

## DIRECT DEMOCRACY: THE POLITICS AND POLICY OF BALLOT MEASURES

This course focuses on the theory and practice of the initiative and referendum process in the American states, with particular emphasis on those states that use the initiative process most frequently, such as Oregon, California, Washington, Colorado, and Arizona. I am particularly interested in having us explore the extent to which direct democracy promotes democratic norms and good public policy, and whether it complements or undermines representative democracy. My aim in this course is not only to enhance your understanding of the initiative process but also to use the initiative process as a window into a wide array of public policy debates at the state and local level.

Some of the questions we will address are: What are the origins and historical development of direct democracy in the American states? How do systems of direct democracy differ across the states? How are ballot measures placed on the ballot, by whom, and for what reasons? Does public policy look different in initiative states than in states without direct democracy? Does the initiative process help states enact policies that are more responsive to public preferences or does it advantage special interests? How do legislatures respond to enacted initiatives—that is, do they subvert or “steal the initiative”? What is the role of money and the media in direct democracy contests? What information is available to voters on ballot questions and can they use that information to make good decisions? Do ballot measures make for better, more engaged citizens? Does the initiative and referendum have an adverse effect on minority rights? What is (and should be) the role of the courts in the initiative process? Should the courts treat initiatives differently from laws enacted by the legislature? And should courts be allowed to change signature requirements during the pandemic?

In addition to tackling these and other questions, we will focus on the ways in which the initiative process might be improved. Should a state like Oregon, for instance, make it more difficult to qualify initiatives or should it be made easier to do so? Are initiative “reforms” really just initiative suppression by another name? Can the initiative process be made more deliberative? What lessons can we learn from other states or even other countries? Also, we will ask whether direct legislation in some form would be desirable at the national level.

In addition to our common reading about the initiative and referendum process, you will be expected to do independent research projects—individual and group-based—and presentations at multiple points in the semester. In the first half of the course you will be expected to do two projects and presentations. The first, in week two, will be a group project in which each group (of roughly 4 students) will be assigned one state and will be expected to research and report to the class on that state’s initiative and referendum process, including its origins, how it has shaped policy in the state, and how the process has been reformed over the years, particularly during the last couple decades. The second project, in weeks 6 and 7, will be done in groups of two and will require each group to select one initiative or referendum that has qualified for the ballot in November 2020 (I will provide you a list of the measures you may choose from). One of you in the group will be responsible for presenting the case for the measure and the other in the group will present the case against. You will be expected to track

(and update us on) the campaign for your initiative or referendum throughout the semester and after the election results are in, you will provide an analysis of the measure, explaining why the measure passed and failed. A third and final project, in the second half of the class, will involve writing a policy memo—addressed to a state policy maker—related to initiative reform. This last project will be an individual rather than group project.

These projects will be worth about 70 percent of your grade: 10 percent for the week 2 project, 30 percent for the 2020 measure project, and 30 percent for the final policy memo project. Class participation (including any assignments connected to class discussion) will be worth the other 30 percent of your grade. *Given the uncertainty introduced by COVID-19, it is possible that these assignments and the precise grade percentages will change.* Also because of COVID-19 and the accompanying uncertainty, I am only providing the planned readings and class sessions for the first half of the semester (through week 7). The readings and class sessions for the second half of the class will be announced later in the semester—although you can expect that in the second half we will be taking up topics such as “Does Direct Democracy Hurt Minorities?” “Does Direct Democracy Promote Equality?” “Does Democracy Make for Better Citizens?” and “Are Voters up to the Task?”

There are no books for purchase so all readings will be available on WISE. In those cases where a reading is not on WISE I have provided the URL. Readings available on WISE should be printed out and brought to class, at least so long as we are able to continue in-person instruction. In class (whether we are in-person or remote) you should always have the reading for that day in front of you. As a general rule, so long as we are in person, no laptops or other electronic devices may be used during class (obviously that does not apply to students taking the course remotely). This will also help ensure the university has sufficient bandwidth to support remote learning across the campus. No texting or other use of your phone should take place during class.

Please inform me of any disabilities that will affect your participation in this course and any accommodations authorized by the Office of Disabilities Services. I expect you to be familiar with Willamette’s Plagiarism and Cheating Policy

Office hours will be by appointment (my email is [rellis@willamette.edu](mailto:rellis@willamette.edu)) and will generally take place via Zoom, though I am also happy to meet in-person so long as we are able to meet outside.

## FIRST HALF OF SYLLABUS

### 1.1 (Aug. 25) Introduction

### 1.2 (Aug. 27) Is the Initiative Process Unrepublican?

Hans Linde, "When Initiative Lawmaking Is Not Republican Government: The Campaign Against Homosexuality," *Oregon Law Review* (1993), 19-45

Akhil Reed Amar, "The Central Meaning of Republican Government: Popular Sovereignty, Majority Rule, and the Denominator Problem," *University of Colorado Law Review* (1994), 749-50, 756-766, 786

## 2.1 (Sept. 1) Varieties of Direct Democracy

Group presentations. Reading will depend on state you are assigned. Each group will report on the process's origins, how it has shaped policy in the state, and how the process has been reformed over the years, particularly the last couple decades. States we will likely choose from are Oregon, Washington, California, Colorado, Florida, Nevada, Massachusetts, Arizona, and Alaska.

## 2.2 (Sept. 3) Varieties of Direct Democracy II

Group presentations continued.

## 3.1 (Sept. 8) Joining Deliberation and Direct Democracy: The Citizen Initiative Review (CIR) and Beyond

Guest Speaker: Linn Davis, Program Manager at Healthy Democracy

Katherine Knobloch, John Gastil, and Tyrone Reitman, "Connecting Micro-Deliberation to Electoral Decision Making: Institutionalizing the Oregon Citizens' Initiative Review," 2019 Paper, in Press (published in French in *Participations* in 2020)

## 3.2 (Sep. 10) APSA VIRUTAL CONVENTION

### 4.1 (Sept. 15) Paying Signature Gatherers

*Meyer v Grant* (1988), in Daniel Lowenstein and Richard Hasen, ed., *Election Law: Cases and Materials* (Carolina Academic Press, 2001, 2<sup>nd</sup> edition), 810-817

Oral argument: <https://www.oyez.org/cases/1987/87-920>

Richard J. Ellis, "Signature Gathering in the Initiative Process," *Montana Law Review* (Winter 2003), 35-97

Laws Governing Petition Circulators, <https://www.ncsl.org/research/elections-and-campaigns/laws-governing-petition-circulators.aspx>

### 4.2 (Sept. 17) Signature Gathering in the Time of COVID-19

Ballotpedia, "Changes to ballot measure campaigns, procedures, and policies in response to the coronavirus (COVID-19) pandemic,"

[https://ballotpedia.org/Changes\\_to\\_ballot\\_measure\\_campaigns,\\_procedures,\\_and\\_policies\\_in\\_response\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic,\\_2020](https://ballotpedia.org/Changes_to_ballot_measure_campaigns,_procedures,_and_policies_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020)

Nigel Jaquiss, "Redistricting Measure Aimed at November Ballot Falls Short. Backers File Federal Lawsuit Asking for Lower Bar," *Willamette Week*, July 3, 2020

*Clarno v. People not Politicians*, District Opinion and Order, July 15, 2020

Adam Liptak, "Supreme Court Won't Ease Oregon's Referendum Rules During the Pandemic," *New York Times*, August 11, 2020

Robert Barnes, "Supreme Court Again Splits on Coronavirus-related Election Issue," *Washington Post*, July 30, 2020

Faith Miller, "Court made signature gathering harder. Some ballot initiative groups are undeterred," *Colorado Newsline*, July 10, 2020

5.1 (Sept. 22) The Voters' Pamphlet

City Club of Portland Bulletin, Report on Oregon Voters' Pamphlet  
Oregon Voters' Pamphlet 2018,

<https://sos.oregon.gov/elections/Documents/pamphlet/2018/general-book13.pdf>

California Voters Pamphlet 2018, <https://vig.cdn.sos.ca.gov/2018/general/pdf/complete-vig.pdf>

5.2 (Sept. 24) Regulating the Oregon Initiative Process

Guest Speakers: Summer Davis, Initiative, Referendum, Referral Specialist, and Steve Trout,  
Director of Elections, Oregon Secretary of State's Office

State Initiative and Referendum Manual,

<https://sos.oregon.gov/elections/Documents/statelR.pdf>

6.1 (Sept 29) Debating the 2020 Ballot Initiatives I

6.2 (Oct. 1) Debating the 2020 Ballot Initiatives II

7.1 (Oct. 6) Debating the 2020 Ballot Initiatives III

7.2 (Oct. 8) Debating the 2020 Ballot Initiatives IV