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*Homeward Bound?: Micro-Level Legislative
Responsiveness to Ballot Initiatives*

abstract

Recent macro-level studies examining the indirect effects of direct legislation on public policy in the American states are decidedly mixed. This study tests whether the macro-level logic of legislative behavior in response to ballot initiatives holds true at the micro-level for individual legislators. I examined the determinants of legislative votes on “counter-majoritarian” legislation—bills that directly challenge the outcomes of earlier statewide ballot initiatives. In 1999, the Colorado state legislature tried to overturn the outcomes of three previous ballot contests. I find that in two of the three cases, a legislator’s vote on these bills was related to the vote in his or her district on the respective ballot initiative. This helps explain why many legislators will vote contrary to the outcome of a statewide initiative vote.

One of the central arguments made during the Populist and Progressive eras—when nineteen of the twenty-four states currently allowing the citizen initiative adopted the procedure—was that direct legislation would make state legislatures more responsive to and reflective of voter preferences (Barnett 1915; Beard 1912; Munro 1912; Wilcox 1912). Because of the initiative’s visibility and potential threat to the legislative process, many scholars continue to argue that the process places indirect pressure on legislators to take action representative of constituent wishes (Cronin 1989; Donovan and Bowler 1998b; Gerber 1999; Schmidt 1989). Even critics of the initiative concede that the process may foster legislative responsibility, as legislators are unlikely to tamper with successful initiatives (Magleby 1984; Rosenthal 1998).

However, recent empirical studies examining the indirect effects of the initiative on legislative outcomes in the American states are decidedly mixed. Several scholars have found that states with the initiative process have poli-

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cies closer to the views of citizens than states without the initiative process (Donovan and Bowler 1998a; Gerber 1996, 1998; Matsusaka 1995; Zax 1989). Using cross-state, macro-level data and modeling state legislatures as unitary actors, these scholars argue that legislatures in states with the initiative are more likely to pass laws that are consistent with public opinion, because initiative voting provides a reliable indicator of voter preferences. In contrast to these findings, research by Lascher, Hagen, and Rochlin (1996) and Camobreco (1998) suggests that states with the initiative have public policies that do not fall in line with public opinion any better than non-initiative states.

While these recent macro-level studies have investigated whether ballot measures have the effect of making state *legislatures* more or less responsive to the popular will, little is known about how *individual legislators* respond to initiative lawmaking. Scholars have not tested whether the macro-level logic of legislative behavior holds true at the micro-level for individual legislators. Are legislators bound by the vote on statewide initiatives when faced with similar legislation in the statehouse? Perhaps the apparent contradictions among the macro-level studies are due to a failure to assess the question at the level of the theoretical process.

This article seeks to explain the determinants of legislative votes on so-called “counter-majoritarian” legislation—bills that directly challenge the election outcomes of earlier statewide ballot measures. Our understanding of the re-election-oriented behavior of legislators leads to the simple micro-level hypothesis that legislators in initiative states will vote on counter-majoritarian bills in a manner that is consistent with the votes cast on ballot initiatives in their own districts. Utilizing state legislative district data, I analyze the legislative floor votes on three counter-majoritarian bills in Colorado in 1999: (1) a bill banning partial-birth abortions; (2) a bill gutting campaign finance limitations for candidates; and (3) a bill adding “sexual orientation” to the list of characteristics for which a person may not be discriminated against under the state law.¹ I find that a large number of legislators (if not actual majorities) vote against the statewide electorate as expressed by the popular vote in prior initiative elections, but that legislators do tend to vote in concert with the preferences of their own districts.

ballot initiatives and counter-majoritarian bills in colorado

Of the hundreds of bills introduced in the Colorado state legislature in 1999, three stand out because they directly challenged the election returns of recent statewide ballot initiatives. The bills, dealing with partial-birth abor-

tions, campaign finance limitations, and discrimination based on sexual orientation, were voted out of committee and considered by either the full House or Senate. With these bills, Colorado legislators were not responding to the indirect *threat* of ballot initiative. Rather, legislators were actively trying to pass legislation that ran counter to previous votes on comparable ballot initiatives.

The floor votes on these counter-majoritarian bills provide critical “test cases” for how individual legislators respond to ballot measures. Like several of the two dozen states allowing direct legislation, governance by initiative in Colorado has grown steadily over the past three decades (Elofson 2000). Historically, Colorado has had a high number of initiatives, trailing only California, Oregon, and North Dakota in overall use since the process was first adopted in 1910 (Tolbert, Lowenstein, and Donovan 1998). Furthermore, Colorado has also had some very controversial measures on the ballot that have received national attention, including measures dealing with tax and spending limitations, school choice, parental rights, abortion, and term limits (Smith 1998; Smith and Herrington 2000).

During the 1999 session, the counter-majoritarian bill that advanced farthest through the legislative process was HB1110, the campaign finance reform measure. Sponsored by freshman Republican Representative Rob Fairbank and maverick Democratic Senator Bill Thiebaut, the bill would have eliminated all political campaign contribution limits on persons, political committees, political parties, and candidate committees, and would have removed all voluntary campaign spending limits. Critics of the bill claimed that it would completely eviscerate the campaign finance restrictions introduced by Amendment 15, a statutory initiative passed by 65.8 percent of the voters in 1996. Downplaying the severity of his bill, Fairbank said the intent of HB1110 was to “modify” the provisions of this statutory initiative, as the bill “does not gut [Amendment] 15; it attempts to fix some of the problems” (Fairbank 1999). On March 26, the full House passed the bill on a bipartisan vote of 33 to 30. A month later, the full Senate passed a similar bill on a bipartisan vote of 19 to 16. However, the House and Senate were unable to compromise on the particulars of the bill and effectively killed it for the legislative session.

The second bill considered here was one sponsored by Democratic Representative Gloria Leyba and Democratic Senator Gloria Tanner that would have added “sexual orientation” as a characteristic for which a person may not be discriminated against. HB1245 would have protected gays and lesbians from discrimination in areas including, but not limited to, consumer loans, employer practices involving hiring, discharge, promotion or demo-

tion, and compensation, selling or renting housing, and availability of family planning services. Nearly seven years earlier, in November 1992, Colorado voters passed Amendment 2 with 53.4 percent of the vote. That controversial ballot initiative, struck down in 1996 by the United States Supreme Court, stipulated that local governments were prohibited from enacting laws providing gays and lesbians protected status, quota preferences, or a claim of discrimination. After being slightly amended and passed by the House Judiciary Committee and House Appropriations Committee, HB1245 was defeated 34 to 29 on the House floor's second reading.²

Finally, Republican Senator Doug Lamborn's bill to ban late-term abortions would have been brought before the people as a statutory referendum.³ Senate Bill 80 would have required a thirty-day mandatory minimum jail sentence for any person performing an abortion after a fetus becomes viable. Lamborn's bill was nearly identical to Amendment 11, a constitutional amendment placed on the ballot in 1998 that called for a ban on so-called "partial-birth" abortions. Unlike the other two initiatives, voters defeated Amendment 11 by a narrow margin of 48.6 percent to 51.4 percent. The full Senate defeated Lamborn's bill by a vote of 20 to 13.

why legislators may not be constrained by statewide ballot initiative results

Why would a legislator vote contrary to the will of the people, as expressed by a statewide vote on a ballot initiative? Given that legislators wish to represent their constituents' opinions and that state policy preferences are geographically heterogeneous (Davidson 1969; Erikson, Wright, and McIver 1993; Pitkin 1967; Stimson, MacKuen, and Erikson 1995; Wlezien 1995), it may be rational for a legislator to vote in favor of a counter-majoritarian bill if his or her district voted differently than the statewide electorate. An initiative may pass statewide but lose in a member's legislative district, or vice versa; hence, it is unlikely that a legislator will rely on statewide election returns to inform his or her vote on legislation. All else being equal, then, I expect the vote by a legislator on a counter-majoritarian bill will mirror the vote on a previous ballot measure by the voters living in his or her legislative district.

In modeling legislator support of a counter-majoritarian bill, it is important to control for alternative explanations. First, legislators from safe districts may be more likely to vote for counter-majoritarian measures than legislators from competitive districts. Legislators realize that going against the statewide electorate on these often very visible issues hurts their re-election campaigns, but those with little threat to re-election will be less con-

cerned with this. Second, term-limited legislators may be more inclined to vote for counter-majoritarian bills because they are no longer directly accountable to the public and are not concerned about their re-election prospects. The classic argument advanced by Mayhew (1974), that legislators are responsive to public opinion because they want to be re-elected, is undermined by term limitations.⁴ As lame ducks, term-limited legislators are perhaps less accountable to their constituents when voting on controversial bills (Malbin and Benjamin 1992). Third, partisanship may affect legislative voting patterns on moralistic and governance legislation (Erikson, Wright, and McIver 1993; Haider-Markel and Meier 1996; Tolbert 1998). Hot-button issues such as outlawing abortions and campaign finance reform have clear ideological cleavages. Consistent with their party's platform, Republican legislators are expected to support limits on abortion and gay rights. With respect to campaign finance, Democrats are expected to oppose the gutting of Amendment 15, because several Colorado Democrats, including House Minority Leader Ken Gordon, had campaigned for the 1996 initiative. Fourth, there is reason to believe that women legislators—irrespective of their party affiliations—may vote differently than their male counterparts on some issues. Specifically, women are expected to favor sexual orientation protections and be against late-term abortion measures (Berkman and O'Connor 1993; Thomas 1991; Thomas and Welch 1991).

estimation of empirical models

To estimate the impact of these factors on the probability of a legislator voting for each of the three counter-majoritarian bills, I estimated three logistic regression models (Table 1). The dichotomous dependent variable is coded zero if the member voted “no” on the counter-majoritarian bill, and one if he or she voted “yes.” For each bill, I estimate the impact of the percentage of vote for the ballot initiative in the member's own House or Senate district, the party and sex of each legislator, whether or not the member is term-limited from running for re-election, and the margin of victory in the member's last election. The results suggest that with two of the counter-majoritarian votes—sexual orientation and late-term abortion—legislators responded to the preferences that their districts expressed in votes on the related ballot measures.⁵

Model 1A estimates legislative support for the counter-majoritarian bill on sexual orientation. As expected, Democrats were more likely and Republicans less likely to vote for Lebya's bill to protect gays and lesbians. Term-limited members, who could not run for re-election in 2000, were also statistically more likely to vote in favor of the controversial bill. Most notably,

Table 1: Effect of Ballot Measure Success in a Legislator's District on the Probability of Voting For a Counter-majoritarian Bill

Independent Variables			
	<i>Model 1A</i>	<i>Model 1B</i>	<i>Model 1C</i>
	<i>Sexual orientation</i>	<i>Late-term abortion</i>	<i>Campaign finance</i>
Constant	10.69** (4.56)	-32.67 (56.38)	1.31 (3.69)
% vote on ballot measure in legislator's district	-14.14* (7.90)	37.09* (19.37)	-5.00 (5.53)
Member's % margin of victory	1.35 (1.35)	-2.29 (2.68)	.69 (.84)
Term limited	1.80* (1.04)	-1.18 (1.75)	.28 (.66)
Political party	-4.72** (1.31)	13.22 (55.07)	2.95** (.56)
Member's sex	-1.22 (1.03)	3.62* (2.19)	n.a.
Log likelihood	32.41	12.35	89.25
Overall model X^2	53.47**	27.98**	40.89**
Correctly predicted	87%	87%	81%
Number of cases	62	31	94

*p < .05, one-tailed test, ** p < .01, one-tailed test

—Maximum likelihood estimates of logistic regression models

Note: The dependent variable for each model is dichotomous: 1 if the legislator voted “yes” on the counter-majoritarian bill; 0 if the legislator voted “no.” Coefficients are unstandardized and the asymptotic standard errors of the MLEs are in parentheses beneath them.

Note: Variable Descriptions

Legislator's vote for counter-majoritarian bill: dummy variable scored 1 if the legislator voted yes on the bill and 0 if he or she voted no.

%vote on ballot measure in member's district: percent of vote for a ballot measure in the legislator's district. Because the Colorado secretary of state compiles records of the vote on ballot measures only at the county level, I constructed a measure of the percentage vote for a ballot measure in a legislator's district as follows. If a legislator's district lay completely within a county, I took the county vote on the ballot measure as the approximate vote in his or her district. If a legislator's district included more than one county, I took an average of these counties' votes on the ballot measure as the approximate vote in his or her district.

Member's % margin of victory: percentage difference between the victorious candidate and his or her closest opponent in the member's last election.

Term limited: dummy variable scored 1 if the legislator was prohibited from running for re-election in his or her next election and 0 if he or she could run for re-election.

Political party: dummy variable scored 1 if the legislator was a Republican and 0 if he or she was a Democrat.

Member's sex: dummy variable scored 1 if the legislator was a man and 0 if the member was a woman.

even after controlling for political party, sex, term limitation, and margin of victory, the coefficient for the popular vote in favor of the 1992 ballot measure in a member's district is significant and in the predicted direction. As expected, the lower the vote in 1992 for Amendment 2 in the member's district, the more likely the member was to support Leyba's bill.⁶

In Model 1B, on Lamborn's anti-abortion bill, the multivariate logit analysis also confirms the central hypothesis that members will vote in accordance with the district-level vote on the related ballot measure. Because the late-term abortion measure, Amendment 11, was *defeated* by the voters in 1998, the sign of the coefficient for the percentage of vote for the measure in the member's district is expected to be in the *opposite* direction than for the other two counter-majoritarian bills. As expected, senators representing districts with strong support for the anti-abortion ballot measure were more likely to vote for the bill. Also as expected, men were more likely to vote for the conservative anti-abortion measure than women, but term limits, margin of victory, and political party were not significant predictors of a member's vote on the bill.

Finally, Model 1C in Table 1 estimates the impact of the popular vote in a member's district for the 1996 campaign finance reform ballot measure on a legislator's vote for the bill eliminating most of those reforms. Unlike the previous two bills, the popular vote on the ballot measure in the member's district is not a significant predictor of how the member voted. In addition, the coefficients for the member's margin of victory and whether he or she was term-limited are not statistically significant. Political party is the only significant independent variable in the estimated model. As expected, Republicans were more likely than Democrats to support the bill gutting campaign finance reform, as the 1996 ballot measure was largely perceived to be a "Democratic" initiative.

discussion

It should not come as a surprise to most political observers that individual legislators tend to respond to their own constituents and not to the statewide electorate. Legislators represent very diverse constituencies that may or may not be in sync with statewide public opinion. In Colorado, a sizable number of legislators from both parties voted in favor of three bills in defiance of a statewide majority of voters. As expected, legislators voted in concert with their own district-level constituencies when they supported or opposed the bills dealing with sexual orientation and late-term abortion. But, in the case of campaign finance reform, Republican legislators did not take into account

the will of their own constituencies when they repudiated the statewide will of the people. This unexpected finding may be consistent with the explanation given by Lascher, Hagen, and Rochlin (1996, 772) for why some ballot measure outcomes do not reflect statewide voter preference perfectly. While citizens who vote on ballot initiatives are not completely representative of the entire state population, legislators do not just represent the citizens in their district who vote, or more narrowly, those who vote on ballot measures (Schrag 1998). This may also help to explain why some recent anti-minority ballot measures have been approved by statewide electorates and not by state legislatures (Tolbert and Hero 1996; Gamble 1997), although the evidence on this question is far from conclusive (see Donovan and Bowler 1998c, 1999).

The multivariate analyses of counter-majoritarian legislative votes help rule out an alternative hypothesis for why legislators supported or opposed these controversial bills. Despite the contention that state legislative races are becoming more competitive, which might make legislators more attentive to their own constituencies (Gerber 1998), the level of legislative competition in the previous election does not help to predict the votes of members on counter-majoritarian bills. Legislators from competitive districts were no more likely to vote for the counter-majoritarian bills than those members from relatively safe districts. Similarly, term-limited members (except in the case of sexual orientation) were no more likely to support counter-majoritarian bills than members who were eligible for re-election.

Finally, it is important to recognize the fact that although legislators are elected to represent their constituencies, there are no stipulations on how broadly or narrowly they may define whom they represent (Fenno 1978; Pitkin 1967). There are no rules mandating that a legislator must act either as a "delegate" or a "trustee." With the anti-abortion and sexual orientation bills—two controversial measures that were steeped in rhetoric suggesting that legislators should "do the right thing"—legislators voted in patterns reflecting their own district-level constituencies on the related ballot measures. Should we expect, then, that legislators will tend to vote as delegates on all counter-majoritarian bills? There is evidence that legislators listen to their constituents on some issues more than others, especially those dealing with moral questions such as abortion and gay rights (Haider-Markel 1999). On the other hand, there are some issues on which legislators' interests may diverge from the will of their own constituents, such as in matters of electoral self-preservation (Rosenthal 1998, 77). Perhaps this explains why most Republicans and even some Democrats voted to dismantle the 1996 campaign finance restrictions, thereby rebuking the statewide mandate and ignoring their constituents' wishes.

conclusion

The phenomenon of legislative repudiation of statewide ballot measures is by no means limited to Colorado. In Montana, for example, the state Senate in 1999 passed two bills aimed at overturning a 1998 initiative prohibiting new or expanded cyanide leach gold mines. At the time of the Senate vote, state Senator Lorents Grosfield stated, “Just because the people said that is what they wanted, that does not make it right.” Concurring, Senator Thomas Keating added, “The people were misinformed through emotional ads” (Kesselheim 1999). In California, more than two decades after the voters approved Proposition 13, there is talk in the legislature about restoring to local governments the taxing authority that was restricted by the historic property tax limitation initiative. According to former California Assembly Speaker Antonio Villaraigosa, “For twenty years, California has been coping with the unintended consequences of changes in its fiscal policy that destroyed home rule in government. . . And I believe it is long past time to do something about it” (Rohrlich 1999). Recently, the legislatures in Massachusetts, Oregon, and Washington have altered voter-approved statutory initiatives.

Complementing the macro-level studies that look comparatively at relative legislative responsiveness in initiative and non-initiative states, this study examines how *individual legislators* respond to direct legislation votes. While this single state analysis cannot be used to test hypotheses of legislative responsiveness in initiative versus non-initiative states, it does provide evidence that individual legislators in initiative states do not automatically respond to the will of the statewide electorate. Rather, it shows that legislators will vote against the statewide electorate if it is consistent with their own districts’ wishes, especially with regard to moral issues. In this sense, legislators often do vote in accordance with public opinion, but at the district, not statewide, level. Legislators are predisposed to listen to the collective voice of their *own* constituents. Future studies examining legislative policy responsiveness in initiative states would be wise to disaggregate indicators of statewide public opinion and explore more closely voter decisions at the district level.

endnotes

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1. Two other counter-majoritarian bills died in committee in 1999. House Bill 1384 would have overturned a 1998 voter-approved measure regulating commercial swine operations. The House Agriculture Committee voted to postpone it indefinitely. Senate Bill 162 would have enacted an education tuition reimbursement pilot program to reimburse nonpublic tuition paid by parents. The bill, which was a response to a defeated initiated measure in 1998, failed in the Senate Education Committee.

2. In Colorado, informal second reading voice votes (which precede a final floor vote) are usually not recorded officially, although in this case, the House sponsor of the bill, Gloria Leyba, kept a tally and provided it to the author (Leyba 1999).

3. Senator Lamborn opted to make his bill a referendum so that it would be referred to the conservative Senate State Affairs Committee on which he serves, as opposed to the more moderate Health, Environment, Welfare, and Institutions Committee (Lamborn 1999).

4. During the 1999 session, eleven of the thirty-five senators (five Democrats; six Republicans) and ten of the sixty-five representatives (seven Republicans; three Democrats) were blocked from running for re-election.

5. Due to missing data, the number of cases does not total 65 House floor votes (sexual orientation), 35 Senate floor votes (late-term abortion), or 100 House and Senate combined floor votes (campaign finance). In the case of sexual orientation, one House member was excused from voting on the floor, and two others were appointed to their seats (and therefore did not have a margin of victory in their previous election). In the case of late-term abortion, two senators did not vote on the floor, and two others were appointed to their seats. In the case of campaign finance, two legislators did not cast votes on the floor, and four legislators were appointed to their seats.

6. A separate model was run that included the dummy variable "Ordinance," which was coded one if a member represented a city (Aspen, Boulder, or Denver) that had a local ordinance that protected gays and lesbians from discrimination prior to the passage of Amendment 2 and was coded zero otherwise. The model was significant, and it predicted 92% of the votes on the bill, but only political party remained statistically significant. The district-level vote on Amendment 2 and whether or not a city had a local anti-discrimination ordinance for gays and lesbians were highly inversely correlated (-.80), as expected. Due to this multicollinearity, the Ordinance variable was dropped in estimating Model 1A. But the theoretical interpretation of these results remains the same.

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