the sponsors, Delay and Hawkins, indicated that they purposely kept their initiatives short to prevent the ballot title from being too long.

We gave [the title board] no choice. One sentence. You can't play with this one. Strategically we planned it that way. One sentence. What's the title going to be? It's got to be the sentence (Hawkins 1997).

However, not one of the 34 initiative sponsors interviewed indicated that their initiatives had been treated unfairly by the title setting board. To the contrary, several sponsors specifically mentioned that the members of the title setting board--the Secretary of State and representatives from the Attorney General's Office and the Office of Legislative Legal Services--were very even-handed in their deliberations. The only criticism of the sponsors involved the delays that ensued when the titles of their measures were almost inevitably challenged in court, as a delaying tactic. The inter-agency responsibility for setting the ballot title appears to lead to a much greater degree of satisfaction than the Blue Book process that is run by the partisan-controlled Legislative Council Committee members.

The process by which the language in the Blue Book is set was the single most contentious issue for the initiative sponsors. As discussed in Chapter 4, the Colorado Constitution stipulates that the nonpartisan research staff of the General Assembly must prepare and distribute a ballot information booklet to registered voters. The booklet states the text and title of each measure that will appear on

the ballot, and it must provide “a fair and impartial analysis of each measure.” Because the news media coverage of most initiatives is limited (see the following section of this chapter), the sponsors welcome the opportunity to get information about their ballot measures out to the voters. However, as the initiative literature points out (see Chapter 3), the voter information prepared by the state is often inaccessible to those who do not read at an advanced level. Stan Elofson, the Legislative Council staffer responsible for the preparation of Colorado’s Blue Book, indicated that many of the initiative summaries are written at a college level, and he recalled one that was analyzed and found to be written at the 17th grade level (Elofson 1997). The problem is that certain issues can be very complex, and in attempting to provide all relevant information, it is often difficult to keep things at the 12th grade level that he saw as a goal.

Seven out of the 24 sponsors of ballot initiatives interviewed criticized this stage of the initiative process when asked what was their greatest source of concern about the initiative process in Colorado. Each recommended the Blue Book process as one area for reform.⁵ However, they did not criticize these voter information pamphlets because of the “approachability” of the Blue Book language. These initiative sponsors stated that while they were completely satisfied with the nonpartisan staff’s work, they believed that the *legislators* on the Legislative Council who “review” the staff’s work use the opportunity to change the Blue Book language to be biased against their proposals. A few of the

⁵The seven sponsors recommending the reform of the Blue Book process to control the legislators’ influence were: Angell, Berg, Bridges, Daily, Fabec, Levinson, and Wright.

sponsors indicated that the legislatures had purposely “misrepresented” the substance of their initiatives in an attempt to influence those who read the pamphlet to vote against their measures. Initiative sponsor and former state legislator Ruth Wright made the following comments in regards to her “state trust lands” initiative (1996-#16).

The legislature was very much against [the initiative] because of the leadership. In fact, the Blue Book...we worked closely with the staff on [it, but] there are public hearings and the final decision is made by what’s known as the Executive Committee of the legislature. I used to be on that as minority leader of the House. And they can put anything they want in there as long as they have the vote. They go on a party line basis. They put words in there that indicated that [the “state trust lands” initiative] would cost \$25 million. It was hard to overcome, because the Blue Book has the reputation--somewhat specious now that I know how they put it together, what the Executive Committee can do to it--of being factual (Wright 1997).

In the eyes of Ruth Wright and several other initiative sponsors, the Blue Book coverage of the initiatives is neither non-partisan, nor is it fair. Instead, the legislators’ ultimate control over the language in this pamphlet “puts the fox in charge of the hen house” (Daily 1997). These seven sponsors indicated that if there is significant legislative opposition to a measure, the legislature has the ability to frame the initiatives in a way that makes the public less likely to approve them. Dr. Berg, sponsor of the “reform medical assistance” initiative (1994-#18) summarizes the theme of these sponsors’ resentment of the legislators’ involvement in the Blue Book process:

It isn’t killing the initiative process as they want it to, but they need to patch [the Blue Book] process up so that it’s not just the extension of some high-falutin’ committee chairman and the legislature (Berg 1997).

B. News Media Coverage of the Initiatives

The initiative sponsors, bureaucrats, and legislators all agree on one thing. They all comment that the news media provide entirely inadequate coverage of the initiatives. A review of the numbers of articles published about proposed initiatives in the leading state newspaper support their conclusions. While there may be more in-depth press coverage of a few of the hotter, "sexier" initiatives, on most topics voters are likely to see more coverage of the measures through advertising campaigns than they are to see in the mass news media, if the newspaper coverage is representative of the mass media.

1. The Institutional Elites' Views of the News Coverage

The legislators are almost unanimous in their condemnation of the media coverage of the initiatives. Out of eleven legislators that who were asked to comment on media coverage of the initiatives, nine responded that the media were not doing a good job.⁶ Of the others, one indicated that media coverage was "OK" on big issues (June 1993), and one indicated that it was "pretty good" (Wright 1997). Most agree with Senator Cassidy, who, when asked whether the media does an adequate job of educating the public on important issues, said, "Absolutely not...I think the problem with communication through the media is that it is not in their financial interests to educate the public" (Cassidy 1993).

Other legislators agree.

The media is doing a terrible job of educating the public. They are concerned about their bottom line and want to sell papers with

⁶The nine legislators were Arrington, Cassidy, Foster, Grampsas, Johnson, Kerns, Mendez, Norton, Rizzuto.

sensationalism. The media has no interest in educating the public on the details of important issues. Much of the information written in editorials is blatantly false and hinders the democratic process (Foster 1993).

The media does a deplorable job of providing factual information to the public. They lean toward sensational views to sell air time, papers, etc. The public enjoys reading sensational current events. It is very difficult for the media to present real information to the voters. The fact that they do a very poor job is not necessarily all their fault. It is our tendency for wanting to do things in a thirty second sound bite (Norton 1993).

Newspapers are in the business of selling papers and informing, and so they will try to slant a story to have some flare, [so] people will buy the paper and read it (Kerns 1994).

The legislators' consensus is that the various media are run as businesses to make money, not as a public service.

While they placed the major responsibility with the voting public, the bureaucratic elites also share the legislators' belief that the mass media could be doing a much better job of educating the public. All four officials interviewed-- including the Secretary of State and representatives from the Attorney General's office, from the Legislative Council, and from Legislative Legal Services-- expressed their inability to understand why the press didn't pick up on the proposed initiatives earlier or cover them in more depth. The Solicitor General's comment is representative of the comments made.

I think certainly it would be a lot better if there was more early and ongoing discussion in the press about some of these law changes. These are important law changes. Instead of waiting until the 11th hour...they [the media] cover bills. They cover all these bills during the legislative sessions that get killed....There's only a handful of initiatives that get into the title setting process to begin with, and by no means all of them, but a fair percentage make it on the ballot....wouldn't it make sense to let the people know what

people are thinking about on the initiatives, and sort of make that a public issue? (Westphal 1997).

Secretary of State Buckley and Legislative Legal Services Deputy Lanahan noted that while notices of the review and comment hearings and title setting hearings are posted around the capitol buildings and in the legal notices section of the paper, most of the general public doesn't find out what issues are up for consideration until late in the process, because the media usually doesn't pick up on initiatives until later on. The coverage is "after the fact" (Buckley 1997), with the result that the public does not get involved in the debate until late in the process.

Overall, there is a great deal of consensus among both the elected and appointed public officials that the mass media do not do a good job of informing the public about most initiatives.

2. The Initiative Sponsors' Views of the News Coverage

The sponsors were very concerned with the media's portrayal of their initiatives. Favorable coverage, particularly editorial endorsements, was courted. Negative coverage had to be countered. Several of the sponsors employed professional news clipping services, while others relied on friends and volunteers to send in clippings from around the state. When asked about the news coverage of their initiatives that made it onto the ballot, all of the sponsors had an opinion. Ten out of 23 sponsors interviewed specifically addressed the editorial stance and the general tone of the coverage of one of the two major state newspapers;

sometimes citing the stances of several papers from across the state.⁷ The entrepreneurs were clearly concerned about how the media covered their initiatives.

The initiative sponsors generally agreed with the institutional elites' assessment of the media coverage of ballot initiatives; they were not impressed. When asked the question, "How would you characterize the media coverage of your initiative in terms of the quantity and quality of coverage," only five of the 23 entrepreneurs asked about the media coverage of their measures were complimentary. The proponents of two of Governor Romer's initiatives (1992-#6 and 1996-#16) thought they got a fair amount of coverage, much of it due to the involvement of the governor. Three other sponsors also gave positive assessments of media coverage, although with some qualifications:

Elissa Angell was satisfied with the quality of media coverage, if not the quantity of coverage, on the "prohibited methods of taking wildlife" initiative (1996-#14):

It was at first pretty much ignored. It wasn't until fairly late in the campaign that it got much attention, and we did not get very much partisan support....in Denver and along the front range the newspapers mostly came out in editorials against us, usually because of the constitutional aspect of the initiative--that it was a constitutional amendment. Although they acknowledged what happened to Amendment 10 [when a legislator attempted to rewrite the statutes changed by the 1992 statutory initiative only two months after it had passed], they said, "We don't care. We don't like putting this in the constitution."...And I'm sure that that convinced a lot of people too.

The articles that were written on it, we had some good articles written on it where they really expressed our position in some considerable detail. They tried to be objective and they'd

⁷The 10 sponsors who very closely tracked news coverage of their issues statewide were: Angell, Berg, Bruce, Fabec, Gardner, Hawkins, Johnson (2 initiatives), Klodzinski, Levinson, and Polhill (3 initiatives).

give the other side too...in the end most of the newspapers came out against us, because of the constitutional question. So it was fair coverage (Angell 1997).

Dennis Polhill (1994-#17, 1006-#12, 1996-#13) was also generally satisfied with the quality of media coverage, although he too was concerned about the amount of attention that initiatives received: I think the media, and maybe they're just a reflection of the public, doesn't put enough weight on the initiatives. The initiatives are really where the action is at. They're really more important than any of the candidates. They're framing the issues. They're the critical issues. They're the issues the public cares about, because they got petitioned on there. But I think if you talk to reporters, which I do, they're pretty good. They're generally well-informed, and they generally write pretty good articles, and they generally try to keep whatever personal prejudices they have in perspective. I would be happier if they had the same prejudices that I had, but I don't suppose that would be fair (Polhill 1997).

Sponsor of an initiative to raise tobacco taxes (1994-#1) and former reporter and editor, Arnold Levinson, saw the media coverage as generally "reasonable," although "inherently biased" towards certain types of stories:

Well, the unpaid media, by which I mean reporting and editorials, the unpaid media I would say was quite reasonable. There were a couple of things that I was unhappy about, and I complained to the appropriate city editors. The one thing that stands out in my mind is the *Denver Post* allowed the tobacco industry to frame a number of stories alleging wrongdoing on the part of the campaign or its agency supporters, like the Health Department. When those cases were resolved in our favor, as virtually all of them were, the story ended up on the inside of page D5, instead of on the front page of the newspaper. And it was that kind of placement which, having been in journalism for many years I understand the rationale, but still I thought it was unfair.

...It was not biased, it was simply a combination of an inherent bias in the media against a finding of innocence, if you will, and...the conclusion that the accusation is false is kind of anti-climactic, and so inherently it lacks the same news appeal...It's one of the biases of the news business. It's just the medium rather than anybody's fault (Levinson 1997).

It is interesting to note in the above quotes that these sponsors did *not* judge the quality of the media coverage by how favorable it was towards their

issues, but rather by how good a job the media did in informing the public of the issues. This is true of the vast majority of the initiative entrepreneurs interviewed. The following comments reveal that for most of the sponsors it is not the *side* that the media takes that they take issue with, but rather it is the general *quality* of the news coverage. The five qualified endorsements of the media coverage discussed above aside, the other 18 initiative entrepreneurs' comments about media coverage of the initiatives were more negative...in some cases *extremely* negative. The general consensus of initiative entrepreneurs was that the media was uninformed and/or biased when it came to reporting on initiatives, as the following examples illustrate.

James Klodzinski on the media coverage of the "Trinidad gambling" initiative (1996-#18):

One of the things that I found really tragic about this was that the media didn't really care what was in the measure. Like there were other amendments for gambling--Manitou Springs, the eastern plains group, I think it was called Gateway, our measure, and maybe one or two more--and they were different. We had what we thought was the most responsible one. You start getting into the details and you talk to these reporters, I'm convinced that no reporter I ever talked to read the measures (Klodzinski 1997).

Former President of the Colorado League of Women Voters, Patricia Johnson, on the coverage of the Campaign Finance Reform initiatives (1994-#15, 1996-#15):

I would say that it was medium to poor, frankly. Because I just really felt that the newspapers didn't really thoughtfully explore the issues. Now oddly enough, the Colorado Springs *Gazette Telegraph*, which opposed campaign reform, did some of the best coverage in '94 and in '96 in terms of just laying out the facts, and looking at the information, and showing the people how much money was coming from business PACs. And we fed them this information, but we gave information all of the time. We had press releases out the kazoo. So we used the press as best...we gave them everything we could think of. But it just never caught on....(Johnson 1997).

Doug Bruce, proponent of "tax and spending limitations" (1992-#1) and "election reform" (1994-#12), categorized the media as: Deplorable, lazy, statist. It merely recycles government press releases (Bruce 1997).

State Representative Barry Arrington said the following about the quantity and quality of coverage on his "local control of obscenity" initiative (1994-#16):

Quite a bit of coverage. But journalists are notoriously lazy. If it takes a lot of in-depth analysis and effort, you have to hold their hand all of the way (Arrington 1997).

Jack Hawkins, President of the Denver Area Labor Federation and sponsor of the "workers' choice of care" initiative (1994-#11), criticized the news media for editorializing in their "news" coverage and noted the financial ties between businesses and the newspapers:

I just told them, "Look, if your paper through you cannot report news as the news, and editorials on the editorial page, don't call me. It's over. Well fine, we'll just go to court." ...At a certain point in time they finally caught on, and they started being a little more straight. I really ripped into the lady who was reporting down in the *Gazette*, because I said "You guys are essentially running an editorial every week on this thing, and its either done under your byline or in the editorial page." I said, "That's crazy. Not only that, I'll probably sue you guys to make you report the in-kind contributions to the opposition." I didn't. Freaked them out though (Hawkins 1997).

Hawkins also commented on ties between the news media's positions on issues and their advertising accounts:

I wasn't surprised, but quite disappointed in the fairness. And when these folks would call me especially, I'd say, "I don't want to get after you, the reporter, too much, but tell your punk editor to call me." And I talked to one punk editor. [He said,] "I don't give a damn! I have business concerns. These people advertise" (Hawkins 1997).

The frustration that is apparent in some of the responses above seems to result from the entrepreneurs' assessment that it is much more difficult to win when the major news media oppose you. Former State Representative Ruth

Wright noted that had the governor-backed “state trust lands” initiative (1996-#16) *not* had the support of the major media, “it might very well have lost, because it was a pretty close vote.” And, as discussed previously, the official sponsor of the governor’s “Great Outdoors Colorado” initiative (1992-#8) explained that the specific content of the initiative was calculated to win the support of the major newspapers’ editorial boards (Daily 1997).

On the other hand, those involved in two of the more controversial, conservative initiatives in recent years, 1992’s Amendment 2 (“no protected status for homosexuals”) and 1996’s Amendment 17 (“parental rights”) were certain that the media’s liberal bias would prevent the news media from presenting the issues in an unbiased manner. Stephen Bransford, author and media advisor to the Amendment 2 campaign, provided some evidence of bias against that initiative in both the news and television media. He noted that:

[The news media] uncritically printed the Gay and Lesbian Task Force’s own assembled hate-crime statistics, ignoring or ridiculing the official police numbers. For example, state news rooms announced many stories such as the following during the debate over the meaning of the Colorado vote: **HOMOSEXUAL RIGHTS GROUP SAYS ANTI-GAY VIOLENCE SURGED IN ‘91: TASK FORCE CITES A ‘MESSAGE OF HATRED.’** After touting this story with full sympathy for the homosexual side, the article ended with the small disclaimer (for those tenacious enough to read it), “While the group reported increases in incidents in Boston and New York, police in those two cities reported decreases in anti-gay crimes last year of 21 percent and 14 percent, respectively” (Bransford 1994, 110).⁸

⁸Bransford provides the following citation for the newspaper headline: Associated Press (Washington), “Homosexual Rights Group Says Anti-Gay Violence Surge in ‘91: Task Force Cites a ‘Message of hatred,’” *Gazette Telegraph*, 21 March 1992.

The sponsor of the Parental Rights initiative (1996-#17), Leah Delay, remarked that their campaign strove to avoid the negative media coverage of Amendment 2.

To do so, they avoided all media coverage:

We stayed away from the media, actually. We tried to stay away as much as possible" (Delay 1997).

However, on most initiatives there is relatively little media coverage, particularly considering the significance of the measures, most of which sought to revise the state constitution. Table 7.3 provides a comparison of news media coverage of the various initiatives with voter turnout, a measure of the level of public interest in the initiatives. Based on the number of articles published about each initiative in the largest newspaper in the state,⁹ many of the initiatives--the vast majority in 1994 and 1996--received little news coverage. In the two most recent elections there is an especially notable paucity of newspaper coverage of all but a couple of initiatives each year. In 1994 *The Denver Post* apparently decided that the "tobacco tax" initiative (1994-#1) and Doug Bruce's "election reform" initiative (1994-#12) were several times as newsworthy as the "worker's choice of care" (1994-#11) or the "reform of state medical assistance" (1994-#18). In 1996 there were a total of three articles or editorials that addressed four of the initiatives. The newspaper focused on "taxing non-profits" (1996-#11) and "parental rights" (1996-#17), but determined that "term limits," "extending petition rights," "campaign finance reform," and "limited gaming in Trinidad" did not merit more than three articles apiece.

⁹The totals for the number of articles published include editorials.

[Table 7.3 about here]

In addition, it is apparent that the voting public's level of interest on the initiatives is often quite different from the importance that those initiatives are accorded by *The Denver Post*, the newspaper with the largest statewide distribution. For example, Table 7.13 shows that the highest voter turnout in 1992 was on the "no protected status for homosexuals" initiative (1992-#2), but in the 14 months from when the title was set to when the election was held, between August 1991 and November 1992, there were only 17 articles and editorials published in the leading state newspaper that addressed this highly controversial initiative. More articles were published on the "limited gambling in Denver" initiative (1992-#9), perhaps because *The Denver Post* is more concerned about attracting readers in the area of the state where its circulation is highest, despite the fact that this measure apparently attracted the least interest amongst the statewide public. These figures support the conclusions expressed in the interviews, that the news media do not provide much coverage of many of the initiatives.

Given the deference paid to the news media by the sponsors of the governor-supported measures, it is not surprising that the less "well-connected" sponsors would express significant concern about media coverage of their

Table 7.3
Newspaper Coverage of Initiatives and Voter Turnout

INITIATIVE	NEWS COVERAGE (# ARTICLES/ INITIATIVE)	VOTER TURNOUT (IN THOUSANDS)	VOTER DROP-OFF (AS % LESS THAN INITIATIVE WITH HIGHEST TURNOUT IN THAT ELECTION*)
1992-#1	30	1,513	0.72 %
1992-#2 *	17	1,524*	-
1992-#3	15	1,509	0.98 %
1992-#4	15	1,502	1.44 %
1992-#5	15	1,502	1.44 %
1992-#6	28	1,520	0.26 %
1992-#7	30	1,515	0.59 %
1992-#8	9	1,506	1.18 %
1992-#9	19	1,493	2.03 %
1992-#10	9	1,512	0.79 %
1994-#1 *	23	1,116*	-
1994-#11	5	1,101	1.34 %
1994-#12	22	1,095	1.88 %
1994-#13	6	1,098	1.61 %
1994-#15	8	1,096	1.79 %
1994-#16	3	1,100	1.43 %
1994-#17	4	1,086	2.69 %
1994-#18	3	1,049	6.00 %
1996-#11 *	18	1,455*	-
1996-#12	3	1,422	2.27 %
1996-#13	3	1,401	3.71 %
1996-#14	8	1,443	0.82 %
1996-#15	3	1,410	3.09 %
1996-#16	5	1,364	6.25 %
1996-#17	19	1,452	0.21 %
1996-#18	3	1,397	3.99 %

Source: Newspaper coverage includes the total number of news articles and editorials published in *The Denver Post* on a particular initiative from the time a ballot title was set, based on the *Denver Post Index*. Voter turnout for 1992 and 1994 from *State of Colorado: Abstract of Votes Cast*, published by the Secretary of State. Voter turnout figures for 1996 from *The Denver Post*, 11/7/96, page 4AA. Bold-faced type indicates those initiatives passed.

“*” indicates the initiative with highest turnout in each election.

measures. If the media came out against their initiatives, the sponsors could only counter the negative coverage with paid advertising. And, if the media neglected to cover the issues, the sponsors would again be forced to resort to paid advertising to get their message out.

C. Framing the Issues through Advertising Campaigns

The one concept that was most frequently referred to by sponsors in describing their campaign strategy or the reason for the failure of their initiatives at the polls was that it is a necessity to “get the word out” about your initiative during the campaign. With the lack of news media coverage and the uncertainty about whether many voters read or understand the state-prepared voter information pamphlet, it is not surprising that there is a significant amount of advertising purchased by both proponents and opponents of proposed ballot measures. Advertising is one way to make sure that the public hears your side of the story. However, the legislators and the initiative sponsors agree that the advertising tends to oversimplify the issues and it tends to stress the emotional aspects of the issues, rather than the substance of the initiatives. Comparisons of campaign advertising expenditures and election outcomes in recent Colorado elections confirms the initiative literature’s conclusions that money is an important determinant of election results (see Chapter 3). However, as has been the case elsewhere, overwhelming spending by *opposition* groups is much more determinative than overwhelming spending by the *proponents* of an initiative. The proponents appear to be less able to control the public’s perception of their measures through their advertising’s framing of the measures.

1. Legislators' Views of Initiative Campaigns

As discussed above, the general sentiment expressed by the legislators is that the media are not going to cover most initiatives in any depth. In addition, all 13 legislators who had not sponsored initiatives commented that they doubted that most of the public will take the time to understand the details of the measures. They believe that, as a result, the voters are left with the campaigns as a primary source of information. However, the campaigns primarily consist of "30 second sound bites," and with only 30 seconds for proponents and opponents to state their cases, the tendency is to rely on simplistic and emotional "arguments." As a result, the legislators argue that issues are not considered on their real merits (or demerits), but only in shallow, emotional terms; the specific provisions and ramifications of proposed initiatives go without debate.

If I've got an issue, and that issue can be expressed through the media in a heart-felt way, money will follow that issue and that money will get the issue passed. The campaign will not include the debate because it will be emotional, and [there will]not [be] the quality of life kinds of debates that you would have in the legislature (Norton 1993).

The themes of "30 second sound bites" and the "emotional" framing of the initiatives appears over and over again in the 13 interviews with state legislators who had never sponsored initiatives themselves. Just the term "sound bite" or "30 second sound bite" was used by five of the legislators.

The distinguishing feature of initiatives is their angry tone, special interest agendas, and ability to sell the issue to the public in 30 seconds (Johnson 1993).

The media is definitely fueling the dislike and suspicion of government...and how do you get the public more educated? How

do you educate them when they listen to 30 second sound bites?
(June 1993)

The only way initiatives can be done is in the 30 second sound bite. When you rely on the media, you've got to be direct. You can't elaborate, so you find the most direct way to say what you want to say, even if it's a little bit more biased than perhaps it should be. You have to do it that way in order to afford the commercial... You can't compromise in a commercial (Agler 1994).

It would be one thing if there was a concentrated effort to get [information] in the hands of everybody who is going to vote, information pro and con on ballot issues. but there isn't, and so people tend to vote because of a 30 second ad on TV the last week and a half before the election (Kerns 1994).

In an ideal world a campaign is a discussion and debate about the issues. In the real world of today it becomes a campaign of who can put together flashy slogans and sound bites (Weismann 1993).

These 13 legislators concur that the strategy of initiative campaigns is to present the public with an emotional appeal, oftentimes targeted against the government, always stated in simplistic terms. The need to fit everything into a 30 second commercial drives both proponents and opponents of a measure to present an issue as "black or white," inhibiting true deliberation on the issue by the public.

2. The Initiative Sponsors' View of Initiative Campaigns

The initiative sponsors were quite candid about the lack of substantive discussion of the issues in their advertising campaigns. The cost of advertising in the mass media was a factor. However, the main consideration was that the advertisements were intended to convince voters to vote for their initiatives...not necessarily to inform voters. As agenda setting theorists Cobb and Elder (1983) might have predicted (see Chapter 2), emotion did figure heavily into at least

some of the campaign strategies. The following comments indicate how some of the sponsors consciously attempted to capitalize on emotions in their advertising campaigns.

On the initiative that sought "no spring bear hunt" because bear cubs were still dependent on their mothers at this time (1992-#10): We also had some fairly effective pictures that were sent in by a professional photographer showing a very small bear cub being handled by a biologist, and essentially looking extremely cute at the time. When the newspapers ran their pros and cons of the initiatives, a lot of times that picture was sitting right up there and people who might not otherwise read and become informed on that issue couldn't resist finding out what that picture was all about. Once you saw that picture it was almost a guarantee about how you were going to vote on that initiative. The public response was, "How dare you let them starve to death, those cute little critters!" (Smith 1997).

A television advertisement prepared by the proponents of the initiative that sought to prohibit any "special rights" on the basis of sexual orientation (1992-#2): At the end of this spot we found a shot of a little oriental girl, perhaps six or seven, being literally dragged along the San Francisco [Gay Pride] parade route by her lesbian mother. The child is screaming and crying as all around her adults with whips and chains celebrate their gay pride. The expression on the little girl's face is frozen and brought full screen at the end. "Do we want to protect our children? Yes we do, vote Yes on 2" (Bransford 1994, 150).¹⁰

On the advertising campaign of the initiative for "Medicaid reform" (1994-#17): We had a pretty good ad on TV. It was something like, "Where's daddy, mommy?" (Berg 1997).

On the advertising campaign in support of the "Great Outdoors Colorado" initiative to force the legislature to use lottery funds for parks and recreation (1992-#8):

¹⁰Steven Bransford was a media consultant for the 1992 Amendment 2 campaign. His book was recommended to this author as an authoritative account of the campaign and its background by staff members of Colorado for Family Values, the political committee that supported Amendment 2.

We ran some pretty hard-hitting ads. One was a newspaper ad showing a prison watchtower, barbed wire, and the caption was, "When we voted for the lottery in 1972 to beautify Colorado, this isn't what we had in mind." And then we ran a couple of others with deer gambling through the park spaces, and children picking flowers...that kind of thing.

The one we didn't run would have been a direct attack on the legislature. And it would've started with just a point of light in the center of the screen, and that point of light would've grown slowly into the words, "The Lie." And the voice-over would've been, "In 1972 the legislature promised that the money from the lottery would go to parks, recreation, and open space. And since then, of course, they've used that provision to create Lotto and to fund prisons, and classroom buildings, and computer systems, and...they didn't tell this to you..." And by that time the words "The Lie" fill the entire screen. We had that shot; we had it in the can. We never used it. We would have used it if they had come at us with some of the stuff that we heard was in production. But it never got quite that down and dirty (Daily 1997).

However, the sponsors of initiatives were not alone in their attempts to elicit an emotional response from the public. The opposition campaigns also sought to use emotion to *their* advantage. Emotion was at the core of the opposition to 1992's anti-Amendment 2 campaign that characterized the "no protected status for homosexuals" initiative as a "message of hatred" (Gazette Telegraph, 3/21/92). The opponents of the "parental rights" initiative (1996-#17) presented the public with pictures of sad and disheveled children, lending emotional impact to their arguments that the initiative would give parents the right to abuse their children. It was also evident in the opposition to the "taxing non-profits" (1996-#11) campaign slogan, "Don't Hurt the Helpers," that was inscribed over a picture of a broken heart, as well as in the following opposition campaigns.

About the opposition to the "Great Outdoors Colorado" initiative's emotional appeal (1992-#8):

[Senator Tom Norton] recruited Tom Sutherland, a CSU [Colorado State University] professor who'd been a captive in Beirut to do some radio ads...The heart-rending short messages being broadcast about the value of higher education and what he dreamed about in those days of captivity, and here it is being brought to the ground by a bunch of know-nothing tree-huggers... "Trust us. We are your elected representatives." So there was that flavor deliberately injected into the campaign (Daily 1997).

On how the opposition to the "workers' choice of care" initiative (1994-#11) turned the issue from one of individuals' choice of their doctor to one of fraud:

And they wove the theme that this was going to create fraud. No explanation...[on the television ads] they had a guy drive up in a limousine in front of the capitol. Then this lawyer gets out, "Amendment 11. It's going to make the attorneys and someone else happy." We knew from the focus groups that three groups didn't "taste good" to the public--attorneys, labor unions, and insurance companies (Hawkins 1997).

In their attempts to control conflict escalation, both the initiative entrepreneurs and their opponents engaged in the politics of problem definition discussed in the agenda setting literature. Those involved sought to control the public's perception of the distribution of the costs and the benefits entailed in the initiatives, often by appealing to the emotions of the voters. As the legislators discussed, many of the proponents of the proposed policy changes relied on emotional appeals and simplistic framing of the issues in an attempt to convince the public to vote for their initiatives. However, the tendency was for *both* sides of the issues to focus on simplistic, emotional arguments in their appeals for public support or opposition to the proposed measures. The key strategic consideration for both initiative entrepreneurs and their opponents was to control the public's perception of the issues. The entrepreneurs fought to convince the

public to vote for change; their opponents fought to convince the public that it couldn't afford to bear the costs associated with those changes.

3. Spending on Advertising

The sponsor interviews and the campaign finance reports provide some insights into the importance of money in the initiative sponsors' attempts to "get the word out" about their initiatives. Money is a key concern for the sponsors. Because the mass media do not devote a great deal of coverage to most of the initiatives, and because they usually confront organized, and often wealthy opposition groups, most sponsors emphasized the importance of raising significant funds for advertising in order to keep the public on their side. This research confirms the initiative research's predominant conclusion that money *is* important in initiative campaigns. It also provides some indications about what determines the amount of advertising. This research found that the amount of advertising by the proponents is often dependent on the spending by opponents, but that in a few of the better-funded initiatives, advertising spending appeared to increase when public opinion polls showed a "close race." The sponsors believe that advertising affects public opinion on their initiatives.

Table 7.4 summarizes the total amount of campaign expenditures and advertising expenditures for the issue committees on both sides of the initiative campaigns for the 1992 through 1996 period. Because total expenditure figures in some cases reflect significant expenditures not directly related to publicizing an initiative--such as the costs of hiring paid petition circulators, professional campaign management, or legal services--the campaigns' efforts to influence public opinion on an initiative are better reflected in their expenditures for

advertising.¹¹ For example, the committee in favor of the initiative to “reform state medical assistance” (1994-#18) spent a total of \$119,221, but a negligible amount, \$9000, went towards advertising. Similarly, the committees opposed to “eliminating the spring bear hunt” (1992-#10) spent a *total* of only 20 percent less than the committees in favor of the initiative, but they spent less than 10 percent of what the proponents did on advertising. Hence the scope of the public campaigns waged to frame the initiatives for the public is discussed below in terms of the advertising dollars spent, rather than in terms of the total campaign expenditures on both sides of the issue.

[Table 7.4 about here]

a. Spending by Proponents and Opponents

The campaign spending on advertising by the “pro” and “con” sides was often very uneven, with a greater than 2 to 1 advantage on advertising/media expenditures occurring on one side or the other of a question in 16 of the 26 cases (see Table 7.4). The more lop-sided spending ratios were associated with a significant increase in the chances that the higher-spending side achieved the desired election outcome, particularly for initiative opponents. Table 7.5 summarizes the spending ratios and success rates for the initiatives. Out of nine cases where the opponents outspent the proponents by a factor of two or more, they were able to defeat the initiative seven times, 78 percent of the time. Where

¹¹Expenditures for advertising averaged just under 40 percent of total expenditures for proponents, and 54 percent for opponents.

Table 7.4: Campaign Spending
7.4A: 1992 Initiatives

INITIATIVE	TOTAL CAMPAIGN SPENDING	RATIO: FOR/ AGAINST	SPENDING ON MEDIA AND ADVERTISING	RATIO: FOR/ AGAINST
1992-#1: For	\$ 297,138	.48	\$ 190,227	.41
Against	\$ 615,446		\$ 466,685	
1992-#2: For	\$ 378,793	.53	\$ 164,894	.43
Against	\$ 703,516		\$ 383,409	
1992-#3: For	\$ 800,071	2.82	\$ 538,257	7.90
Against*	\$ 284,125		\$ 68,157	
1992-#4: For	\$ 194,824	.69	\$ 32,879	.48
Against*	\$ 284,125		\$ 68,157	
1992-#5: For	\$ 382,937	1.35	\$ 126,088	1.85
Against*	\$ 284,125		\$ 68,157	
1992-#6: For**	\$ 713,379	4.81	\$ 428,771	5.49
Against	\$ 148,252		\$ 78,156	
1992-#7: For	\$ 545,943	1.16	\$ 305,578	.78
Against**	\$ 471,256		\$ 392,907	
1992-#8: For	\$ 316,193	3.77	\$ 138,821	2.86
Against	\$ 83,874		\$ 48,486	
1992-#9: For	\$ 121,918	.43	\$ 95,000	1.39
Against*	\$ 284,125		\$ 68,157	
1992-#10: For	\$ 129,493	1.17	\$ 80,105	11.60
Against	\$ 110,800		\$ 6,886	

Source: Based on Colorado Secretary of State's summary records for ballot initiatives and on the individual issue committees' campaign finance disclosure reports filed with the Secretary of State. Total spending figures reflect the total spending by all committees registered for or against each initiative through the post-general election reports, and they exclude fund transfers made to other political committees. Where a conflict existed between the two sources' total spending figures, the campaign finance reports' figures were used. Bold-faced type identifies those initiatives that passed.

*A total of \$284,125 was spent by several committees organized in opposition to all four gambling initiatives.

**Spending totals include \$8683 spent by committees that were for 1992-#6 and against 1992-#7, and \$4874 in media/advertising also purchased by the committees for/against these two initiatives.

Table 7.4: Campaign Spending
7.4B: 1994 Initiatives

INITIATIVE	TOTAL CAMPAIGN SPENDING	RATIO: FOR/ AGAINST	SPENDING ON MEDIA AND ADVERTISING	RATIO: FOR/ AG'NST
1994-#1: For	\$ 263,714	.04	\$ 51,312	.02
Against	\$ 7,471,804		\$ 2,727,900	
1994-#11: For	\$ 227,336	.19	\$ 116,125	.17
Against*	\$ 1,169,237		\$ 679,219	
1994-#12**: For	\$ 185,889	.19	\$ 139,408	.25
Against	\$ 958,012		\$ 562,510	
1994-#13***: For	\$ 155,039	1.30	\$ 58,128	.66
Against	\$ 119,714		\$ 88,000	
1994-#15: For	\$ 73,774	.09	\$ 24,184	.05
Against*	\$ 844,957		\$ 514,680	
1994-#16: For	\$ 100,826	--	\$ 13,853	--
Against	None on file.			
1994-#17: For	\$ 17,860	--	\$ 1,000	--
Against	None on file.			
1994-#18: For	\$ 119,220	18.54	\$ 8,526	1.46
Against	\$ 6,430		\$ 5,837	

Source: Based on Colorado Secretary of State's summary records for ballot initiatives and on the individual issue committees' campaign finance disclosure reports filed with the Secretary of State. Total spending figures reflect the total spending by all committees registered for or against each initiative through the post-general election reports, and they exclude fund transfers made to other political committees. Where a conflict existed between the two sources' total spending figures, the campaign finance reports' figures were used. Bold-faced type identifies those initiatives that passed.

*Opposition committees ("Save Colorado Springs Jobs" and "Coalition to Save Colorado Jobs") not included in Secretary of State summary. Figures taken from campaign finance reports.

** "For" total includes \$167,129 spent by a committee in support of 1994-#12 and against 1994 Referendum A. "Against" total includes \$844,957 spent by a committee in support of 1994 Referendum A, and in opposition to 1994-#12 and 1994-#15. \$514,680 in common advertising spending was also included under 1994-#12 and 1994-#15.

*** No issue committees were listed in the Secretary of State summary for 1994-#13. Figures taken from campaign finance reports for proponents (Coloradans for Better Schools) and opponents (Citizens Against Statewide Casinos). A total of \$119,714 was spent in 1994 in opposition to 1994-#13 and 1994-#14. The latter did not appear on the ballot until 1996 as 1996-#18.

Table 7.4: Campaign Spending
7.4C: 1996 Initiatives

INITIATIVE	TOTAL CAMPAIGN SPENDING	RATIO: FOR/ AGAINST	SPENDING ON MEDIA AND ADVERTISING	RATIO: FOR/ AGAINST
1996-#11: For	\$ 114,445	.16	\$ 0	--
Against	\$ 720,079		\$ 442,700	
1996-#12: For	\$ 129,413	66.74	\$ 0	--
Against	\$ 1,939		\$ 0	
1996-#13: For	\$ 179,829	.32	\$ 135,400	.31
Against	\$ 566,161		\$ 430,000	
1996-#14: For	\$ 184,890	4.68	\$ 125,000	3.29
Against	\$ 39,515		\$ 38,000	
1996-#15: For	\$ 40,218	--	\$ 0	--
Against	None on file.		--	
1996-#16: For	\$ 320,491	9.96	\$ 82,500	3.37
Against	\$ 32,192		\$ 24,500	
1996-#17: For	\$ 447,932	1.23	\$ 285,000	1.27
Against	\$ 363,166		\$ 225,000	
1996-#18*: For	\$ 59,646	.65	\$ 44,100	.63
Against	\$ 91,876		\$ 69,500	

Source: Based on Colorado Secretary of State's summary records for ballot initiatives and on the individual issue committees' campaign finance disclosure reports filed with the Secretary of State. Total spending figures reflect the total spending by all committees registered for or against each initiative through the post-general election reports, and they exclude fund transfers made to other political committees. Where a conflict existed between the two sources' total spending figures, the campaign finance reports' figures were used. Bold-faced type identifies those initiatives that passed.

*Totals for committees for and against 1996-#18 reflect spending for the period beginning with the post-general election reporting figures for 1996. (This Trinidad gambling initiative was originally included on the 1994 ballot as 1994-#14, but was removed before the election. It was then placed on the 1996 ballot by court order.)

Table 7.5
Summary of Advertising Spending Ratios:
Issue Committees Organized in Opposition to
and in Favor of Ballot Initiatives
in Colorado from 1992-1996

	SPENDING FAVORS OPPONENT BY 3:1	SPENDING FAVORS OPPONENT BY 2:1	SPENDING ABOUT EVEN*	SPENDING FAVORS PROPONENT BY 2:1	SPENDING FAVORS PROPONENT BY 3:1
Number of initiatives in each category (% of 26 ballot initiatives)	6 (23%)	9 (35%)	11 (42%)	6 (23%)	5 (19%)
Number of initiatives in each category that passed (% of initiatives in spending category)	0/6 (0%)	2/9 (22%)	3/11 (27%)	4/6 (67%)	3/5 (60%)

Source: Derived from data in Table 7.4.

*Initiatives 1996-#16 and 1996-#17 are included in the "about even" column because the total amount of advertising by either side was negligible.

there was more than a 3 to 1 spending ratio favoring the opposition, defeat appeared to be all but guaranteed--all six initiatives in this category were defeated.

[Table 7.5 about here]

On the other hand, as the initiative literature suggests (see Chapter 3), overwhelming spending by the proponents was not as determinative, although it did greatly increase the odds of victory. Table 7.5 shows that when the proponents of an initiative outspent the opposition by a factor of two or more, they were able to get their initiative passed in four out of six cases, 67 percent of the time. A proponent's 3 to 1 spending advantage corresponded to victory in 3 out of 5 cases, or 60 percent of the time. Compared to the overall rate of passage for all initiatives during this period, 35 percent, the proponents' ability to spend two to three times as much as their opponents almost doubled the odds of success. Spending on advertising does appear to have an effect on the public's perceptions of the initiatives.

b. Money "Gets the Word Out"

Colorado's recent experience conforms to the nationwide trend noted in the literature. A large campaign war chest can't guarantee victory, but the failure to have at least a competitively-sized war chest, at least half the size of the opposition's war chest, appears almost certain to condemn an initiative to defeat. The entrepreneurs seem to have a "gut level" awareness of these spending relationships. The sponsors' responses regarding what they'd do differently the next time they led an initiative campaign revealed that money was a primary concern for most of them. Because they sought to get their side of the story--their

framing of the issue--out to the public, and because few initiatives generate significant free media coverage, the entrepreneurs are understandably concerned with having sufficient funds for advertising. Based on the comments made by the initiative sponsors and on campaign finance reports, the amount of funds that are "sufficient" is often determined by the amount of advertising done by the opposition. For at least 12 out of 24 initiatives on the ballot, the proponents indicated that they felt it was necessary to advertise primarily *in response to* advertising by the opposition.¹² For example:

From the sponsor of two "term limits" initiatives (1994-#17, 1996-#12):

Money is not particularly important to term limits. It might be if we had organized opposition. If we had opponents who were spending several hundred thousand dollars against us...But if we had that kind of money against us, we would have got money, and we would have spent money (Polhill 1997).

Explaining the drop in public support for the "limited gambling in Trinidad" initiative (1996-#18):

The [Colorado] Supreme Court came out with the decision [putting this initiative on the 1996 ballot] at the latest possible time, so it was just a case of not being able to get our feet on the ground and going fast enough. And also the realization of, no matter what we did, [the existing casinos] were going to do 5 or 10 times. If we did zero and they did zero, we stood a better chance than if we did 10 and they did 100 (Fabec 1997).

Regarding the various initiatives in several states (1994-#1 in Colorado) that work against the interests of the tobacco companies:

It really comes down to, can you get your message out? And can you respond. When they started their government and tax [arguments], that was the time for us to address directly the issues of accountability, but we had no money to do it. We got a couple

¹²Those initiatives whose sponsors indicated that their concern was to advertise in response to the advertising of the opposition were: 1996-#11, #12, #13, #15, #18; 1994-#1, #11, #12, #15, #17; 1992-#4, #5.

of news stories out, but that didn't hold a candle to their saturation (Levinson 1997).

On why the "workers' choice of care" initiative (1994-#11) failed after leading in the public opinion polls with 60 percent approving of the measure only a month before the election:

The fact that we couldn't keep up media-wise. We couldn't respond (Hawkins 1997).

And:

It would have been nice to have the money...my point is I don't need to match them a dollar for a dollar. I can only do so much. I analyzed their expenditures and they wasted more money than I could ever imagine--\$7.5 million (Hawkins 1997)!¹³

Dr. Dan Bridges described what turned out to be a hopeless battle against the pro-religious individuals and organizations and the non-profits organized against his "taxing non-profits" initiative (1996-#11):

We were outflanked, out-maneuvered, and out-gunned. After we realized we'd need to spend \$80,000 or \$90,000 I was ready to give up, but [co-sponsor] John Murphy spent \$60,000 of his own money (Bridges 1997).

However, Tables 7.4 and 7.5 demonstrate that more often than not the sponsors did not have the financial wherewithal to respond to the opposition's advertising expenditures. Confronted with the opposition of the casino associations that represented the towns that already had legalized gambling, Dave Beasley (1992-#5) and Paul Nielsen (1992-#4) noted their frustrations in the area of fund-raising. Nielsen noted that after the ballot title appeals process was over,

We didn't have time to raise the money. We didn't have time to advertise or anything else, because [the opposition] were *way* ahead of us (Nielsen 1997).

¹³The campaign finance reports available at the Secretary of State's office indicated that the opposition committees for 1994-#11 spent a total of \$1.2 million. However, the reports that were found by this author were filed under committees not contained on the Secretary of State's master list of issue committees organized on this issue. It is quite possible that other issue committees organized against the initiative were listed separately.

And Barry Arrington described his biggest “lesson learned” as an initiative sponsor

(1994-#16):

Have enough money up front or [do] not waste the effort. You need \$500,000 minimum (Arrington 1997).

Pat Johnson of the League of Women Voters summed up the situation in regards to her “campaign finance reform” initiatives by noting that it was “David versus Goliath” (Johnson 1997).

However, in several other cases it appears that the proponents’ spending on advertising was related to the public opinion polls, rather than to the oppositions’ spending. Examining six initiatives where the proponents spent more than two times as much as the opposition on advertising, it is notable that the three initiatives that originated with Governor Romer all fall in this category (1992-#6, 1992-#8, 1996-#16). As discussed in Chapter 5, the governor seems to be very successful in raising funds from corporations for the initiatives that he formally supports. It is also interesting to note that these three initiatives were all cases where public opinion was fairly close in the month or so prior to the election (see Chapter 6, Table 6.1). The “school sales tax” initiative (1992-#6) led by six percentage points, with 4 percent undecided. The “Great Outdoors Colorado” initiative (1992-#8) led with 49 percent of the public “for” the initiative, but 11 percent were still undecided a month before the election. And Governor Romer’s effort to allow the state to preserve more open space through the “state trust lands” initiative (1996-#16) had only 37 percent support and a full 30 percent undecided, just three days before the election. Furthermore, the campaign finance

reports reveal that these three campaigns benefited from large corporate contributions (approximately one-third of the total campaign contributions) in the last few weeks before the election. When it became necessary for an end-of-the-campaign media barrage, the governor's initiatives had the financial wherewithal to fund it.

The other three initiatives where there was organized opposition and where there was at least a 2 to 1 advertising spending advantage by the proponents were the two animal rights/protection initiatives (1992-#10 and 1996-#14) and a gambling initiative (1992-#3). This last initiative provides a scenario similar to the three corporate-backed initiatives led by Governor Romer. With the approval rating of their gambling initiative plummeting, from 42 percent in mid-August to 29 percent at the end of September, the proponents raised \$540,000 mostly from a few big donors in the last two months before the election, and spent \$538,000 on advertising. The two animal rights/animal protection initiatives followed a different pattern. Both initiatives staged their media/advertising campaigns in the last days before the elections, but lacking the deep-pocketed donors or sponsors, the proponents had saved their funds throughout the campaign for the final effort to sway the voters to their sides (Smith 1997; Angell 1997).¹⁴

The ability to respond to opposition spending varies with the nature of the support of the initiatives. Those that relied on broad financial support, consisting

¹⁴The proponents of the initiative to limit spring bear hunting (1992-#10) actually had only a 1.17 to 1 advantage in *overall* campaign spending, however, most of the opposition's money went towards consulting/salaries/contract labor (41 percent) and office overhead (16 percent); only 6 percent went towards advertising/media. This case demonstrates just how expensive a professionally-run campaign can be.

of many small donations, tended to have a difficult time raising significant funds late in the campaign, while those that relied on narrow, but deep support tended to have more elastic fundraising capabilities. In addition to the term limits initiative whose proponent Dennis Polhill is quoted above, several other initiative campaigns were able to ratchet up their spending when significant opposition to their initiatives developed towards election time. The proponents of the "Parachute gambling" initiative (1992-#5), the "Downtown Denver gambling" initiative (1992-#9), the "petition rights" initiative (1996-#13), and the "parental rights" initiative (1996-#17) were able to get a significant amount of funds late in the campaign to counter well-financed opposition campaigns. The "Parachute gambling" campaign raised \$100,000 in October and spent \$105,000 for ads in late October and early November (Campaign Finance Reports). The "petition rights" campaign received \$134,000 from Doug Bruce's TABOR Committee and spent \$135,000 for a late media campaign to counter the opposition's campaign (Polhill 1997; Campaign Finance Reports). The "parental rights" campaign was given over \$300,000 by the Virginia-based group "Of the People" and two out-of-state individuals in the weeks before the election; that paid for their \$275,000 of media advertisements in the two weeks before the election (Delay 1997; Campaign Finance Reports). In each of these cases, the proponents raised large amounts of money from just a few large donors late in the campaign, allowing them to fund publicity campaigns in the final days before the election, in response to the oppositions' spending and polls showing their initiatives to be in trouble.

However, when the initiative campaigns are dependent upon many small contributors or less wealthy interest groups, or when the opposition campaign is funded by the deep pockets of corporations that would be adversely affected by the passage of the initiatives, campaign finances are not so elastic. This was the case for the proponents of the "tobacco tax" initiative (1994-#1) and the "workers' choice of care" initiative (1994-#11) whose sponsors are quoted above. The initiative sponsors found it to be a hopeless cause to match the heavy corporate funding of the opposition (Levinson 1997; Hawkins 1997). A few others specifically noted the difficulty in raising additional funding late in the game. The proponents of the "Gateway Gambling" initiative (1992-#4), the first "campaign finance reform" initiative (1994-#15), and the "petition rights" initiative (1996-#13) indicated that they just did not have the wherewithal to counter the opposition's spending late in the campaign, when the opposition really hit the airwaves and the papers with their "anti" campaigns (Nielsen 1997; Johnson 1997; Polhill 1997).

The ability to wage an effective advertising campaign appears to be a key factor in determining the success of initiatives when there is organized opposition. The proponents of ballot measures, and almost certainly the opponents of measures, battle to control the public's understanding of the issue at hand over the airwaves and in the print media. Each side fights to control the framing of issues...and it is an expensive "war."

"Getting the story out" is a key strategic concern for the initiative entrepreneurs, and because of the lack of news media coverage of most

campaigns, and perhaps due to the inaccessibility of the state-prepared voter information pamphlets' explanations, paid advertising is often the primary means of accomplishing that goal. The review of campaign spending records revealed that the entrepreneurs who were able to keep up with, or stay ahead of, the opposition when it came to advertising were much more likely to get their initiatives passed than those who could not at least be competitive in terms of advertising spending. With minimal news coverage of the initiatives, the sponsors tend to conclude that a large part of the public does rely on emotional and generally uninformative media advertising campaigns for the framing of initiative issues.

III. Conclusions

This chapter examined how the initiative agenda is set, in terms of the nature of the policy proposals that appear on the ballot, as well the apparent ability of advertising by the proponents and opponents of initiatives to shape the public's perceptions of the issues on the ballot. Once the policy entrepreneur had decided to pursue policy change through the initiative process, issue framing was *the* main concern. Most sponsors drafted their initiatives while actively considering public opinion, as well as the arguments that the opposition would make against their initiatives that might affect public opinion. The sponsors' sought to get a measure on the ballot that would accomplish the policy changes *they* desired, to the extent that *public opinion* would allow them to. In contrast to some speculation in the initiative literature, there is definitely some compromise by issue activists when they draft their measures. They compromise because they recognize that the

public must support their policy proposals, so the policy proposals have to be desirable in the eyes of the public. In addition, the sponsors sought to keep their measures as non-complex as possible, in order to avoid "turning off" the voters. They seemed to understand what the initiative literature confirms--when the voter has some doubts about an initiative, he votes "no." Most sponsors, 75 percent of those addressing the issue, sought to design their initiatives to appeal to the Colorado public. The policy proposals in the initiatives are framed with the views of the public, at least the voting public, in mind.

The Colorado sponsors are much less willing to compromise when it comes to the form the initiatives take; they overwhelmingly prefer constitutional initiatives to statutory initiatives. Their reliance on the former results from their distrust of the legislators. Even while the legislators complain that many of these initiatives "don't belong" in the Colorado constitution, the sponsors distrust the legislators to the point of not believing that the legislators will abide by the "will of the voters" when statutory initiatives are passed. Almost half of the initiatives were constitutional in nature, proposing changes to existing provisions within the constitution. However, the sponsor interviews indicate that the reason that all but three of the remaining initiatives were proposed as constitutional amendments is that the sponsors do distrust the legislators. They are unwilling to risk the legislators' overturning their hard-won changes, particularly since the reason the sponsors turned to the initiative was that they believed the legislature to be hostile to their positions in the first place. Similarly, the legislators' overwhelming support for making constitutional initiatives more difficult to pass seems to be

based on their general distrust of the individuals who sponsor initiatives. Each group tends to see the other as being dominated by "special interests."

In terms of framing the public's perception of initiatives, the sponsors indicate a great deal of concern with the official framing of the initiative by institutional elites. While they indicate general satisfaction with the titles set by the title setting board that is manned by bureaucrats from three separate agencies, as well as with the explanations of ballot proposals developed by the non-partisan legislative staff, the sponsors are extremely cynical about the legislators' involvement in determining the final form of the voter information pamphlet. Several sponsors commented that there is an inherent conflict of interest involved, given that the legislators who prevented a bill from going through legislature ultimately determine how ballot measures are presented to the voters in the Blue Book. To quote one sponsor, "It puts the fox in charge of the hen house" (Daily 1997).

The legislators and the sponsors do agree on one thing. Both view the news media coverage of the initiatives as entirely inadequate. As proposed in the agenda setting literature, there is a tendency for the news media to concentrate on a few of the more sensational initiatives, and to emphasize the emotional aspects of those initiatives. Both the quantity and the quality of news coverage was deemed to be poor by most of the individuals interviewed. The data in Table 7.3 supports their conclusion about the minimal amount of media coverage of the ballot measures. The sponsors and the legislators see the mass media as

motivated by business concerns or their own ideologies rather than by a goal of informing the public.

The end result was that both the proponents and the opponents of initiatives turned to advertising as the primary means to “get the word out.” They sought to directly control the framing of the issues that was presented to the public. However, the legislators and the initiative sponsors noted that when it comes to paid advertising, the tendency is to present emotional arguments for and against the proposed measures. Serious discussion of the issues that would promote serious deliberation about the proposed policies is in very short supply. As several legislators commented, there is little chance for discussion in a 30 second sound bite.

Finally, campaign finance reports demonstrated that the issue framing that occurs through paid advertising, whether or not it addresses the substantive aspects of the issues, does have an affect on electoral outcomes. That is, it apparently affects the public’s perceptions of the issues at stake in the proposed initiatives. As the initiative literature has demonstrated previously, overwhelming spending by opponents--the uncontested negative framing of the initiatives--is quite decisive come election time. Given the trends in public support of the initiatives noted in Chapter 6 (see Tables 6.4 and 6.5) and the campaign spending data in this chapter, it appears that the Colorado public’s perceptions of the issues and the policies on the initiative agenda are affected by campaign spending on advertising. Overwhelming spending by the proponents greatly increases the

chances that the public will approve a proposed policy, almost doubling the chances of victory.

However, the sponsor interviews reveal that in most cases the proponents' spending on initiative campaigns is dependent upon the amount of spending by the opponents of the initiative, lending further support to the sponsors' own assertions that they believe that their policy proposals will "naturally" be favored by the majority of the public. Advertising is judged by proponents to be essential when the opposition is working to turn the public against an initiative.

Chapter 8

The Initiative Process: a Political Institution that Facilitates Political Change

This chapter summarizes the findings of this research regarding how the initiative agenda is set and why individuals and groups turn to the initiative process. Based on these findings the author draws some conclusions regarding the significance of this institution of direct democracy to the distribution of political influence and to the processes of political change in the state of Colorado. Part I summarizes why groups and individuals decide to go the initiative route and how the initiative agenda is set. It examines which actors play major roles in setting the initiative agenda. Part II contrasts the mobilization of bias of the initiative with the mobilization of bias of representative democracy, summarizing the influence exercised by different types of political actors in setting the initiative agenda with the influence they exercise in setting the agenda of representative government. Part III examines the initiative process in the broader context of the political system. It compares the functions served by this right to petition the *people* with the functions that have been attributed to the right to petition *government*. In addition, it examines how the initiative, a political institution with a “mobilization of bias” that favors different types of interest than those that are favored in the representative institutions of government—particularly those interests that seek to act in accordance with the views of the majority of the polity—can complement and actually *strengthen* representative government. Finally, Part IV presents some suggestions for future research to enhance our

understanding of the significance of the initiative to democratic political processes.

I. The “Why” and “How” of the Initiative

A. Why Individuals and Groups Turn to the Initiative Process

This research has demonstrated that the initiative institution is used by interest groups and by individuals because they are dissatisfied with current public policy *and* because they are convinced that the legislature will not fairly consider their interests *and* because they are convinced that the public agrees, or would tend to agree with their views on the issue at hand. Initiative sponsors use the process to vertically escalate conflict on their issues to the public or to *threaten* state legislators or other groups whose interests are favored by the existing mobilization of bias within the legislature with the vertical escalation of conflict, in order to convince them of the necessity to consider their interests or concerns.

An example of the use of the initiative for the horizontal escalation of conflict is the use of the initiative in Colorado to promote the interests of consumers and labor in the Republican-dominated legislature. Advocates of the interests of union and workers have begun the initiative process several times with the goal of making business interests and the Republicans in the Colorado legislature compromise--or face the possibility of having the voters determine specific policies. In fact, records of the numbers of initiatives that make it through various stages of the initiative process (see Table 5.1) and the comments made by initiative sponsors and key bureaucrats seem to indicate that many of the

measures that do not progress past the title setting stage of the process are actually intended to serve as “bargaining chips” to get onto the legislative agenda, rather than to get onto the public agenda.

The initiative process also provides an alternative to the legislative agenda. It facilitates the vertical escalation of conflict to the voters’ agenda, if the sponsor can get sufficient public support in the petition stage of the process. Interviews with institutional elites from the Colorado legislature, with key bureaucrats from three separate government departments, and with the initiative sponsors indicate that the initiative process is primarily used for vertical conflict escalation by those who believe their interests are effectively “shut out” of the state legislature. Ninety-two percent of the 37 initiatives sponsored by individuals interviewed for this research were sponsored because the sponsors did not believe their interests were treated fairly in the legislature (see Table 5.6).

However, it is also notable that 92 percent of the 24 sponsors of initiatives on the ballot between 1992 and 1996 indicated that they believed that their initiatives would pass (see Table 6.2). All but one of these sponsors indicated that they proposed an *initiative* because they believed that the majority of the public was already on their side of the issue. Available public opinion polls tend to confirm their views of the mood of the public. Early polling data confirmed the sponsors’ assessment of the public support/public opposition in 13 out of the 17 initiatives for which data are available (see Tables 6.2 and 6.5).

State legislators and initiative sponsors identified the initiative as an institution that allows the public to deal with "conflict of interest" issues--such as term limits and campaign finance reform--and "hot potato" issues--such as moral issues (homosexual rights and parental rights) and issues where specific groups (such as casino operators or ranchers) are entrenched by existing policy subsystems. "Conflict of interest" issues affect the powers and prerogatives of the legislators and the legislature as an institution. "Hot potato" issues are those issues that are politically disadvantageous for the legislators to deal with because it is likely to prove detrimental to their political careers. Taking a stance on these issues is likely to alienate some group, corporation, or individuals that will hurt the representative come election time. When an issue is of low salience to the general public but of great interest to other organized interests or to the elected representatives of the people themselves, the "representatives" may be less responsive to the views of the general public than to "special interests."

An examination of the campaign finance reports and the records of bills considered in the Colorado General Assembly provide at least some support for the legislators' and the initiative sponsors' conclusions that the initiative process is usually used by those who oppose interests that are favored in the legislature. While large interest group contributions are key to both proponents' and opponents' campaigns, the interest groups weighing in *against* initiatives tend to be those favored in the legislature. For example, animal rights and environmental interest groups proposed initiatives that faced heavy opposition by ranching,

farming, and trapping interests that are highly influential in the House and Senate Agricultural Committees, and any bills related to their interests would have to go through both of these committees. In addition, corporate interests were much more predominant sources of campaign funding for opposition campaigns than they were for proponents' campaigns (see Tables 5.4 and 5.5). The initiative sponsors saw themselves as combating these "special interests."

To summarize, individuals and groups turn to the initiative process because they believe that the majority of the public agrees with their position on an issue, even while the legislators elected by the public are reluctant to risk the political costs of acting on their policy proposals. They see the initiative process as a means of combating interests that are entrenched in the legislature. Policy entrepreneurs direct their appeals to the public when they believe that the legislature has not treated their concerns fairly. The initiative process provides a means of "sidelining" the institutional elites in the legislature.

B. How the Initiative Agenda is Set

Figure 8.1 graphically illustrates how the initiative agenda is set. Three types of political actors are instrumental in setting the initiative agenda: policy entrepreneurs, interest groups, and the public. Each of these actors plays a significant role in determining both the issues *and* the policy proposals that appear on the ballot. Institutional elites and the media have significantly less influence over the initiative agenda.

[Figure 8.1 about here]

Most initiatives were proposed by policy entrepreneurs who organized their campaigns in an effort to change public policy. Interview data indicates that the vast majority of initiative sponsors have had long term involvement on an issue prior to their initiative campaigns (see Table 5.2). In addition, the sponsors of the vast majority of initiatives on the ballot between 1992 and 1996, 22 out of 24 sponsors interviewed, indicated that their primary motivation for proposing an initiative was their own beliefs that current policy needed to be changed. Only two of the 24 initiatives were proposed based upon any overwhelming public demand for policy change. However, as stated above, 21 of these sponsors also indicated that they believed that the public was in agreement with their position on the issue, or would be in agreement if people knew what was going on. In other words, while the sponsors were motivated primarily by their personal concern rather than the public's overwhelming concern about a specific issue, they saw themselves as proposing policies that would have the approval of the public. The majority of initiative sponsors were *not* seeking benefits that would accrue to themselves or members of one interest group. They represented "specific interests" that sought benefits for the majority.

Given that initiatives are usually not proposed because they represent the most pressing concerns of the general public, the public can not be said to truly "control" the initiative agenda. The initiative sponsors do have to get signatures

from members of the public in order to qualify for the ballot. However, due to court rulings that have determined that states must allow paid petition circulators, there is some doubt as to whether the public effectively screens initiatives through the petition process, or whether any interest with sufficient funds to pay petitioners can make it onto the ballot. In terms of the issues that appear on the ballot, the role of the public in the initiative agenda setting process is very similar to the role of the public in the agenda setting process in conventional, representative politics--the agenda is constrained by the public but rarely directed by the public. Still, in recent elections the sponsors overwhelmingly claim to escalate conflict via the initiative process *because* they have the support of the public.

The public is extremely important when it comes to determining the substance of the initiatives, the specific policy proposals that appear on the ballot. The framing of initiatives involves an additional aspect that does not come to play in issue framing under the representative institutions of government. In conventional policy making channels the policy entrepreneur attempts to frame an issue so that it will appeal to institutional elites who are likely to favor their policy positions. However, setting the agenda and determining the policy solutions are two distinct parts of that process. The entrepreneur seeks to define the issue in a way that encourages the "right" policy response, but the institutional elites ultimately determine the government's response. Under the initiative institution

of direct democracy the policy entrepreneur has direct control over the proposed policy “solution.”

The framing of issues under the initiative process, contrary to some of the assumptions made by Colorado legislators and other initiative researchers, *does* entail compromise on the part of the initiative sponsors. Because they are escalating issues to the public, for resolution by the public, the sponsors try to design their policy proposals--the substance of the initiatives--to accomplish the policy changes that the sponsors want to the extent that the public permits. On 74 percent of the initiatives for which data were available, the initiative sponsors indicated that they compromised on the substance of their policy proposals in order to appeal to the Colorado public (see Table 7.2). For example, the “prohibited methods of taking wildlife” initiative (1996-#14) was basically designed based on public opinion polls that addressed the types of limitations favored by Coloradans and the concerns Coloradans had about banning trapping. Most of the sponsors anticipated organized opposition to their initiatives, so they considered any potential “weak points” that the opposition might grab onto to turn the public against their measures. The result is that the initiative language proposed is a compromise that takes into account the sponsor’s policy preferences, the public’s views, and the views of opposing interest groups.

Interest groups are also key players when it comes to setting the initiative agenda in Colorado. The petition process reveals the importance of citizen-based interest groups, as opposed to corporate membership-based interest groups, in

setting the initiative agenda. Despite the ability to hire paid petitioners, almost 40 percent of the 26 initiatives on the ballot between 1992 and 1996 relied entirely or predominantly on volunteer petitioners (see Table 5.3). Interview data reveal that interest groups are the primary source for these volunteer petitioners. And as discussed above, large interest group contributions are also key sources of campaign funding for initiative proponents, including funding to hire paid petition circulators.

Interest group campaign contributions are also important in terms of determining the public's perception of the issues and policy proposals that are on the ballot. Due to the limited mass media coverage of most initiatives (see Table 7.3) the sponsors relied heavily on paid advertising to get their framing of the issues out to the public. However, this method of "getting the word out" tended to lead to emotional portrayals of the initiatives, rather than to relay the major facts and issues involved. The opposition campaigns often had the same emotional focus. The legislators spoke scathingly of the campaigns' reliance on "30 second sound bites," and, indeed, if the voters are relying only on the commercials for their information about the measures, they are not making very informed decisions.

In contrast to their roles in setting the formal, governmental agenda, institutional elites and the media played minor roles in setting the initiative agenda. Other than their influence on some sponsors' perceptions of the prevailing public mood, the media largely came into play in terms of the

proponents' and opponents' attempts to influence the public's perceptions of the initiatives through paid advertising. Contrary to some speculation in the initiative literature (see Chapter 3), the initiative process in Colorado is *not* used to a great extent by institutional elites. The exception is Governor Romer, who instigated three initiatives when his policy goals were thwarted in the legislature. During the period of this study, the initiative process was not used as a campaign platform. For the most part institutional elites play only an indirect role in setting the initiative agenda in Colorado. The actions or inaction of the legislature is what convinced most of the initiative sponsors that it was necessary to circumvent the legislature and turn to direct democracy to effect policy change.

In summary, policy entrepreneurs, the public, and interest groups are the most important actors when it comes to determining what appears on the ballot. It takes a policy entrepreneur, a sponsor, to get an initiative on the ballot. However, it appears that sponsors only attempt the initiative process when they believe that they have the majority of the public on their side. In addition, they design their initiatives with the Colorado public specifically in mind. Even if the necessity for citizens' signatures to qualify an initiative for the ballot does not constitute "control" of the initiative agenda, the public enters into the initiative agenda setting process to a much greater extent, and much more directly, than it enters into the agenda setting process under the institutions of representative government. Interest groups are key to the agenda setting process as a source of volunteers and a source of campaign funding. On the other hand, institutional

elites and the mass media play minor, supporting roles when it comes to setting the initiative agenda.

II. The Mobilization of Bias of the Initiative's Direct Democracy and of Representative Democracy

Bachrach and Baratz (1962) discuss how political institutions and processes have different biases, they favor the introduction of different types of issues and the enactment of different types of policies. This research has demonstrated that the initiative process has a different mobilization of bias than that associated with the representative institutions of government. An indication of this different bias is that the roles played by different political actors are very different in the initiative process than they are under the representative institutions of government. The influence of the different actors in the initiative agenda setting process are summarized in Table 8.1 and are compared here with their roles under representative government (see Table 2.1).

[Table 8.1 about here]

The greatest difference is that the public plays a much greater, much more direct role, both in setting the initiative agenda and in determining the policies that are adopted to deal with specific issues. The policy entrepreneurs also have much more influence under this institution of direct democracy, because they control the specific policy solutions that are proposed. However, they must still appeal to the public to get their issues on the ballot via the petition process, but perhaps more importantly given the availability of paid petition circulators, the policy entrepreneurs design their initiatives to appeal to the majority of the public. They

try to frame their policy solutions to “fit” existing public opinion. Formally and in practice, the public determines the issues and the substance of the policy proposals that appear on the initiative agenda. If there is an “ultimate guardian” of the initiative agenda, it is the “silent majority” in the public whose views and interests are often under-represented, according to existing critiques of pluralist democracy.

Table 8.1
Political Actors' Roles in Setting the Formal Agenda
Through the Initiative Process

ELEMENTS OF THE AGENDA SETTING PROCESS	MAJOR ACTORS INVOLVED	INFLUENCE
Conflict Escalation	Interest Groups Policy Entrepreneur	Unempowered groups seek to change policy by escalating conflict vertically to the public, or horizontally (w/threat of vertical escalation), to force legislature & empowered groups to negotiate <i>Vertical Conflict Escalation:</i> Entrepreneur usually the initiative sponsor, often associated with citizens' interest groups; impetus for entrepreneur's involvement usually personal concern about an issue <i>Horizontal Conflict Escalation:</i> Entrepreneur often hires prof'l initiative consultant to sponsor initiative
Timing	Policy Entrepreneur Mass Public Institutional Elites Interest Groups	Decides to use initiative after decides legislature unwilling to deal fairly w/ "conflict of interest" or "hot potato" issues and judges public opinion to be in favor of preferred policy; usually must have time to run campaign Existing public opinion/mood the <u>key</u> determinant of timing of proposed initiatives Action or inaction of legislators makes an issue a candidate for escalation by entrepreneur Availability of volunteers and financial resources from interest groups a major consideration for some entrepreneurs
Issue Framing	Policy Entrepreneur Interest Groups Institutional Elites Mass Media	Designs initiative to appeal to existing mood and opinion of the public & in anticipation of organized opposition's attacks of weak points; rely on paid advertising to get their issue framing to the public Key source of funding for paid advertising; support emotional framings of issues Determine official framing of initiatives with the ballot title and voter information pamphlet Minimal news coverage of most measures, so primarily a conduit of framings by interest groups and entrepreneurs' via paid advertising

Source: Summary of data discussed in chapters 4 through 7.

The institutional elites exercise significantly less influence in setting the initiative agenda, as well as in determining the policy solutions that are proposed. The policy entrepreneurs gear their campaigns to appeal to the public, not to elected or appointed elites. Elected and appointed officials' influence comes primarily through their ability to decide the way that the measures will be framed in official documents, such as the voter information guide and the ballot. The legislators' have an indirect effect on the initiative agenda by defining the universe of issues that are initiative "candidates." The action or inaction of the legislature is what leads the initiative entrepreneurs to look for other ways to change public policy.

Based on the comments made by legislators, bureaucrats, and initiative sponsors, the mass media is primarily influential as a conduit for issue framings in advertising paid for by proponents and opponents of the initiatives. Because there is insignificant unpaid media coverage of most initiatives, and because the media does not play a significant role in determining what issues will make it onto the initiative agenda, the initiative process is amenable to issues that do not necessarily lend themselves to media coverage. Issues like campaign finance reform, Medicaid reform, and changes in the state's policies regarding trust lands would be unlikely to capture the interest of the mass media. Indeed, as the agenda setting literature might predict, the news media tend to concentrate on a few of the more controversial, non-technical, and emotionally compelling initiatives. Most

of the measures receive very little news coverage, so groups rely on advertising in the mass media to "get the story out" to the public.

Because paid advertising is important, money is an important factor in most campaigns. The amount of the proponents' spending on advertising was usually dependent on the amount of advertising by opponents, to the extent that they could marshal the financial resources. It was apparent in the campaign finance reports for the issue committees that large interest group and large individual donations (donations of \$1000 or more) accounted for a significant part of most of the initiative proponents' campaign funding. On the other side, the opponents' campaigns were also funded by large interest group donations, but large corporate donations also weighed in heavily against proposed measures.

As the agenda setting literature would predict, the interest groups supporting the measures, that is groups supporting policy change, tended to be associated with interests that opposed groups with more institutionalized power in the legislature. Animal rights advocates and environmentalists fought against farmers, ranchers, and land developers. Small towns sought to expand gambling with the opposition of the casino owners' associations from the three towns with a constitutional monopoly on gambling in the state. The League of Women Voters, Common Cause, and the Colorado Public Interest Research Group faced off against the legislators on issues of political reform.

Only a handful of initiatives were proposed by entrepreneurs who did not start out with the backing of organized interest groups. However, this form of

direct democracy is rarely resorted to by “special interest” groups that seek policy change in order to benefit their membership. The initiative institution seems to be most conducive to majoritarian-type politics, increasing the influence of *specific* interest groups. These “specific interest” groups, as well as individual policy entrepreneurs, seek policy change on an issue that is of particular concern to themselves, but they turn to the initiative when they also believe that the public will support their proposed policy changes.

Institutional elites have minimal influence over the initiative agenda. They can control it only to the extent that they decide to preempt a policy entrepreneur’s resorting to the initiative by making her believe that they will deal, and deal fairly, with her policy concerns. This institution of direct democracy has a different mobilization of bias than the representative institutions of government. The initiative, therefore, presents an alternative institutional venue for those who would challenge the status quo. Because of the influence exercised by the public, it is particularly conducive to conflict escalation for policy proposals that the majority of the public is likely to favor. It increases the influence of the public and of interests that face institutionalized opposition in the legislature. As Baumgartner and Jones’ (1993) propose, when policy subsystems prevent policy change under current institutional arrangements, those disfavored by the status quo will seek to escalate the conflict to a new venue. The initiative is one such venue in Colorado.

III. How the Initiative Affects the Political System

Chapter 1 discussed how the right to petition has been recognized as serving several important functions in representative democracy. It increases the government's responsiveness to the public will by providing a means for the people to make their will known. It provides a means of bringing new ideas and new viewpoints to the attention of the public and the government, ensuring that government does not neglect to consider or stifle change in society. Finally, the *right to petition government* has been recognized as protecting the assertion of minority views, serving as a vehicle for peaceful, political change.

According to the prevailing pluralist conception of American politics, and according to the existing agenda setting research, the representative institutions of our government are not generally responsive to the majority of the public on any given issue. Instead, representative government is responsive to issue publics that organize around narrow interests of concern to them. Specific policies tend to be the product of "minorities rule." Critics of pluralist democracy or "interest group liberalism" argue that this form of democracy is biased against the representation of certain types of groups, such as those that stand for the interests of the poor, the uneducated, and the general public interest. In addition, they argue that it is biased against those who would challenge the status quo. The existing agenda setting literature, based on the examination of the representative institutions of government, agrees with the critics of pluralist democracy. The formal, governmental agenda is characterized by incremental change, and that change is

largely controlled by institutional elites and interests that are entrenched in existing policy subsystems.

This research has demonstrated that the availability of the initiative agenda does facilitate political change in Colorado, by providing an alternative policy agenda that is primarily used by individuals and groups that represent interests disadvantaged in the representative institutions of government. The initiative process provides a means for the political system to deal with “hot potato” and “conflict of interest” issues when the proposed policies have clear benefits for the general public. Legislators, bureaucrats, and initiative sponsors agree that the initiative process provides a means for Colorado citizens to make their concerns and their will known to the government, particularly when they seek policy changes with benefits that will accrue to the *majority* of the public. Most of those interviewed remarked that it makes representative government more responsive to the majority. Individuals and groups even employ this institution of direct democracy for horizontal conflict escalation, never intending to “go public” because they think the threat to “go public” is enough to make the legislators represent the views and the interests of the public. In Colorado the initiative has been used to send a “wake up call” to the General Assembly on issues such as the worker’s right to choose their medical provider, worker safety issues, and auto insurance reform.

Several sponsors referred to the initiative process as a “safety valve.” They view direct democracy as performing what structural-functionalists would

describe as a “systems maintenance” function. They express views similar to the writings of some scholars of American politics who discuss how “structure-induced equilibrium” inhibits American society’s adaptation to new societal problems (see Chapter 1 “agenda setting and political change”). These initiative sponsors see the elected government in Colorado as being held hostage by the political aspirations of “strategic politicians.” The analogy of “the bullet or the ballot” came up more than once. The sponsor of a “school choice” initiative that never made it onto the ballot put it this way:

...the petition is a very important safety valve. Let me see how I can put this. Reform is essentially a conservative process. Not conservative in terms of where it sits on the political scale, [but] conservative in that it tries to preserve the system, tries to allow the system to adjust to new circumstances. The modern day elites, perhaps due to our decline in education, are neither educated well enough, nor have [they a] sufficient ethical background to understand the finely balanced system of our republic. So they cannot do it on their own. Essentially, what I’m saying is that they’re not smart enough and they’re not honest enough. If we allow the petition process to function freely, or relatively freely, the system will adjust to new circumstances without bloodshed or Timothy McVeigh-like excesses. If we do not, then I’m afraid we’re looking towards a very bleak future (Golyansky 1997).

The initiative process has also been used to promote unpopular policies-- “unpopular” in the sense that the ideas are not those currently favored by the majority party in the legislature. For example, the initiative was used to promote two animal rights issues (1992-#10 and 1996-#14) when the proponents concluded that both the House and Senate Agriculture Committees were “captured” by the ranching and farming interests that are so politically powerful in this western state. The initiative sponsors, including a former House Minority

Leader, concluded that it was hopeless to get any animal rights legislation through these two committees, so they turned to the initiative process.

The initiative to raise state taxes on tobacco products in order to curb teen smoking and the initiative that sought to require parental notification of a minor's abortion are two examples of "hot potato" issues that the legislature had avoided. In both cases the political costs of a representative taking a stance on the issues would have been considerable, given the clout of the pro-tobacco interest groups and the divisiveness of the abortion issue. The initiative that sought to prohibit the state's civil rights laws from being extended to cover homosexuals is an example of a "politically *incorrect*" initiative that, nevertheless, had the support of the majority of voters. The sponsors of this measure certainly believe that they were serving as a check on the legislature when it had become the dogmatic guardian of the public mind.

The initiative in Colorado has been used much less frequently as a means of kindling public debate on new issues. Attempts to put the legalization of marijuana on the ballot and the initiative that sought to eliminate property tax exemptions for churches and other non-profits were largely attempts to increase public awareness of issues. The sponsor of the latter initiative was one of only two sponsors who believed in the beginning that their initiatives were not going to pass. However, the sponsor believes that the current tax code is unfair and unconstitutional, and he thinks that after the people have thought about it for a while, they will eventually agree with him.

While the initiative process in Colorado is conducive to the escalation of conflict on what James Q. Wilson would refer to as “majoritarian” or “entrepreneurial” policies, the right to petition the *people* is *least* likely to serve the function of protecting the assertion of minority interests.¹ The mobilization of bias of the initiative process is to promote interests that are likely to have the support of the majority. The initiative is an institution that primarily facilitates the vertical escalation of conflict to the public--the majority, although it also facilitates legislative consideration of issues when the sponsors can realistically threaten to have the public decide an issue in its favor. While there is no prohibition against the use of the initiative process by any interest, this institution is most conducive to the promotion of interests that the majority will agree with. The process is just too expensive and too time-consuming for most groups to use as a means of publicizing issues.

The initiative process has been demonstrated to serve four out of the five systems maintenance-type functions that have been associated with the right to petition *government*. While this institution is apparently not particularly conducive to the promotion of minority interests, it does serve to enhance the promotion of majority interests. Some of the framers of the US Constitution maintained that representative democracy needs no cure for *minority* factions, but most of the initiative sponsors would agree with the Anti-federalists that “special

¹ “Minority interests” in this context connotes the interests of individuals or groups who have views and policy preferences counter to those of the majority of the public. For example, the very wealthy, the poor, religious, ethnic, and racial groups might all constitute minorities whose interests might diverge from those of the majority at one time or another.

interests” are a major threat in American representative democracy. And an overwhelming majority of the American public supports the right of citizens to petition *the people*. While there is a great deal of cynicism about the politics and politicians associated with our representative institutions of government, there is a great deal of support for this institution of direct democracy. Apparently many citizens agree with Thomas Jefferson that,

The first principle of republicanism is, that *lex-majority partis* [the law of the majority] is the fundamental law of every society of individuals of equal rights; to consider the will of society enounced by the majority of a single vote, as sacred as if unanimous, is the first of all lessons in importance, yet the last which is thoroughly learnt. This law once disregarded, no other remains but that of force, which ends necessarily in military despotism. This has been the history of the French Revolution (Jefferson 1817).

Because the citizen’s initiative increases the influence exercised by different types of groups, promoting issues on an alternative policy agenda that are often blocked from attaining serious consideration in the legislature, the initiative does promote change in public policy. Direct democracy provides a means of accelerating change when representative government is slow to recognize or adjust to changes in the public’s policy preferences. Perhaps it is not a coincidence that the use of the initiative has increased in recent years, as the state party organizations and state legislatures have become stronger and more professionalized (Squire 1992; Bibby and Holbrook 1995; Patterson 1995). One aspect of “professionalization” is that members tend to look on their service as being a career (Squire 1992), thus increasing the likelihood that an individual legislator would not be willing to tackle what the “conflict of interest” and “hot

potato” types of issues that are often dealt with by the initiative. As Erikson, Wright, and McIver (1993) discuss in their study of the impact that public opinion has on policy making in the American states:

Representation in the states works not necessarily in terms of government compliance with specific public demands...but rather in terms of public opinion controlling the general ideological direction of state policy (244).

The initiative process is one means of making public policy responsive to public opinion on *specific* issues.

Furthermore, the availability of the initiative institution in *some* states can have a significant *national* impact. The initiative literature has noted the tendency for initiative issues to make their way across several states, on issues ranging from bottle deposits and anti-nuclear measures, to tax limitation and term limits. Indeed, in the latter case the founder and current president of the national “US Term Limits” organization remarked to this author that “There would be no national term limits movement without the initiative” (Rich 1998). Certainly this organization’s ability to get an identical term limits initiative on the ballot in 14 states in 1994 did not hurt the rise of term limits to the national agenda, via the Republican Party’s “Contract for America.” The initiative process has provided a vehicle for the diffusion of new ideas.

In conclusion, this research on the process by which the initiative agenda is set in Colorado indicates that, at the very least, the availability of this alternative policy making venue provides a means of increasing the number and types of interests represented in the political process. In particular, the initiative

process is well-suited to the escalation of policy changes that naturally tend to have the support of the majority of the public. The initiative does not provide a "solution" for pluralist democracy's underrepresentation of groups in the minority, such as the poor and the uneducated. However, it is conducive to the escalation of conflict on entrepreneurial and majoritarian policies that the people's elected representatives shy away from. In Colorado the availability of the initiative process must be considered as having an important effect on the representative-based political system. Given the undeniably different bias of the initiative process, it is quite likely that this institution of direct democracy would have a similar impact in other states as well.

IV. Suggestions for Future Research

This research has demonstrated how the initiative agenda is set in the state of Colorado, and how the initiative process has a different mobilization of bias than the representative institutions of government. It constitutes a first step in the investigation of how an institution of direct democracy affects the institutions of representative government. To paraphrase Schattschneider, this research indicates that there are means of expanding the membership of the heavenly choir that sings in our pluralist heaven. The initiative, an institution of direct democracy, facilitates the promotion of majoritarian and entrepreneurial policies that seek benefits for the unmobilized majority, one group that may be under-represented in a pluralist democracy.

While there are numerous aspects of direct democracy that merit future research, perhaps the first step is to further examine the bias of the initiative process in other states, in order to determine the extent to which the results of this research are applicable to other states. Based on the data from Colorado, there needs to be further research into the extent to which the initiative is used to escalate conflict vertically and horizontally in the different states, and to determine what types of interests use the initiative process in other states. Related questions that need to be answered include: Do other states' initiative processes also serve to incorporate different types of issues and different types of interests into the political system? To what extent do different procedures, different variations on the initiative process, lead to a different type of bias? These questions require similar in-depth analysis of specific initiatives, but polls of initiative sponsors would also be helpful, now that it is apparent what some of the important types of questions are that need to be asked.

In addition, there is clearly a need to better understand the nature of the impact of the existence and the use of the initiative on the state legislatures. Do the legislators become more responsive to the public, and less beholden to special interests, when the initiative process is available? How is the effectiveness of the legislature affected by the initiative process? How does the initiative affect the nature of compromise and the protection of minority interests by the legislature? These questions require investigation of the different state legislatures, with an emphasis on the processes by which decisions are made. Comparative analysis of

various qualitative measures of legislative effectiveness and responsiveness in the states with the initiative and in states without the initiative would be one approach. An examination of one state's political system over time to determine the impact of the initiative would be another approach. For example, a state such as Mississippi that has only recently incorporated the initiative might provide a fruitful area for research.

Recognizing that the initiative process is much more likely to expand into other states than to go away, it is essential that the initiative research focus on ways to improve and enhance this institution of direct democracy. Further consideration of the relationship between specific institutional characteristics of the initiative and their practical effects should be a priority. For instance, the different methods of setting ballot titles that are employed in different states may have an impact on the voters' ability to understand proposed initiatives. Do mandatory legislative review of initiatives and state-sponsored public debates affect the amount of substantive media coverage of the issues? Do geographical distribution requirements for petitions affect the number of grassroots petition drives? Research into these and other questions will provide important insights into the biases that result from different procedures. There are 24 different initiative states, with 24 different processes. These different states provide a laboratory to determine what procedures promote the fullest deliberation of the political issues, and what procedures best facilitate peaceful political change in an increasingly heterogeneous society confronted with a rapidly changing world.

The initiative process constitutes an alternative venue for interests disadvantaged by the institutions of representative government. As a result, it facilitates change in a democratic system that is naturally resistant to change. It is essential, therefore, to acquire a more in-depth understanding of this institution of direct democracy, in order to ensure that it is constructed so that its bias is to promote change that increases the responsiveness of democratic government to the majority, but with thorough consideration of and protection of the interests and rights of the minority.

Epilogue

Dealing with "Shortcomings" in the Initiative Process

This author will join the ranks of initiative researchers who make suggestions for initiative reform. It is her opinion that no matter what one's views are regarding the desirability of this institution of direct democracy in some states, it is here to stay. While most of the suggestions have been made previously in one form or another, the following discussion emphasizes the Colorado initiative process, as well as the view developed in this research that the initiative is important as a means of incorporating new and varied interests into the political process.

The mobilization of bias of the initiative process favors majority interests and disfavors minority interests. It also favors the promotion of issues that have the support of organized interest groups or wealthy individuals. This is the case because of the need for a significant number of committed volunteer petition circulators or about \$100,000 to hire paid circulators to collect the signatures required to qualify a measure for the ballot. In addition, money is usually necessary for the proponents of an issue to launch a full-blown advertising campaign. After all, if policy entrepreneurs turn to the initiative process because they face entrenched interests in the legislature, it is only natural that those interests will challenge them in the public forum as well. A final weakness of the initiative process that has been revealed in this research (and in other initiative research) is that there is a paucity of accessible information and public debate on the proposed ballot measures that discourages public deliberation. Increased

public deliberation would facilitate the individual voter's discernment of how the public interest might best be served in the case of each proposed initiative.

I. An Institutional Bias Against Minority Interests

In the first case, in terms of the initiative's bias towards majoritarian issues, this author concludes that little can be done. This bias is natural and unavoidable. Furthermore, it was expected and even intended from its inception. As discussed in Chapter 1, the initiative was championed by the Populists, the Socialists, and the Progressives as a means of elevating the voices of the many, at a time when it was felt the voices of the few and the privileged were all that were heard in the halls and the courts of the government. As mentioned above, it is too onerous and too expensive of a process for most minority interests to turn to, particularly if the proposed policies aim to aid the few at the expense of the many.

However, the use of this "venue" to kindle public debate on new issues, such as the taxing of churches and non-profits in a state that is headquarters to hundreds of Christian organizations alone, indicates that the initiative does have some potential for those "minority" interests that can reasonably frame their interests in terms of the broader public interest. If they can logically demonstrate to the majority that broader principles such as justice or equity are at stake, the initiative process could further their policy goals. Many of the campaigns organized in opposition to proposed initiatives have demonstrated this principle at work. For example, tobacco companies argued that the proposed tax on tobacco products set a dangerous precedent of taxing unpopular minorities. In that case it was tobacco users, but who would it be next? This and similar arguments against

1994's Amendment 1, led public opinion to drop from over 70 percent *in favor of* the measure to 61 percent *opposed to* it on election day (Levinson 1997).

Nevertheless, the initiative is a political institution that is biased against unpopular minorities, and it will inevitably remain so.

II. A Resource-Intensive Institution

It requires significant resources to use the initiative process. Even in those cases where the initiative process is used as a "bargaining chip" in efforts to promote legislative consideration of a policy, the initiative sponsor must be able to at least realistically threaten to "go public" with the issue if the legislature does not act. Since the US Supreme Court decision that it is unconstitutional for a state to prohibit the paid circulation of petitions, the initiative process has opened up to more interests. Prior to this prohibition against paid petition circulators it was a necessity for an issue to have at least a few dozen committed supporters to get an issue on the ballot, but the use of paid circulators theoretically permits any individual or group with \$100,000 to qualify a measure for the ballot. However, this research has also demonstrated how important the financial support from interest groups and large individual donations are to the pro-initiative campaigns. Proponents and opponents of initiatives clearly believe that paid advertising is the best way to reach the voters. The result is that organized interest groups and wealthy individuals have an advantage, both in getting measures on the ballot, and in getting those measures passed by the voters.

However, it is perhaps most interesting that there are not *more* initiatives on the ballot if, indeed, any interest with sufficient funds can afford to use the

initiative process. The literature and even the mass media have discussed the “proliferation” of ballot measures, but the fact remains that even in this period of high usage there have been only eight to ten measures on the ballot in Colorado. With all of the bills that fail to make it through the state legislature, with all of the wealthy corporate interests and interest groups who *could* propose legislation to benefit their groups, money is clearly not the only limiting factor. Based on this research, the main factor limiting groups’ use of the initiative process is that this institution is not conducive to the promotion of “special interest” policy.

The recent record in Colorado also demonstrates that there still are grassroots initiative campaigns. Ten out of 26 pro-initiative campaigns relied primarily on volunteer petitioners to qualify their measures for the ballot. Six pro-initiative campaigns relied on hundreds of small contributions from individual citizens for the majority of their funding, and another eight of them relied on contributions from citizens’ groups such as the Humane Society, Common Cause, and the League of Women Voters, as opposed to corporate-dominated interest groups. Efforts such as the initiatives to reform campaign finance rules, to limit government spending and taxes, and to prohibit certain methods of trapping wildlife represent citizens’ movements.

The sponsors of these initiatives indicated that the process is extremely time-consuming and extremely frustrating, and that it can also be very expensive. However, even those without wealthy patrons stated that the initiative process in Colorado was largely fair. Sponsors such as Jack Hawkins (“workers’ choice of care” initiative, 1994-#11), who were vastly outspent by issue committees

organized against their initiatives, attributed the failure of their initiatives to the overwhelming advertising by wealthy opponents, but the consensus of the sponsors was that the process is "not easy, but it's fair" (Hawkins 1997). The sponsors realized that they would face considerable opposition from groups that stood to lose if their initiatives passed. However, they were generally satisfied that they had had their day in the court of public opinion. They believed that at least with the initiative, they had a chance.

The fact that the initiative process requires significant resources is not so much a "problem" as it is a hurdle that individuals and groups must overcome. The petition process is designed to demonstrate that there is sufficient public support for an initiative that it should be placed on the ballot for consideration by all of voters. The petition can be done entirely with volunteers. The practical necessity of accumulating sufficient funds to counter the opposition's campaign is unavoidable, because the initiatives will often face the opposition of interests that find it economical to spend hundreds of thousands, and even millions of dollars to try and shoot down proposed measures. While the news media do not adequately cover the issues, the state does prepare the Blue Book that does present the major facets of each initiative and the major arguments that have been made for and against each initiative, even if it may contain some biased arguments.

Finally, the record shows that perseverance does pay off. Eventually a tax and spending limitation initiative did pass, as did campaign finance reform, despite extremely well-funded opposition campaigns. As Patricia Johnson, sponsor of "campaign finance reform" initiatives in 1994 and 1996, found, there

comes a point where the opposition realizes there is just too much public support for a measure. And the legislators themselves have agreed that the initiative informs their actions and makes them more responsive to the will of the people. Even when an initiative does not pass, or even make it to the ballot, this institution provides an alternative venue for different types of interests than those that are favored in the legislature. It provides an *opportunity* to be judged in the court of public opinion, not a *guarantee* of victory.

III. A Lack of Information; a Lack of Deliberation

In order for the initiative to provide a forum that increases public deliberation about new issues or different points of view, one characteristic of the initiative process in Colorado that can and should be dealt with involves the lack of information that is available and accessible to the public. The mass media's lack of attention to the proposed constitutional and statutory policy proposals is unfortunate, but "freedom of the press" gives the media the right to choose the issues they see fit to cover. However, and the state-prepared ballot titles and the state-prepared Blue Book need to be accessible to *all* citizens, not just those with graduate level education. In addition, state and non-state actors could work in other ways to increase legislative consideration of, and public debate over, proposed initiatives.

A. Simplifying and Clarifying Ballot Titles

In Colorado the ballot title that is set by the title setting board is required to go on the top of each page of the petition sections that are circulated for signatures. It is also the language that appears on the ballot that the voter casts on

election day. Certainly it is critical that the citizens who sign a petition and cast a vote understand the basic issue that they are being asked to decide. But as was discussed in Chapter 4, there is a tendency for the ballot titles to get very wordy and very complex. Colorado statutes specify that the title board members are required to prepare "brief" ballot titles that "unambiguously state the principle of the provision sought to be added, amended, or repealed" (CRS 1-40-106(3)(b)). However, in practice, the titles turn out to be so long that they are neither "brief" nor easily intelligible to the average citizen.

The Deputy Director of Legislative Legal Services, Rebecca Lanahan, remarked that it is difficult to keep titles short and uncomplicated; there is a trade-off between brevity and completeness. A glance at the ballot titles for the eight initiatives in 1996 reveals that completeness has won out over brevity. Five out of the eight titles are more than 150 words long, and they consist of phrase after phrase strung together by commas and semi-colons. However, in sacrificing brevity, the ballot titles have also sacrificed clarity. Even a person familiar with the initiative can find it difficult to decipher the ballot titles. Certainly the citizen stopped outside the grocery store and asked to sign a petition will have a difficult time recognizing at a glance what they're signing. The voter in the voting booth is also confronted with this tangled web of dependent clauses.

In order to facilitate the voters' understanding of the issues, the title setting board should be required to set a short ballot title that says in one or two sentences, and in 25 to 30 words, what the issue is. This title could then be paired with the ballot summary that is currently prepared by this same board. The

potential petition signer and the voter could then determine whether they are supporting a petition that calls *for* term limits or the *repeal* of term limits, or whether they are voting to *expand* gambling or to *prohibit* the expansion of gambling. Then, if the individual is so disposed, he may choose to read the convoluted language in the ballot summary if he wants more of the details. This would allow some additional insurance against the proliferation of initiatives that the voters don't care enough to consider. However, it seems likely that the voters would themselves decrease the number of petitions they sign sight unseen, *if and when* the voters become disenchanted with the number or type of measures they confront on election day. The people do ultimately control what interests have access to the initiative agenda.

B. Revising the Ballot

A simple change of the form of the ballot would also enhance the initiative's ability to increase public and legislative deliberation on the issues. As discussed in Chapter 4, it appears that many of the "no" votes on initiatives result from weaknesses in the details of the initiative's proposed policy solution, even while the voters favor some a change in the status quo. The initiative could be of additional assistance in informing legislators of voter preferences if the voters were allowed to vote "yes," "no," or "no, but this issue deserves the further consideration of the legislature." It would make the will of the people clearer to the legislature, and thereby allow the initiative to better complement the representative institutions of government. It would also encourage even more compromise in the policy solutions proposed by the initiative, because the voters

could be more confident that the legislature would look into issues when clearly directed to do so by the people.

C. Simplify the Blue Books

The voter information pamphlets ("Blue Books") that are largely the product of the non-partisan Legislative Council Staff are superb sources of information on proposed initiatives, and they are mailed out to the household of each registered voter in the state. However, they are written at much too advanced a level for many voters. The Deputy Director of Legislative Legal Services, Stan Elofson, noted that the pamphlets are generally written at the 13th grade level, but that a few of the write-ups he had checked were at the *17th* grade level!

This author recommends that the pamphlets be written at a level more equivalent to popular news magazines or the daily newspaper. If the public is going to have the chance to debate the issues, the issues have to be understandable to the public. There are some complex legal arguments related to some of the initiatives; Mr. Elofson cited the "local control of obscenity" initiative (1994-#16) as an example. However, to regale the average reader with descriptions of numerous court cases' decisions regarding what constitutes a "prurient interest" is likely to turn most people off from the rest of the information presented.

Similar to my proposal for the addition of a truly simple ballot title, I would recommend that the Blue Book incorporate the major arguments for and against each initiative in a more accessible format. Several of the other initiative states put a short summary of the issue and the major arguments for and against the issues in a tabular format. The table might also include short statements by

those issue committees organized for and against an initiative, about why they support or oppose the measure. (This would also help alleviate the problem of the elected officials including biased comments in the Blue Books.) The rest of the information prepared by the legislative staff could remain as supplementary material for those who want to closely examine the issues; the pamphlet provides excellent background information. But, the most important thing is to get the basic facts out to the voters in a way that they will find approachable enough to read.

D. Other Methods of Increasing Public Debate on Initiatives

Finally, to facilitate discussion of the issues at stake in proposed measures, both the Colorado government and public interest groups such as Common Cause, the League of Women Voters, and Colorado Public Interest Research Group (COPIRG) should encourage and support public debates and discussion of the initiatives. For example, the state of Nebraska requires their Secretary of State to conduct public hearings on ballot measures in each congressional district no more than 8 weeks prior to the general election. Proponents and opponents are encouraged to attend to provide their views on the measures.

Other public interest groups could hold additional debates, along the lines of those commonly sponsored by the League of Women Voters to give candidates for elected office the opportunity to inform the voters about their policy positions. And these debates have the added benefit of attracting the attention of the mass media. Clearly the substance of initiatives is not going to be revealed through mass media advertising campaigns. This would be one way of increasing the

likelihood that the real issues at stake will be discussed, to allow the voters to make more informed decisions.

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Appendix A
Statewide Initiatives on the Ballot in Colorado: 1992-1996*
Summaries of Basic Issues

1992 Initiatives

#1: Tax and Spending Limitations

Constitutional Amendment. State legislature required to get voter approval for tax and spending increases that are in excess of adjustments for population growth and inflation.

#2: No Protected Status for Homosexuals

Constitutional Amendment. Prohibit the state of Colorado or any of its political subdivisions from adopting or enforcing any law or policy which provides that sexual orientation/relationships constitutes or entitles a person to claim any minority or protected status, quota preferences, or discrimination.

#3: Gambling in Selected Western and Southern Cities and Counties

Constitutional Amendment. Permit limited gambling in specific towns, cities, and counties, subject to an affirmative vote of the electorate in each such city, town, or county.

#4: Gambling in Selected Eastern and Southern Cities and Counties ("Gateway Gambling")

Constitutional Amendment. Permit limited gambling in specific cities, towns, and counties subject to an affirmative vote of the electorate in each such city, town, or county.

#5: Gambling in Parachute

Constitutional Amendment. Permit limited gambling in the town of Parachute and prohibit expansion of gambling until January 2000.

#6: Educational Standards and Sales Tax

Statutory Amendment. Establish a system of educational standards and assessments for public schools and increase the state sales tax by 1 percent with additional receipts be applied solely to fund public schools.

#7: School Vouchers

Constitutional Amendment. Require that all state moneys appropriated for the general support of kindergarten, elementary, and secondary education be apportioned among Colorado students in the form of vouchers.

#8: Great Outdoors Colorado (GOCO)

Constitutional Amendment. Require that permanent dedication of net proceeds from every state-supervised lottery game go to provide for the preservation, protection, enhancement and management of the state's wildlife, park, river, trail, and open space, after existing financial obligations for money met.

#9: Gambling in Denver

Constitutional Amendment. Permit limited gambling in specified portions of the Central Platte Valley area of Denver.

#10: Limit Black Bear Hunting

Statutory Amendment. Prohibit the taking of black bears by the use of bait or dogs at any time, and prohibit the taking of black bears by any means between March 1 and September 1 of any calendar year.

1994 Initiatives**#1: Tobacco Tax**

Constitutional Amendment. Increase tobacco taxes by 2.5 cents per cigarette and 50 percent of the manufacturer's list price of other tobacco products, and require resulting revenue for health care, educational programs to reduce tobacco use, and research concerning tobacco use and tobacco-related illnesses.

#11: Workers' Choice of Care

Constitutional Amendment. Specify that workers' compensation benefits include all reasonable and necessary treatment, to allow injured workers to choose health care providers, and subject provider fees to state regulation.

#12: Election Reform

Constitutional Amendment. Various election reforms including: allow state elections on any subject in odd-numbered years, require voter approval of elected officials' increased salaries and limit their future participation in pension plans, to limit campaign contributions to campaign committees, to eliminate political contributions to only human beings, to limit petition ballot titles to 75 words, to limit the annual number of bills that governments may exclude from referendum and petition, to limit reasons for invalidating petition signatures, and to prevent elected officials from changing certain voter-approved laws.

#13: Limited Gambling in Manitou Springs and Public Airports

Constitutional Amendment. Give certain governmental entities the option to place slot machines in public airports without a local vote and to legalize limited gambling in certain areas of the city of Manitou Springs.

(#14: Limited Gambling in Trinidad. Constitutional Amendment removed from the ballot in 1994 but later reinstated as 1996-#18.)

#15: Campaign Finance Reform

Constitutional Amendment. Put limits on the amount of campaign contributions to candidate committees, political committees, and political parties, along with additional restraints and reporting requirements.

#16: Local Control of Obscenity

Constitutional Amendment. Allow state, cities, towns, and counties to control the promotion of obscenity to the full extent permitted by the First Amendment of the U.S. Constitution, and thereby prevent the Colorado courts from interpreting the right of free expression more broadly under the Colorado Constitution than under the U.S. Constitution.

#17: Term Limits

Constitutional Amendment. Limit the number of consecutive terms that may be served by a nonjudicial elected official of any subdivision of the state and by U.S. representatives elected from Colorado, and to allow voters to lengthen, shorten, or eliminate such term limits.

#18: Reform State Medical Assistance

Constitutional Amendment. Require that any payment of medical assistance for minors by any agency of the state or its political subdivisions be a debt owed to the agency by biological and/or adoptive parents, and establish requirements regarding the establishment of paternity.

1996 Initiatives

#11: Eliminate Property Tax Exemptions for Non-Profits

Constitutional Amendment. Eliminate any property tax exemptions for real property used for religious purposes, real property used for for-profit schools, real property used for charitable purposes other than for community corrections facilities, orphanages, or for housing low-income elderly, disabled, homeless, or abused persons.

#12: Term Limits

Constitutional Amendment. Instructing Colorado's state senators and representatives to vote to apply for an amendment-proposing convention to amend the U.S. Constitution to limit U.S. senators to two terms, former and incumbent U.S. senators to one additional term, U.S. representatives to three terms, and former and incumbent U.S. representatives to two additional terms, and to require identification of election ballots of Colorado U.S. senators and representatives or state senators and representatives when they fail to support such an amendment when proposed.

#13: Extending Petition Rights

Constitutional Amendment. Various changes in initiative and referendum rights that extend petition powers to local governments, limit ballot titles to 100 words, limit the annual number of enacted laws that governments may exclude from possible referendum petitions, establish standards for review of filed petitions, and require voter approval for future petition laws and rules changes.

#14: Prohibited Methods of Taking Wildlife

Constitutional Amendment. Prohibit the use of certain types of traps with exceptions for governmental management of wildlife, with certain exceptions for protection of private property.

#15: Campaign Finance Reform

Constitutional Amendment. Put limits on the amount of campaign contributions to candidate committees, political committees, and political parties, along with additional restraints and reporting requirements.

#16: State Trust Lands

Constitutional Amendment. Provide that the state public lands are held in trust and increase the flexibility of the board of trustees entrusted with such management to consider the long-term stewardship of land and value of other public uses of land.

#17: Parental Rights

Constitutional Amendment. Specify that parents have the right to direct and control the upbringing, education, values, and discipline of their children.

#18: Trinidad Gambling

Constitutional Amendment. Permit limited gambling in the original or reconstructed historic building in the national historic district of the City of Trinidad, subject to a future local vote.

Appendix B
Interviews Conducted with Initiative Sponsors and Interest Groups
And Interview Questionnaires

Sponsors who made it to the ballot (* denotes not taped)

1. Elissa Angell (1996-#14 Prohibited Methods of Taking Wildlife/Trapping)
2. Barry Arrington* (1994-#16 Local Control of Obscenity)
3. Richard Bainter (1994/1996-#15, Campaign Finance Reform)
4. Beasley* (1992-#5 Gambling in Parachute)
5. Dal Berg (1994-#18 Reform Medical Assistance)
6. Dan Bridges* (1996-#11 Tax Non-Profits)
7. Douglas Bruce* (1992-#1 TABOR, 1994-#12 Election Reform)
8. Brian Buzby (1996-#16 State Trust Lands)
9. Terry Considine (1996-#12 Term Limits)
10. Richard Daily (1992-#8 Great Outdoors Colorado- GOCO)
11. Leah Delay (1996-#17 Parental Rights)
12. Robert Fabec (1996-#18 Trinidad Gaming)
13. Anita Gail (1994-#11 Worker's Choice of Care)
14. Donna Gardner (1992-#6 Education Standards and Tax)
15. Jack Hawkins (1994-#11 Worker's Choice of Care)
16. Patricia Johnson (1994-#15 and 1996-#15 Campaign Finance Reform)
17. James Klodzinski (1992-#3 Gaming in West & South; 1996-#18 Gaming in
Trinidad)
18. Arnold Levinson (1994-#1 Tobacco Tax)
19. Nielsen (1992-#4 Gaming in East & South)

20. Dennis Polhill (1994-#17 Term Limits; 1996-#12 Term Limits; 1996-#13 Petition Reform)

21. Robert Randolph* (1994-#13 Manitou Gaming)

22. Mike Smith (1992-#10 Spring Bear Hunt)

23. James Witmer* (1992-#2 No Protected Status for Homosexuals)

24. June Wright (1996-#16 State Trust Lands)

Sponsors who didn't make it to the ballot

1. Mark Bender (1997 Prohibition on Use of Public Moneys)

2. Mathew Cole (1996 Possession of Tobacco)

3. Nicholas Cole (1996 Possession of Tobacco)

4. Gregory Golyansky (1996 School Vouchers)

5. Richard Hamilton (1994 Water Rights; 1997 Capitol Renovation)

6. Dan Hayes (1997 School Impact Fee; 1997 Growth Limitation)

7. Pat Miller (1994 Parental Notification of Abortion)

8. Neil O'Toole (1996 Majority Rule; Provider Choice; Safe Work Environment)

9. Kenneth Shakeshaft (1994 Insurance Reform)

10. Gary Swing* (1996 Minor Political Parties)

Groups that were Potential Sponsors of Initiatives

1. Pat Boyle* (Colorado Association of Commerce and Industry- CACI)

2. Ann Chandler* (Colorado Child Care Association)

3. Chris Snowberger* (Colorado Association of Realtors)

4. Streich* (Colorado Mothers Against Drunk Drivers- MADD)

5. (Colorado Trial Lawyers Association)

Questions for Initiative Sponsors

Before I ask you about your experience with the initiative process, I have a couple of questions to ask regarding your background.

1. What is your occupation?
2. How have you been involved in politics outside of the initiative process?

The following questions relate to your experiences and your views about the initiative process in Colorado.

1. While I am familiar with the basic substance of the initiative you sponsored, could you briefly summarize the measure in your own words?

So, you're saying that the basic issue(s) was _____?

And you were proposing a policy that would _____?

2. How did you become involved in _____[issue]?
3. What made you decide to sponsor an *initiative*?
4. And why in 199_ in particular?
5. Had you sought to achieve your goals through the legislature or any other government channels prior to sponsoring an initiative?
6. What specific factors did you consider when deciding whether or not to go ahead with an initiative?
7. What were your **goals and expectations** in sponsoring an initiative (e.g. to pass a particular policy, to publicize an issue, to force the legislature to act)?
8. How did your campaign seek to reach the public and convince it to vote for your initiative?
9. What types of individuals or groups **supported** your initiative?
10. What types of individuals or groups **opposed** your initiative?
11. If there was a political committee organized in opposition to your campaign, what strategy did it (or they) employ in opposing your initiative? (e.g. different "framing" of issue)

12. How would you characterize the level of public support for your initiative from the **petition stage** through the **general election** (e.g. increasing, decreasing, stayed about the same)?

What means did you use to judge the levels of public support?

13. How would you characterize the media coverage of your initiative, in terms of both the **amount** of coverage and the **quality** of that coverage?

Did they “frame” the issue in the same terms that you did?

14. Why do you think your initiative passed/failed to pass?

15. If you were to sponsor another initiative, would you do anything differently?

16. What, if anything, would you do to **improve the initiative process** in Colorado?

Questions for Sponsors Who Didn't Make it to the Ballot

Before I ask you about your experience with the initiative process, I have a couple of questions to ask regarding your background.

1. What is your occupation?
2. How have you been involved in politics outside of the initiative process?

The following questions relate to your experiences and your views about the initiative process in Colorado.

1. Could you please describe the basic issue(s) in your proposed initiative?
So, you're saying that the basic issue(s) was _____?

And you were proposing a policy that would _____?
2. How did you become involved in _____ [issue]?
3. What made you decide to sponsor an *initiative*?
4. And why in 199_ in particular?
5. Had you sought to achieve your goals through the legislature or any other government channels prior to sponsoring an initiative?
6. What specific factors did you consider when deciding whether or not to go ahead with an initiative?
7. What were your **goals and expectations** in sponsoring an initiative (e.g. to pass a particular policy, to publicize an issue, to force the legislature to act)?
8. How far along in the process did you get?
9. Why did you pull out of the process?

For those who made it to the petition stage:

10. What types of individuals or groups **supported** your initiative? (Based upon....)
11. What types of individuals or groups **opposed** your initiative? (Based upon....)

12. How would you characterize the media coverage of your initiative, in terms of both the **amount** of coverage and the **quality** of that coverage?

Did they “frame” the issue in the same terms that you did?

13. If you were to sponsor another initiative, would you do anything differently?

14. What, if anything, would you do to **improve the initiative process** in Colorado?

15. What was the most difficult part of the process?

Questions for those who haven't sponsored initiatives

1. What is the basic charter (purpose) of _____ (your group)?
2. Your group is listed as being represented by a professional lobbyist, _____, at the state capitol. Has there been any particularly important legislation which your group has supported or opposed in the last year?
3. Are you familiar with the initiative process in Colorado?
4. Has your group ever considered sponsoring a ballot initiative?

If answer is yes:

One what particular issue(s)?

What specific factors convinced you not to go ahead with an initiative?

If answer is no:

Is there any particular reason why you do not think the initiative process would benefit your group's goals?

5. Has your group ever supported an initiative campaign sponsored by someone else?
6. Has your group ever found it necessary to defend its policy goals against an initiative sponsored by others?
7. Do you have any comments or personal observations you would like to make regarding the initiative process in Colorado?

What, if anything, would you do to improve the initiative process in Colorado?

Appendix C
Colorado Legislators Interviewed by Dr. Caroline Tolbert, 1993 and 1994
And Interview Questionnaire

I want to start by asking you some general questions about state legislatures and the initiative process.

In Colorado, has there been a rise in the use of the initiative process? If yes, what do you think is driving this trend?

What are the most distinctive features of the legislative process that are not found in the initiative process?

What do you see as the advantages of the initiative versus the legislative process in your state?

Are there certain issues the legislature is unable or refuses to consider that have been adopted through the initiative?

Let's talk about how public policies are formulated for the initiative ballot or legislative review.

How does the drafting process for ballot initiatives compare with bills drafted by the state legislature?

How does the working/clarity of ballot initiatives compare with bills drafted for legislative consideration?

Let me shift now and ask about the strategies groups use to promote their policy agenda.

Do you think interest groups are more effective by sponsoring initiatives or lobbying state legislatures? Which groups? Why?

How are issues presented to the voters in initiative campaigns compared with the state legislature?

Now lets talk about how policies are implemented into law.

How difficult is it to interpret and implement legislation drafted by state legislatures compared with ballot initiatives?

Are policies passed by ballot initiative more or less likely than legislative statutes to be disputed in court?

Are policies formulated by the initiative more likely to have long-term unintended consequences than policies formulated by state legislatures?

How do policy outcomes formulated by the initiative process compare with policy outcomes from the legislative process?

Do you see a common thread among the diverse initiatives on the ballot in recent elections?

Do you see any differences between policies formulated by the initiative and policies formulated in the state legislatures?

Finally, I have some overall impact questions.

How has the initiative changed/shaped the Colorado State legislature?

Who benefits from initiative policy making? The public? Special interests? Elected officials? Campaign consultants? The media? Who gains power?

***If Colorado didn't have the initiative process, would you be in favor of establishing an initiative? If yes, what restrictions would you place on the use of the process?

Appendix C
Colorado Legislators Interviewed by Dr. Caroline Tolbert, 1993 and 1994
and Interview Questionnaire

Colorado State Senators

Sam Cassidy (Democrat)- Appropriations Committee

Jana Wells Mendez (Democrat)- Appropriations Committee

Tom Norton (Republican)- President of the Senate

Ray Powers (Republican)- Assistant Majority Leader

James Rizzuto (Democrat)- Appropriations Committee and Joint Budget Committee

Paul Weismann (Democrat)- Member Colorado Senate

Colorado State Representatives

Vickie Agler (Republican)- Majority Whip

Jeanne Faatz (Republican)- Assistant Majority Leader

Tim Foster (Republican)- Majority Leader

Tony Grampsas (Republican)- Chair, Joint Budget Committee

Vi June (Democrat)- Minority Whip

Joan Johnson (Democrat)- Appropriations Committee

Peggy Kerns (Democrat)- Assistant Minority Leader