

PUTTING THE INITIATIVE BACK TOGETHER

The American ballot initiative¹ is a powerful tool. Initiatives can innovate: Four states can credit ballot initiatives for legislative redistricting commissions that removed redistricting from the hands of lawmakers.² Initiatives can break legislative logjams: Since the 2010 passage of the Affordable Care Act,³ citizens in seven states have used initiatives to expand Medicaid eligibility after representatives refused to do so.⁴ Initiatives can clarify public opinion and force action on polarizing issues such as abortion protection.⁵ In theory and practice, voters use citizen-initiated measures to demand swift, substantial, and popular government action.

But the ballot initiative is also broken. In some states, minimal ballot access requirements leave voters with pages of complex, confusing, and contradictory propositions.⁶ Special interest groups fund expensive campaigns to place obscure priorities on the ballot or oppose measures they dislike.⁷ And when initiatives do pass, they can face legal and

¹ In this Note, the term “ballot initiative” refers broadly to various forms of direct democracy — that is, processes by which people vote directly on particular policy proposals — where voters themselves generate the proposals under consideration. Ballot initiatives contrast with popular referenda, where voters evaluate proposals generated by a legislative body. Because these forms are closely related, this Note often discusses referenda or referenda-like processes; its focus, however, is on challenges and opportunities most pertinent to citizen initiatives. For more, see generally NAT’L CONF. OF STATE LEGISLATURES, INITIATIVE AND REFERENDUM PROCESSES (2024), <https://www.ncsl.org/elections-and-campaigns/initiative-and-referendum-processes> [https://perma.cc/W7BU-R6PP].

² NAT’L CONF. OF STATE LEGISLATURES, CREATION OF REDISTRICTING COMMISSIONS (2021), <https://www.ncsl.org/redistricting-and-census/creation-of-redistricting-commissions> [https://perma.cc/9R2D-ZC92]. A fifth state, Colorado, created its redistricting commission via ballot initiative; the state legislature instituted a new version of that commission in a 2018 amendment. *See id.*

³ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code).

⁴ *See* Akeiisa Coleman & Sara Federman, *Where Do the States Stand on Medicaid Expansion?*, THE COMMONWEALTH FUND: TO THE POINT (Jan. 15, 2025), <https://www.commonwealthfund.org/blog/2022/where-do-states-stand-medicaid-expansion> [https://perma.cc/E59F-7Q7S]; Vox Staff, *9 Noteworthy Ballot Measures from the 2022 Elections*, VOX (Nov. 9, 2022, 11:40 AM), <https://www.vox.com/policy-and-politics/2022/11/7/23425409/marijuana-ballot-abortion-medicaid-midterm-elections-2022> [https://perma.cc/YN4J-VGHX].

⁵ *Cf.* Mabel Felix et al., *Addressing Abortion Access Through State Ballot Initiatives*, KFF (Feb. 9, 2024), <https://www.kff.org/womens-health-policy/issue-brief/addressing-abortion-access-through-state-ballot-initiatives> [https://perma.cc/CEH9-DS4D].

⁶ *See, e.g.,* Kelsey Piper, *California’s Ballot Initiative System Isn’t Working. How Do We Fix It?*, VOX (Nov. 6, 2020, 10:50 AM), <https://www.vox.com/future-perfect/2020/11/6/21549654/california-ballot-initiative-proposition-direct-democracy> [https://perma.cc/7XDX-TYSJ].

⁷ JOHN G. MATSUSAKA, FOR THE MANY OR THE FEW: THE INITIATIVE, PUBLIC POLICY, AND AMERICAN DEMOCRACY 11–12 (2004).

political challenges that delay or outright erase their intended impact.⁸ Democratic? To its critics, the ballot initiative is anything but.⁹

Advocates have responded with a range of reforms that would cabin, streamline, and supplement initiative processes.¹⁰ Others would go much further. Recently, opponents of direct democracy have seized upon critiques to push for ostensible reforms that would effectively neuter initiatives altogether by reconcentrating power within legislatures.¹¹ Many of these efforts have followed ballot initiatives enacting liberal priorities that conservative legislatures strongly opposed — and tried to preempt through their own use of direct democratic processes.¹² While ballot initiative processes suffer from real flaws, opponents of direct democracy would throw out the baby with the bathwater. Such an outcome would be disastrous for popular sovereignty and for active, responsive government. To preserve the ballot initiative and its democratic promise, its defenders need an answer.

They may find it in citizens' assemblies. Citizens' assemblies are a form of democracy by lottery, in which randomly selected and demographically representative groups of citizens come together to deliberate and make recommendations or decisions on particular policy issues.¹³ Governance by random selection, or "sortition," is as old as democracy itself.¹⁴ Unlike representative assemblies, such as Congress or state legislatures, citizens' assemblies use "random or near random [selection] process[es]" to arrive at bodies that "descriptively" match the particular demographics of the body politic¹⁵ in ways that representative systems often cannot.¹⁶

⁸ Alan Greenblatt, *Don't Like the Ballot Measure Voters Approved? Just Ignore It, Some Lawmakers Say*, GOVERNING (Jan. 30, 2017), <https://www.governing.com/archive/gov-ballot-measure-voters-lawmakers.html> [<https://perma.cc/MSX8-HVPW>].

⁹ See MATSUSAKA, *supra* note 7, at 2, 11–12.

¹⁰ See, e.g., Piper, *supra* note 6; Note, *Making Ballot Initiatives Work: Some Assembly Required*, 123 HARV. L. REV. 959, 960–61 (2010).

¹¹ See Miriam Seifter, *State Institutions and Democratic Opportunity*, 72 DUKE L.J. 275, 313–14, 316 (2022); Sara Carter et al., *Politicians Take Aim at Ballot Initiatives*, BRENNAN CTR. FOR JUST. (Jan. 16, 2024), <https://www.brennancenter.org/our-work/research-reports/politicians-take-aim-ballot-initiatives> [<https://perma.cc/24LT-TRWE>].

¹² See Julie Carr Smyth & Samantha Hendrickson, *Voters in Ohio Reject GOP-Backed Proposal that Would Have Made It Tougher to Protect Abortion Rights*, AP NEWS (Aug. 9, 2023, 9:26 AM), <https://apnews.com/article/ohio-abortion-rights-constitutional-amendment-special-election-227cdeo39f8d51723612878525164f1a> [<https://perma.cc/E6YQ-N8QV>] (describing the failure of an Ohio ballot measure that would have raised the threshold of passage from a simple majority to sixty percent for subsequent initiatives proposing amendments to the state constitution).

¹³ See CITIZENS' ASSEMBLIES, <https://citizensassemblies.org> [<https://perma.cc/YNX8-NKXU>].

¹⁴ See Terrill G. Bouricius, Essay, *Democracy Through Multi-Body Sortition: Athenian Lessons for the Modern Day*, 9 J. PUB. DELIBERATION, no. 1, 2013, at 1, 1–2.

¹⁵ Stuart White, *Citizens' Assemblies and Republican Democracy*, in RADICAL REPUBLICANISM: RECOVERING THE TRADITION'S POPULAR HERITAGE 81, 81 (Bruno Leipold et al. eds., 2020).

¹⁶ See Nicholas Cocomo, *The Case for Abolishing Elections*, BOS. REV. (Nov. 7, 2022), <https://www.bostonreview.net/articles/the-case-for-abolishing-elections> [<https://perma.cc/6XWR-3NP8>].

This Note offers the citizens' assembly as one way to restore the promise of direct democracy by answering criticism levied toward modern initiatives. Citizen "initiative" assemblies can ensure representative control over direct democracy, use deliberation to generate clearer, more productive initiatives, and, above all, drive more meaningful public participation in the initiative process. The argument proceeds in three parts. Part I details the democratic deficit¹⁷ built into current American initiative processes. Part II introduces citizens' assemblies as a solution. While sortition and the related concept of deliberative democracy are relatively rare in American government today,¹⁸ more expansive cases in Europe¹⁹ and Canada,²⁰ and experimental interventions in California,²¹ Oregon,²² and Massachusetts²³ offer contemporary models. Drawing on these models, Part III sketches a vision for initiative assemblies — citizens' assemblies tasked with crafting ballot initiatives — that can remake and strengthen American direct democracy.

Accordingly, this Note makes two distinct contributions. First, it makes the case for a more expansive role for the citizens' assembly. Most prominent examples of assemblies abroad have been formed by legislatures to advise on or formulate proposals for discrete issues.²⁴ The more limited implementations in the United States have been purely advisory in nature.²⁵ This Note argues for a broader mandate in which standing citizen assemblies have authority, at least in part, to craft the subject matter of initiative proposals and set the process by which measures make the ballot.

¹⁷ Though the term "democratic deficit" has its roots in structural analysis of the European Union, see Sanford Levinson, *How the United States Constitution Contributes to the Democratic Deficit in America*, 55 DRAKE L. REV. 859, 860 (2007), this Note follows other scholars by applying the concept to other contexts where "ostensibly democratic organizations or institutions . . . fall short of fulfilling . . . the principles of democracy," *id.* In this Note, the deficit results from initiative processes that fail to represent the views of the polities that apparently generate and vote on them.

¹⁸ See Hollie Russon Gilman & Amy Eisenstein, Opinion, *It's Like Jury Duty, But for Getting Things Done*, BOS. GLOBE (Aug. 18, 2023, 3:00 AM), <https://www.bostonglobe.com/2023/08/18/opinion/citizens-assemblies> [<https://perma.cc/3KDH-VRZD>].

¹⁹ See James Traub, *Can We Deliberate, Please?*, DEMOCRACY J. (Winter 2024), <https://democracyjournal.org/magazine/71/can-we-deliberate-please> [<https://perma.cc/NG6A-X9GC>]; David M. Farrell et al., "Systematizing" Constitutional Deliberation: The 2016–18 Citizens' Assembly in Ireland, 34 IRISH POL. STUD. 113, 114 (2019).

²⁰ PATRICK FOURNIER ET AL., WHEN CITIZENS DECIDE: LESSONS FROM CITIZEN ASSEMBLIES ON ELECTORAL REFORM 5 (2011); see also Amy Lang, *But Is It for Real? The British Columbia Citizens' Assembly as a Model of State-Sponsored Citizen Empowerment*, 35 POL. & SOC'Y 35, 38–39 (2007) (describing the origins of the British Columbian assembly).

²¹ See Gilman & Eisenstein, *supra* note 18 (describing a first-of-its-kind municipal assembly in Petaluma, California).

²² OR. REV. STAT. ANN. §§ 250.137–149 (West 2023) (establishing the Citizens' Initiative Review Commission).

²³ See CAMBRIDGE CHARTER REV. COMM., CHARTER REVIEW COMMITTEE: FINAL REPORT 9–10 (Jan. 31, 2024) (proposing that the City Council of Cambridge, Massachusetts, adopt a regularized system of "Resident Assemblies" as part of the municipal charter).

²⁴ See *infra* section II.B.1, pp. 1923–24.

²⁵ See *infra* section II.B.2, pp. 1924–25121.

Second, this Note argues for that expansive role by casting new light on the citizens' assembly's democratic qualities. Much has been written about the "deliberation"²⁶ in deliberative democracy and its benefits for initiative processes.²⁷ But equally important, and closely intertwined, is the other half: democracy. Citizens' assemblies are powerful both because of *how* they make decisions and *whom* they empower to make them. This Note considers each. The initiative assembly can channel the democratic intent of ballot initiatives through a more genuinely democratic process than the status quo — one that grants direct political power to a representative panel of the public while still giving voice to the whole polity. And it can use intentional deliberation to make that process more productive and fair. Employed correctly and boldly, initiative assemblies can help direct democracy forge a more deliberative and representative path forward.

The primary purpose of this Note, then, is to equip supporters of direct democracy with a tool to better channel the values of representation, participation, and deliberation that ballot initiatives ostensibly foster. But this Note has something to offer skeptics of direct democracy as well. To the extent opposition emerges from the defective processes discussed here, citizens' assemblies offer a responsive solution.²⁸ Furthermore, citizens' assemblies can imbue state and local government with a healthier politics that fosters participation, deliberation, and trust.²⁹ That is hopefully something even skeptics can get behind.

I. THE BALLOT INITIATIVE: THEORY AND PRACTICE

A product of the Progressive Era, the ballot initiative stands for the proposition that citizens have a right to make legislative decisions

²⁶ See, e.g., JAMES S. FISHKIN, *DEMOCRACY AND DELIBERATION: NEW DIRECTIONS FOR DEMOCRATIC REFORM* 1–13 (1991).

²⁷ See Note, *supra* note 10, at 970–71. See generally John Gastil et al., *When Good Voters Make Bad Policies: Assessing and Improving the Deliberative Quality of Initiative Elections*, 78 U. COLO. L. REV. 1435 (2007). This Note builds on the important work of the *Harvard Law Review* student Note cited here, which likewise calls for assemblies as a means to improve the deliberative and democratic qualities of ballot initiative processes. Though that Note engages with the democratic ideals of assemblies, its critique of the initiative focuses more on the difficulty of enacting sound policy, rather than on the democratic deficit described at length here. With the benefit of another fifteen years, this Note also engages with newer American examples of assemblies, including Oregon's Citizens' Initiative Review and the more recent Cambridge proposal. See *infra* sections II.B–C, pp. 1922–28.

²⁸ In addition to theoretical and normative justifications, there is evidence that states with initiative processes are more likely to enact legislation in line with median voter preferences. See, e.g., Elisabeth R. Gerber, *Legislative Response to the Threat of Popular Initiatives*, 40 AM. J. POL. SCI. 99, 101, 112 (1996); see also NICHOLAS O. STEPHANOPOULOS, *ALIGNING ELECTION LAW* 278–79 (2024). For extended arguments in favor of direct democracy, including responses to many of the critiques raised in this Note, see generally JOHN G. MATSUSAKA, *LET THE PEOPLE RULE: HOW DIRECT DEMOCRACY CAN MEET THE POPULIST CHALLENGE* (2020).

²⁹ See *infra* notes 80–83, 149–51 and accompanying text.

outside the control of elected representatives.³⁰ Nearly half of states, composing two-thirds of the U.S. population, have some kind of process³¹ through which citizens can generate legislative or constitutional³² plebiscites.³³ In the 2022 elections, voters assessed twenty-nine initiatives across twelve states and Washington, D.C., passing nineteen; the November 2024 general elections featured nearly twice as many initiatives put to voters.³⁴ These sums do not include countless ballot measures in municipal elections nationwide.

Majorities of the public support the initiative as a tool voters can use to check unresponsive state governments.³⁵ But many critics argue that, in their contemporary form, initiatives fall short of that aspiration.³⁶ They have a point. The next section lays out three primary critiques of ballot initiatives: the vulnerability of initiative campaigns to outsized special interest influence; the problem of “agenda control” arising from ballot access requirements; and the tendency of initiatives to produce confusing or defective policies. It then describes how opponents of initiatives exploit those critiques not to improve direct democracy, but to attempt to eliminate it altogether.

A. *Ballot Initiatives: The Core Critiques*

Critiques of ballot initiatives are largely operational or consequentialist. Operationally, critics argue initiatives fail to construct the democracy that they promise. Signature requirements, substantial campaign spending, and a low-information electorate create processes that the wealthy can easily “subvert . . . to their own purposes,”³⁷ making direct democracy as vulnerable to the influence of moneyed interests as its electoral counterpart. In practice, voters only decide on specific proposals before them, not on what kinds of issues make the ballot in the

³⁰ MATSUSAKA, *supra* note 7, at 1–2; *see also* JEFFREY S. SUTTON, WHO DECIDES? STATES AS LABORATORIES OF CONSTITUTIONAL EXPERIMENTATION 345 (2022).

³¹ *See* MATSUSAKA, *supra* note 7, at 1.

³² *See* SUTTON, *supra* note 30, at 344–46.

³³ Some states only allow statutory amendments via ballot initiative; others allow constitutional amendments via ballot initiative; and some states — including California and Colorado — allow both. Morgan Thomas, *How Ballot Measures Get on the Ballot*, COUNCIL OF STATE GOV'TS (Nov. 9, 2023), <https://www.csg.org/2023/11/09/how-ballot-measures-get-on-the-ballot> [<https://perma.cc/63XZ-GB24>]. This Note mostly elides those differences, instead focusing on critiques around participation and access that apply to both. For recent work detailing and defending the constitutional-amendment-by-initiative, *see generally* Jessica Bulman-Pozen & Miriam Seifter, *The Right to Amend State Constitutions*, 133 YALE L.J.F. 191 (2023).

³⁴ *Statewide Ballot Measures Database*, NAT'L CONF. OF STATE LEGISLATURES (Mar. 14, 2025), <https://www.ncsl.org/elections-and-campaigns/statewide-ballot-measures-database> [<https://perma.cc/KAS4-66DE>]. These totals are based on the National Conference of State Legislatures' database of ballot measures and include only initiatives from the 2022 and 2024 general elections that definitively passed or failed. *Id.*

³⁵ *See* MATSUSAKA, *supra* note 7, at 2.

³⁶ *See infra* section I.A.1, pp. 1916–18; *see, e.g.*, MATSUSAKA, *supra* note 7, at 11–12.

³⁷ *See* DAVID S. BRODER, DEMOCRACY DERAILED: INITIATIVE CAMPAIGNS AND THE POWER OF MONEY 243 (2000).

first place. Operational flaws create a democratic deficit, which this section analyzes in two parts: the problems of interest capture and agenda control. The consequentialist critique is simpler: Initiatives generate bad policy due to confusing, politicized wording, and they conflict with the legislature's own preferences and processes.

I. Operational Critiques: Interest Capture and Agenda Control. —

The first critique is perhaps the most common: The procedures that govern initiatives make the process ripe for subversion by wealthy interests — an ironic outcome, given direct democracy's populist origins.³⁸ One contributing factor is how most state-level initiatives make the ballot. Every state that allows initiatives uses minimum-signature requirements to gatekeep ballot access.³⁹ Signature requirements ostensibly ensure a floor of public support for any initiative put before the electorate. However, the practical effect of signature requirements is that ballot access becomes not so much a function of public support as a measure of fundraising and campaign capacity,⁴⁰ regardless of where the threshold lands. Too high a threshold, and campaign dollars become especially important, making the ballot inaccessible to initiatives without resourced campaigns.⁴¹ Too low, and far more initiatives make the ballot, muddying the waters for voters and giving wealthy interest groups another opportunity to use their dollars to shape public opinion on potentially obscure proposals.⁴² No matter where states set signature minimums, interests with more resources and sophistication can play an outsized role in the process.

California provides an instructive and well-documented⁴³ example of this challenge. With an eight percent signature threshold,⁴⁴ California voters can expect to see a dozen or more initiatives on their ballot each cycle, some backed or opposed by over \$100 million in campaign spending.⁴⁵ In 2020, Uber, Lyft, and other companies spent over \$200 million in a successful campaign to enact Proposition 22, exempting millions of gig workers from full-employee status and its accompanying benefits,

³⁸ See MATSUSAKA, *supra* note 7, at 2.

³⁹ These minimums generally range from three to fifteen percent of votes cast in a state's most recent gubernatorial election. See SUTTON, *supra* note 30, at 345.

⁴⁰ See David Dayen, *The California Ballot Is an Epic Joke*, NEW REPUBLIC (Sept. 23, 2016), <https://newrepublic.com/article/137090/california-ballot-epic-joke> [<https://perma.cc/PR2S-QHR7>].

⁴¹ See Jennifer S. Senior, Comment, *Expanding the Court's First Amendment Accessibility Framework for Analyzing Ballot Initiative Circulator Regulations*, 2009 U. CHI. LEGAL F. 529, 529, 533.

⁴² See Dayen, *supra* note 40; John Myers, *Powerful, Wealthy Interest Groups Keep Tight Grip on California Proposition System*, L.A. TIMES (Nov. 5, 2020, 6:43 AM), <https://www.latimes.com/california/story/2020-11-05/analysis-ballot-initiatives-system-california-spending> [<https://perma.cc/ZA64-RCMJ>].

⁴³ See, e.g., Myers, *supra* note 42; Piper, *supra* note 6; SUTTON, *supra* note 30, at 359–60.

⁴⁴ SUTTON, *supra* note 30, at 356.

⁴⁵ See Myers, *supra* note 42.

such as a minimum wage.⁴⁶ The “yes” side outspent the “no” campaign by tenfold,⁴⁷ and there is strong evidence that the spending distorted voters’ understanding of the policy before them.⁴⁸ According to one poll, forty percent of Californians who voted “yes” on Proposition 22 — depriving Uber and Lyft drivers of minimum wage protection — characterized their vote as “[e]nsuring Uber / Lyft and DoorDash employees can earn livable wages.”⁴⁹ In another 2020 initiative, which sought to expand rent control, “no” voters were nearly split on whether their vote “[s]upport[ed] [r]enters” or landlords, and twenty percent did not know one way or another.⁵⁰ While reasonable minds can argue about the relative wisdom of each policy, there is little doubt money substantially shaped the presentation of the issues to the electorate.

The resources involved in signature gathering point to a related problem: Ballot access requirements fail to provide voters with meaningful control over the initiative agenda. The problem of agenda control within the initiative process is a more theoretical yet under-theorized⁵¹ critique. As a starting premise, initiatives assume elected representatives sometimes “misbehave”: That is, they fail to represent and adequately pursue their constituents’ interests.⁵² Initiatives circumvent that failure.⁵³ But adequate representation requires more than just reflecting constituent views on discrete questions. Legislatures can also align or misalign themselves with the public through the issues they choose to prioritize and address.⁵⁴ By granting voters an opportunity to put forth their own policy proposals, initiatives purport to allow citizens to pursue their priorities when their representatives do not.

⁴⁶ See Faiz Siddiqui & Nitasha Tiku, *Uber and Lyft Used Sneaky Tactics to Avoid Making Drivers Employees in California, Voters Say. Now, They’re Going National.*, WASH. POST (Nov. 17, 2020), <https://www.washingtonpost.com/technology/2020/11/17/uber-lyft-prop22-misinformation> [<https://perma.cc/T6VM-8QFK>].

⁴⁷ See *id.*

⁴⁸ See John Howard, *An Early-Voting Survey of the Ballot Propositions*, CAPITOL WKLY. (Oct. 28, 2020), <https://capitolweekly.net/an-early-voting-survey-of-the-ballot-propositions> [<https://perma.cc/HM56-8YUB>]; Note, *Drowning Out Democracy*, 137 HARV. L. REV. 2386, 2386–87 (2024).

⁴⁹ Howard, *supra* note 48.

⁵⁰ *Id.*

⁵¹ In his book assessing and largely defending direct democracy, Professor John Matsusaka briefly discusses agenda control in a chapter theorizing frameworks for how initiative processes can function in a representative democracy. See MATSUSAKA, *supra* note 7, at 132–33, 132 n.2. Discussions of agenda control in political science otherwise tend to focus on legislatures and elected officials, rather than direct democracy. See, e.g., *infra* note 54.

⁵² See MATSUSAKA, *supra* note 7, at 132.

⁵³ *Id.*

⁵⁴ Substantial literature excavates the mechanics, motivations, and implications of legislative agenda control. See, e.g., John G. Matsusaka, *Popular Control of Public Policy: A Quantitative Approach*, 5 Q.J. POL. SCI. 133, 135 & n.2 (2010) (discussing the influence of special interests on the legislature and how agenda control can “frustrate [legislative] accountability,” *id.* at 135 n.2); Nicholas O. Stephanopoulos, *Elections and Alignment*, 114 COLUM. L. REV. 283, 364 & n.365 (2014) (describing the relationship between legislative agenda control and the alignment of policy outcomes with voter preferences).

As this section suggests, however, initiatives are rarely pure instruments of grassroots politics. To the extent initiative processes return agenda control to voters, they do not do so in a democratic way. Instead, organized interests use structural advantages to put their priorities on the ballot,⁵⁵ while the interests of voters with less capital may never make it there. The role of money and organization in determining ballot access threatens to turn initiatives into, at best, a form of referenda in which voters weigh in on the questions that special interests have already determined worthy of a vote.⁵⁶

2. *Consequentialist Critiques: “A Recipe for Confusion.”*⁵⁷ — The second core critique addresses the consequences of policymaking by initiative. States generally include safeguards to ensure initiative language meets basic requirements for “clarity and accuracy,”⁵⁸ and opponents of initiatives frequently litigate to edit or remove certain measures.⁵⁹ But these safeguards fail fully to prevent initiative writers from designing policy proposals with dense, technical language⁶⁰ and politicized or misleading framing.⁶¹ This design problem can contribute to the kind of voter confusion that surrounded Proposition 22. After enactment, initiatives can hamstring legislatures or agencies tasked with executing initiatives that conflict with existing policy or result in other unintended consequences.⁶²

Contradictions and vagueness aside, there is a broader critique that initiatives generate bad policy, period. Even when initiatives clearly communicate the public’s wishes, they can do so in ways that impede future legislative efforts.⁶³ Clunky, inefficient policymaking is not unique to direct democracy, but it adds to the initiative’s democratic deficit. Opaque or misleading language on ballots makes it harder for voters to align their policy preferences with their actual votes.⁶⁴ Likewise, when legislatures and executive agencies delay, dilute, or distort⁶⁵ an initiative designed and supported with a particular goal in mind,

⁵⁵ See Myers, *supra* note 42.

⁵⁶ For more analysis of initiatives and referenda as agenda-setting mechanisms, see David F. Damore et al., *Agenda Setting by Direct Democracy: Comparing the Initiative and the Referendum*, 12 ST. POL. & POL’Y Q. 367, 368–69, 379–80 (2012).

⁵⁷ Dayen, *supra* note 40.

⁵⁸ See SUTTON, *supra* note 30, at 345.

⁵⁹ See Alice Clapman et al., *How Courts Oversee Ballot Initiatives*, STATE CT. REP. (June 3, 2024), <https://statecourtreport.org/our-work/analysis-opinion/how-courts-oversee-ballot-initiatives> [<https://perma.cc/758K-3K97>].

⁶⁰ Rachel Hvasta, *Ballot Measure Inaccessibility: Obscuring Voter Representation*, HUM. RTS., Jan. 2020, at 22, 22.

⁶¹ See, e.g., Piper, *supra* note 6.

⁶² See, e.g., SUTTON, *supra* note 30, at 357–58; cf. Dayen, *supra* note 40.

⁶³ See, e.g., SUTTON, *supra* note 30, at 357–58 (describing an initiative capping state tax revenues).

⁶⁴ See Hvasta, *supra* note 60, at 23.

⁶⁵ See Clapman et al., *supra* note 59.

voters fail to receive the policy outcomes they voted for. Such results are neither direct nor democratic.

B. *The Risks of Non-Reform*

These structural flaws lead to an initiative ecosystem that frequently fails to live up to its promises. From a normative and democratic perspective, this is less than ideal: Initiatives both fall short of their potential as tools of popular power and are susceptible to the influence of moneyed interests. But even with their flaws, initiatives present voters with unmatched opportunities, under some circumstances, to shape state policies. That makes the need for reform even greater: Without it, valid critiques of initiatives may enable antidemocratic actors to do away with initiatives altogether.

In recent years, efforts to subvert or eliminate ballot initiatives have reached a new tenor. Several states have considered proposals that would make it much harder for citizens to propose and enact ballot initiatives.⁶⁶ Most notably, these include three state efforts to require that initiatives receive sixty percent approval, rather than simple majorities, to succeed.⁶⁷ These proposals all failed, but they are of a piece with broader efforts by largely conservative state legislatures to wrest control back from direct democratic processes.⁶⁸ These efforts would have the practical effect of making initiatives nearly impossible to use,⁶⁹ particularly for grassroots interests already at a disadvantage.

Even more concerning, these aggressive “reforms” have cropped up in clear response to voters using initiatives in ways that seem to make good on their purpose: enacting popular priorities when elected representatives will not. In November 2023, Ohio voters approved a ballot

⁶⁶ Derek Clinger, *Explainer: Shaping Democracy: 2023's Statewide Ballot Measures and What Lies Ahead in 2024*, UNIV. OF WIS. L. SCH. STATE DEMOCRACY RSCH. INITIATIVE (Jan. 17, 2024), <https://statedemocracy.law.wisc.edu/explainers/2024/explainer-shaping-democracy-2023s-statewide-ballot-measures-and-what-lies-ahead-in-2024> [https://perma.cc/SQF2-LAXK].

⁶⁷ Ohio voters rejected this proposal, a “legislatively referred [constitutional] amendment,” in 2023; South Dakota and Arkansas voters rejected similar proposals in 2022. *See id.*

⁶⁸ *See* Seifter, *supra* note 11, at 311–18; Georgia Lyon, *Two Ways Politicians Are Making It Harder to Pass Ballot Initiatives*, CAMPAIGN LEGAL CTR. (Mar. 23, 2021), <https://campaignlegal.org/update/two-ways-politicians-are-making-it-harder-pass-ballot-initiatives> [https://perma.cc/SQF2-LAXK]; Reid J. Epstein & Nick Corasaniti, *Republicans Move to Limit a Grass-Roots Tradition of Direct Democracy*, N.Y. TIMES (May 22, 2021), <https://www.nytimes.com/2021/05/22/us/politics/republican-ballot-initiatives-democrats.html> [https://perma.cc/D3LC-B285].

⁶⁹ *See, e.g.*, Seifter, *supra* note 11, at 314 (describing a recent Idaho law that requires “signatures from 6 percent of voters in each of the state’s 35 senate districts,” *id.*, as making it, according to critics, “virtually impossible for grassroots organizations to qualify initiatives . . . for the ballot,” *id.* (quoting *Reclaim Idaho Files Lawsuit to Strike Down Anti-Initiatives Law*, KTVB (May 7, 2021, 4:52 PM), <https://www.ktvb.com/article/news/local/capitol-watch/reclaim-idaho-files-lawsuit-to-strike-down-anti-initiatives-law/277-e9351938-6047-43fo-bca7-db3b667df241> [https://perma.cc/G5ZS-HZRR])).

initiative that would amend the state constitution to protect abortion.⁷⁰ Anticipating that vote, the majority-Republican legislature put before voters a separate measure that would have required constitutional initiatives to reach sixty percent approval for passage⁷¹ — a threshold that would have doomed the abortion amendment, which ultimately garnered fifty-seven percent approval.⁷² Voters rejected the supermajority requirement, which campaigns on each side clearly tied to the November abortion vote.⁷³ After the amendment passed, opponents began discussing ways to use legislative power to challenge the pro-choice amendment.⁷⁴ Echoing critiques described above, some legislators attributed the amendment to “[f]oreign billionaires” rather than Ohioans’ popular support.⁷⁵ Others claimed the amendment used “clever language” to sneak in radical consequences that voters did not want.⁷⁶

This fight brings the stakes into focus: If democracy’s supporters do not reform and improve the initiative, then democracy’s opponents will continue to exploit its flaws to undermine direct democracy altogether. To build a better system, supporters should look to citizens’ assemblies.

II. DELIBERATIVE DEMOCRACY AND THE CITIZENS’ ASSEMBLY

In their various forms, citizens’ assemblies share a singular aim of empowering citizen voters. As forms of “deliberative”⁷⁷ democracy, they allow citizens to draw on their own views and experiences to deliberate on and generate solutions for the issues of the day. In doing so, assemblies seek to remedy a persistent problem in representative democracy: Most citizens play a very minor role in policymaking.⁷⁸ Direct democracy shares a similar origin — but, as described above, it often falls short of its goals, empowering only certain voters in uneven and limited

⁷⁰ Julie Carr Smyth, *Ohio Voters Enshrine Abortion Access in Constitution in Latest Statewide Win for Reproductive Rights*, AP NEWS (Nov. 7, 2023, 11:31 PM), <https://apnews.com/article/ohio-abortion-amendment-election-2023-fe3e06747b616507d8ca21ea26485270> [https://perma.cc/JY4H-QGLD].

⁷¹ Smyth & Hendrickson, *supra* note 12.

⁷² Alice Herman, *Ohio Voted to Protect Abortion Rights. Republicans Are Scheming to Undo It*, THE GUARDIAN (Nov. 17, 2023, 7:00 AM), <https://www.theguardian.com/us-news/2023/nov/17/ohio-abortion-rights-republicans-overtake> [https://perma.cc/R9X5-6XPK].

⁷³ See Smyth & Hendrickson, *supra* note 12.

⁷⁴ See Herman, *supra* note 72.

⁷⁵ Press Release, Ohio House of Representatives, Republican Newsroom, *Deceptive Ohio Issue 1 Misled the Public But Doesn’t Repeal Our Laws* (Nov. 9, 2023) (quoting Ohio State Representative Jennifer Gross), <https://ohiohouse.gov/news/republican/deceptive-ohio-issue-1-misled-the-public-but-doesnt-repeal-our-laws-117412> [https://perma.cc/E56N-E5U8].

⁷⁶ See Jo Ingles, *There’s Already Confusion over the Abortion Ballot Language in Ohio. It’s Going to Get Worse*, STATEHOUSE NEWS BUREAU (Sept. 1, 2023, 8:20 AM) (quoting Ohio State Senator Teresa Gavarone), <https://www.stateneews.org/government-politics/2023-09-01/confusion-abortion-ballot-language-ohio> [https://perma.cc/P5Z4-ERWA]. Ohio Republicans joined a tradition of legislators seeking to subvert initiatives they dislike. See Seifter, *supra* note 11, at 313–16.

⁷⁷ See FISHKIN, *supra* note 26, at 1–13.

⁷⁸ See FOURNIER ET AL., *supra* note 20, at 5.

ways. This Part outlines both the “deliberative” and “democratic” advantages of citizens’ assemblies, suggesting how they may provide answers to the initiative’s struggles. It then surveys recent examples of citizens’ assemblies abroad and in the United States, highlighting lessons that reformers can draw from each.

A. *Deliberative and Democratic*

For at least thirty years, political scientists have hailed citizens’ assemblies and similar structures as laudable examples of “deliberative democracy.”⁷⁹ Assemblies create opportunities for diverse swaths of the public to come together and deliberate. Beyond building consensus political proposals, extensive ancillary benefits emerge from the assembly’s deliberative process. Deliberation allows individuals who may know little about a particular issue to learn and formulate new views on important policy matters through meaningful engagement with their fellow citizens.⁸⁰ Deliberation can “blunt[] polarization” by helping citizens cultivate greater generosity and respect toward one another than they otherwise would.⁸¹ And deliberative structures, particularly those empowered by government, can increase trust in political systems⁸² and encourage broader political participation.⁸³ Altogether, deliberative assemblies can breed healthier and more robust political participation.

If citizens’ assemblies are deliberative because of *what* citizens do when they are “in the room,” then they are democratic because of *who* is in the room to begin with. As instruments of democracy, they can deliver well-aligned political solutions because assemblies — “mini-publics”⁸⁴ — model a representative, engaged body politic. At the very least, they can model the public much better than voting alone can. Democracy-by-lottery can better reflect the makeup of the public at large by avoiding the demographic skews endemic to both candidate selection⁸⁵ and differential voter turnout.⁸⁶ This is not to say citizens’

⁷⁹ See, e.g., Graham Smith & Maija Setälä, *Mini-Publics and Deliberative Democracy*, in THE OXFORD HANDBOOK OF DELIBERATIVE DEMOCRACY 300, 302 (Andre Bächtiger et al. eds., 2018); FISHKIN, *supra* note 26, at 1–13 (integrating “deliberative opinion poll[s],” *id.* at 1, into democratic processes).

⁸⁰ Dennis F. Thompson, *Who Should Govern Who Governs? The Role of Citizens in Reforming the Electoral System*, in DESIGNING DELIBERATIVE DEMOCRACY: THE BRITISH COLUMBIA CITIZENS’ ASSEMBLY 20, 34–35 (Mark E. Warren & Hilary Pearse eds., 2008).

⁸¹ Traub, *supra* note 19.

⁸² See, e.g., Smith & Setälä, *supra* note 79, at 309.

⁸³ See Stephen Elstub, *Deliberative and Participatory Democracy*, in THE OXFORD HANDBOOK OF DELIBERATIVE DEMOCRACY, *supra* note 79, at 187, 189–90.

⁸⁴ Smith & Setälä, *supra* note 79, at 300.

⁸⁵ See, e.g., Coccoma, *supra* note 16 (describing the skewed demographic characteristics of Congress).

⁸⁶ See, e.g., Hannah Hartig et al., *Republican Gains in 2022 Midterms Driven Mostly by Turnout Advantage*, PEW RSCH. CTR. (July 12, 2023), <https://www.pewresearch.org/politics/2023/07/12/republican-gains-in-2022-midterms-driven-mostly-by-turnout-advantage> [<https://perma.cc/LW6S-4QF6>].

assemblies are ipso facto perfect models of the political bodies they intend to represent. They are, however, intentionally designed to overcome uneven patterns of representation that can occur in representative assemblies.⁸⁷

When deliberation works, it leads to compromise solutions that represent not just the public at large, but a public that has meaningfully and intentionally wrestled with all dimensions of an issue. And participants' deliberative product is representative in a direct, unvarnished way: free, at least in theory, of skews based on incomplete information, imbalanced campaign spending, and uneven participation. It is for that reason that some advocates have gone so far as to propose that assemblies replace direct and electoral democracy altogether.⁸⁸ This Note does not go that far. A sortition-only system would undermine the project of mass democracy that elections facilitate. And assemblies, subject to their own logistical realities and structural challenges, are no panacea. But deliberation can meaningfully respond to the core critiques laid out above, making assemblies an excellent candidate to complement initiatives and help direct democracy make good on its promises.

B. *Experiments in Assemblies*

Though sortition is quite old, the modern assembly is new. Nonprofit and academic groups have recently experimented with deliberative democracy,⁸⁹ even as few governments have empowered assemblies in policymaking. In these examples, assembly power has been meaningful but nonbinding — allowing assemblies to, for example, send recommendations to referenda or legislative consideration.⁹⁰ This section details those cases. It first considers assemblies convened abroad to deliberate on and respond to discrete issues. It then examines the Citizens' Initiative Reviews established in Oregon and piloted in other states. The subsequent section highlights lessons from each case and considers a first-of-its-kind proposal in Cambridge, Massachusetts, that would represent an unprecedented expansion of assemblies in the United States.

⁸⁷ There is a robust literature on the structural decisions and conditions that make citizens' assemblies optimally representative, and on the broader questions of democratic theory implicated by mini-publics. For an overview, see generally Mark Brown, *Deliberation and Representation*, in THE OXFORD HANDBOOK OF DELIBERATIVE DEMOCRACY, *supra* note 79, at 171, 171. For discussion of those decisions in one specific assembly, see Jonathan Rose, *The Ontario Citizens' Assembly on Electoral Reform*, CAN. PARLIAMENTARY REV., Autumn 2007, 9, 9–10.

⁸⁸ See e.g., Cocomma, *supra* note 16; HÉLÈNE LANDEMORE, OPEN DEMOCRACY, at xvii–xviii (2020).

⁸⁹ See, e.g., FISHKIN, *supra* note 26, at 95–97; Traub, *supra* note 19; Susana F. Molina, *Citizens' Assemblies Could Be the Art of the Possible*, URB. ACTIVIST (Sept. 26, 2023), <https://theurbanactivist.com/idea/citizens-assemblies-in-los-angeles-could-be-the-art-of-the-possible> [https://perma.cc/HTK6-8U37].

⁹⁰ See FOURNIER ET AL., *supra* note 20, at 5, 7–9.

I. Assemblies Abroad: Canada and Ireland. — In 2004, British Columbia initiated one of the first contemporary citizens' assemblies.⁹¹ One hundred fifty-eight people, representing electoral districts and demographic communities across the province, had a singular task: to formulate a recommendation on whether to maintain the province's existing system of single-member, plurality-elected districts, or to propose an alternative system instead.⁹² If the latter, the assembly would design a new system and submit it to a referendum.⁹³ Two years later, Ontario initiated a similar assembly process with a similar task.⁹⁴ The British Columbia assembly proposed a "single transferable vote" system;⁹⁵ Ontario's citizens chose "mixed member proportional" representation.⁹⁶ Both required sixty percent support for adoption.⁹⁷

Neither proposal passed, but both experiences were successful. Participants in British Columbia described their experience quite positively; one participant said that deliberating with people from across the province helped demonstrate the need for "more nuanced representation[.]"⁹⁸ The deliberation process encouraged participants to stay engaged: Almost ninety percent of assembly members presented on and campaigned for the proposal in the months leading up to the province-wide vote.⁹⁹ Many voters felt the proposal's origins — in citizen, rather than legislative, deliberation — gave it greater legitimacy.¹⁰⁰ Despite its failure, the British Columbia proposal was popular: fifty-eight percent voted in its favor.¹⁰¹ The Ontario proposal failed, but the assembly was a success: Participants were "able and eager to learn," and members' ninety-eight percent attendance rate spoke to their commitment to the process.¹⁰²

The Canadian experience inspired imitations elsewhere,¹⁰³ with Ireland becoming Europe's most enthusiastic and regular adopter. Beginning with a multi-year constitutional convention made up of randomly selected voters, Ireland has since used several nationwide assemblies to

⁹¹ *Id.* at 7.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *See id.* at 9.

⁹⁵ *Id.* at 8.

⁹⁶ *Id.* at 9.

⁹⁷ *Id.* at 8–9.

⁹⁸ *See* Lani Guinier, *Beyond Electocracy: Rethinking the Political Representative as Powerful Stranger*, 71 MOD. L. REV. 1, 28 (2008) (quoting an interview with one member of the assembly).

⁹⁹ *See id.*

¹⁰⁰ *See id.*; Lang, *supra* note 20, at 50 (describing survey data showing that voters who knew about the assembly origins of the proposal were "more likely to vote in favor" of it); Thompson, *supra* note 80, at 20, 29.

¹⁰¹ FOURNIER ET AL., *supra* note 20, at 8.

¹⁰² *See, e.g.,* Rose, *supra* note 87, at 16.

¹⁰³ One example includes an electoral reform assembly in the Netherlands in 2006. *See* FOURNIER ET AL., *supra* note 20, at 8.

address a number of issues.¹⁰⁴ The initial convention, for example, generated a successful 2015 referendum legalizing same-sex marriage.¹⁰⁵ A subsequent assembly led to the overwhelming passage of a constitutional amendment repealing the country's abortion ban.¹⁰⁶ As in Canada, assembly members in Ireland described their experience with satisfaction.¹⁰⁷ Some citizens have expressed concerns over government follow-through: Though the Irish government acted quickly on the proposed abortion referendum, it has been much slower to take action on other citizens' proposals.¹⁰⁸ Still, Irish citizens have responded positively overall to assemblies as a tool of policymaking, and their representatives have listened, establishing subsequent assemblies focused on other issues.¹⁰⁹

2. *American Assemblies: The Citizens' Initiative Review.* — As of 2024, no American states have charged citizens' assemblies with making policy, either directly or subject to popular or legislative review. But they have begun their own modest experiments. Oregon, for example, enthusiastically uses ballot initiatives.¹¹⁰ With that usage in mind, the legislature enacted House Bill 2895, establishing "citizen panels to review and create statements on . . . initiated state measures."¹¹¹ These panels became Citizens' Initiative Reviews (CIRs), in which small, random, representative panels of Oregon voters meet before elections to review initiatives on the ballot and write brief statements evaluating initiatives' merits.¹¹² Statements include "[k]ey [f]indings," messages from assembly members for and against each initiative, a statement of "[s]hared [a]greement," and a general description of the CIR process.¹¹³ Statements are published in the official voters' pamphlet distributed statewide.¹¹⁴

¹⁰⁴ See Farrell et al., *supra* note 19, at 114; *Citizens' Assembly*, CITIZENS INFO. (Feb. 15, 2024), <https://www.citizensinformation.ie/en/government-in-ireland/irish-constitution-1/citizens-assembly> [<https://perma.cc/YGW8-SPES>].

¹⁰⁵ Farrell et al., *supra* note 19, at 114.

¹⁰⁶ See *id.*; Henry McDonald et al., *Ireland Votes by Landslide to Legalise Abortion*, THE GUARDIAN (May 26, 2018, 1:16 PM), <https://www.theguardian.com/world/2018/may/26/ireland-votes-by-landslide-to-legalise-abortion> [<https://perma.cc/96DJ-E254>].

¹⁰⁷ See Farrell et al., *supra* note 19, at 118–19.

¹⁰⁸ *Id.* at 119.

¹⁰⁹ See Seána Glennon, *What Canada Can Learn from Ireland on Citizen Engagement to Bolster Democracy*, THE CONVERSATION (Jan. 29, 2024, 12:34 PM), <https://theconversation.com/what-canada-can-learn-from-ireland-on-citizen-engagement-to-bolster-democracy-221699> [<https://perma.cc/DZB3-99U9>].

¹¹⁰ See SUTTON, *supra* note 30, at 352–54. Its initiative system, established in 1902, is the oldest in the country, and has put nearly four hundred proposals before voters since its inception. *Id.*

¹¹¹ John Gastil et al., *Vicarious Deliberation: How the Oregon Citizens' Initiative Review Influenced Deliberation in Mass Elections*, 8 INT'L J. COMMC'N 62, 64 & n.3 (2014) (quoting H.B. 2895, 75th Leg., 2009 Reg. Sess. (Or. 2009)).

¹¹² *Id.* at 62, 64–65.

¹¹³ *Id.* at 64–65.

¹¹⁴ *Id.* at 64.

CIRs represent a new model: one in which deliberation helps correct the skewed messaging and informational gaps that accompany initiatives. This structure is distinct from the Canadian and Irish models, where legislatures preselected topics for assembly deliberation and tasked assemblies with formulating more specific proposals on which the broader electorate would then vote.¹¹⁵ Those processes did not generate initiatives; legislatures retained control over the high-level agenda of democracy and delegated to assemblies the authority to design and direct the ultimate proposals.¹¹⁶ Oregon, meanwhile, maintains an initiative process that grants the public full control over the direct democratic agenda, for better or worse. There, CIRs perform a different intervention: They inject another layer of “democracy” after initiatives have been added to the ballot but before voting, using assembly deliberation to inform voters on the measures before them.¹¹⁷

There is evidence that Oregon voters find CIR assessments valuable — to the extent they read them.¹¹⁸ In one survey, a large majority of voters who read CIR statements before the 2010 election said the statements were at least “somewhat important” to their ultimate vote.¹¹⁹ But fewer than half of surveyed voters actually knew about the statements and the assemblies that wrote them.¹²⁰ That limited uptake speaks to the CIR’s modest intervention. As of 2025, Oregon remains the only state to regularly use CIRs as part of the initiative process; Arizona, California, Colorado, and Massachusetts have each employed CIR pilots.¹²¹

C. Lessons and Opportunities

Models from Oregon and abroad demonstrate the advantages and limits of different kinds of deliberative interventions. CIRs address directly, and with some success, the problems of confusion and understanding that arise from interest-driven initiative processes. A CIR in California, for example, may have served a valuable purpose in California’s Proposition 22 debate. Rather than filtering public debate through

¹¹⁵ See *supra* section II.B.1, pp. 1923–24.

¹¹⁶ See *id.*

¹¹⁷ See Gastil et al., *supra* note 111, at 64–65.

¹¹⁸ See *id.* at 66, 68; Simon Niemeyer & Julia Jennstal, *Scaling Up Deliberative Effects — Applying Lessons of Mini-Publics*, in THE OXFORD HANDBOOK OF DELIBERATIVE DEMOCRACY, *supra* note 79, at 329, 336.

¹¹⁹ Gastil et al., *supra* note 111, at 67–68.

¹²⁰ See *id.* In 2012, Oregon voters were more aware of the CIR than in 2010, but still only about half or fewer had read the CIR statements. See Katherine R. Knobloch et al., *Empowering Citizen Deliberation in Direct Democratic Elections: A Field Study of the 2012 Oregon Citizens’ Initiative Review*, FIELD ACTIONS SCI. REPS., 2014, at 1, 7–8.

¹²¹ *Healthy Democracy Projects*, HEALTHY DEMOCRACY, <https://healthydemocracy.org/home/projects> [<https://perma.cc/G2DL-4ZPA>].

an expensive and noisy campaign,¹²² a CIR could have allowed a representative, deliberative panel at least some chance to intervene. Even in expensive campaigns in the country's most populous state, a CIR with scale and communicative power could have provided the even-handed, disinterested explanations that the campaigns lacked.

Still, CIRs fail to meaningfully address other criticisms that plague initiatives. Their influence is nonbinding and advisory: A CIR offers an opinion, even if well-considered, that voters may ignore. To the extent they do influence other voters, it is only after specific proposals, designed and advanced by interested parties, have made the ballot. CIRs cannot help voters use initiative processes to reclaim genuine democratic control over the agenda. Voters remain stuck with whichever initiatives make the ballot; they may feel better prepared to vote "yes" or "no" on proposals before them, but CIRs give them no more say over what those proposals are. CIRs address the "confusion" and "bad policy" critiques of current initiative processes, but only graze the surface of interest capture, and do nothing to affect agenda control.

The Canadian and Irish examples succeeded in different ways and fell short in others. To begin, their assemblies were not really part of initiative processes at all. Legislatures retained control of the agenda, entrusting assemblies to answer particular questions. Within that delegation, however, Canadian and Irish assemblies had meaningful space to come up with proposals that were truly their own. The Canadian assemblies were not stuck with a "yes" or a "no" on a legislative proposal; they had free rein to recommend nearly any electoral system they wanted.¹²³ Irish assemblies had similar room to maneuver. Though some topics were more discrete — like whether to recommend an amendment legalizing abortion — others were much broader. The legislature asked a 2016 assembly, for example, "how the state can make Ireland a leader in tackling climate change."¹²⁴ That assembly generated thirteen recommendations.¹²⁵

But while assemblies abroad have reasserted some agenda control, their outputs have had varying levels of consequence. For example, several Irish proposals, including many on climate change, have landed with parliamentary committees with little or no obligation to act.¹²⁶ Ireland's experiments have earned it recognition "as a world leader in the linking of deliberative democracy . . . and direct democracy,"¹²⁷ but its system is still incomplete: It gives assemblies limited control of the agenda and allows only some proposals to reach the full public.

¹²² Myers, *supra* note 42 (noting that rideshare and delivery companies "set aside \$90 million" to support Proposition 22); *see also* Note, *supra* note 48, at 2386, 2397–99.

¹²³ See Lang, *supra* note 20, at 36; Rose, *supra* note 87, at 14–15.

¹²⁴ See Farrell et al., *supra* note 19, at 114.

¹²⁵ *Id.* at 115.

¹²⁶ *See id.* at 115, 119.

¹²⁷ *Id.* at 119.

In the United States, a more robust proposal recently emerged on a local scale. In January 2024, the Charter Review Committee of Cambridge, Massachusetts, submitted to the City Council a series of recommendations,¹²⁸ focused mainly on whether to keep the city's "Council/Manager" system or to elect a mayor instead.¹²⁹ But the Committee developed several additional proposals, among them a call for the Council to establish a "Resident Assembly": a panel of at least thirty Cambridge residents, selected at random, with a regular role in the city's policymaking process.¹³⁰

The Committee proposal suggests a number of powers for the "Resident Assembly."¹³¹ Like some Irish examples, the assembly would be able to answer questions posed by the City Council, followed by mandatory council hearings or responses.¹³² Like CIRs, the assembly could review, assess, and endorse resident-generated initiatives before they receive a vote.¹³³ Unlike other assemblies, however, the Cambridge Resident Assembly would also have independent power to advance initiative petitions that fail to meet local procedural requirements.¹³⁴ The assembly would also have freestanding authority to propose initiatives and draft proposed legislation.¹³⁵ Importantly, the proposal requires the city council to convene at least one assembly per term.¹³⁶

Though it is unclear when, or if, Cambridge will adopt the resident assembly model,¹³⁷ the proposal offers another model for merging deliberative and direct democracy. Its evaluative power would serve the same productive deliberation role as CIRs, and legislative delegations would enable it to represent the public on important issues. But the expanded and systematized authority stands out. The Cambridge proposal would create assemblies that give residents the power to set the terms and content of direct democracy. And assemblies would become a more meaningful part of the system: institutions with independent

¹²⁸ CAMBRIDGE CHARTER REV. COMM., *supra* note 23, at 1–2. The Charter Review Committee consisted of fifteen Cambridge residents, including Professor Nikolas Bowie of Harvard Law School. *Id.* at 2. Conversations with Professor Bowie about the Committee's work were especially helpful to this section.

¹²⁹ *Id.*

¹³⁰ *Id.* at 9–10.

¹³¹ The Cambridge proposal uses the term "[r]esident" because it would allow both citizen and noncitizen residents of Cambridge to participate. *See id.* at 48.

¹³² *Id.* at 47.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *See id.* The proposal defers further specifications on procedures and other delegations to the Cambridge City Council. *Id.* at 48.

¹³⁷ *See* Marc Levy, *Charter Changes, Led by Power to Affect Budget, Are Largely Shot Down in a City Council Session*, CAMBRIDGE DAY (Feb. 5, 2025), <https://www.cambridgeday.com/2025/02/05/charter-changes-led-by-power-to-affect-budget-are-largely-shot-down-in-a-city-council-session> [<https://perma.cc/SV9H-2823>].

authority to generate and moderate the political process, rather than ad hoc bodies responsive only to legislative assignments.

III. THE INITIATIVE ASSEMBLY

The above examples illustrate several ways states and cities can incorporate assemblies. The final Part of this Note draws on these lessons to sketch a new design for a citizens' initiative assembly that uses deliberative democracy to make the ballot initiative a more effective, inclusive, and representative conduit for popular sovereignty. Section III.A outlines that design, suggesting approaches to and expansions for initiative assemblies. Though this Note does not recommend any one specific approach, it broadly advocates for initiative assemblies that feature two novel, more expansive characteristics: first, some kind of binding authority to generate, approve, or reject ballot initiative proposals, and second, a systematic and institutionalized role in the political and electoral process. Section III.B considers the political challenges of assemblies, identifying obstacles that advocates must overcome and arguments that may persuade skeptical legislatures. It concludes by returning to the potential benefits initiative assemblies may hold for political culture: heightened trust, deliberation, and participation.

A. *Designing the Initiative Assembly*

An initiative assembly can improve current ballot initiative processes by addressing each of the three primary critiques described in Part I: vulnerability to special interest capture; failure to democratize the initiative agenda; and a tendency to generate confusing, opaque, or ineffective proposals. Two general elements can make headway on each of these critiques: expansions of assembly authority and scope.

1. *Expansion of Authority.* — Expanding assembly authority means ensuring its power is more than advisory. Cambridge provides a useful starting point. Their resident assembly would have two main forms of binding authority: the power to independently generate legislative proposals and the power to advance petitions originating with other residents.¹³⁸ Both address the “interest capture” and “agenda control” concerns involved in current processes. The proposal then provides one more form of agenda control, vesting the authority to decide whether to submit the proposal to the legislature or to voters at large.¹³⁹

An initiative assembly could adopt any or all of these Cambridge provisions, or take a more expansive approach that eliminates signatures altogether. States and municipalities could, for example, replace signatures with a kind of “notice and comment” submission period overseen by assemblies. Rather than seeking signature support, voters could

¹³⁸ CAMBRIDGE CHARTER REV. COMM., *supra* note 23, at 47.

¹³⁹ *Id.*

submit proposals directly to the panel. These proposals could range from technical and specific (for example, a fully realized carbon tax) to broad and directional (for example, a request for initiatives tackling climate change, as in Ireland¹⁴⁰). Assemblies could then sift through and study these ideas. Their mandate would be to emerge with a set of proposals ready for public consideration, generated through public input, deliberation, and the assembly's democratically representative authority.

Alternative models could give assemblies a more modest but still substantial refinement and selection role. States could design assemblies that approve and veto, but do not generate, proposed initiatives. They could give the assemblies authority to address and reconcile conflicts between proposed initiatives, or between initiatives and pending legislation. Each approach could address the democratic deficit: limiting the extent to which resources can shape ballot initiatives put before the entire public. Expanded authority could thus ensure that assemblies, as representative and deliberative organs of the electorate, become the conduit for the public's political priorities.

2. *Expansions of Scope.* — The second change is related: expanding assemblies' scope by broadening and institutionalizing their role. Making assemblies a regular part of the initiative process creates a systematic role for public input into direct democracy. Systematized initiative assemblies can wrest more authority from unresponsive legislatures and build toward the long-term use that can make initiative assemblies productive policymaking bodies. Granting assemblies a subject-matter-neutral role in the initiative generation process is essential to that aim. This power would distinguish the initiative assembly from the Canadian and Irish examples, which gave citizens only limited subject-specific mandates.¹⁴¹ There could still remain a role for assemblies empowered by legislatures to respond to particular, concrete questions, as the Cambridge proposal suggests.¹⁴² But an effective assembly should have the power to consider, generate, and advance initiatives of all kinds.

A regular, topic-neutral initiative assembly could take many forms. At a minimum, it would have to be recurring, incorporating new, randomly selected members for each election cycle. Beyond that, states could fill in the details: Helpful elements could include, for example, manageable caps on initiatives per ballot; clear rules for when and how often initiatives make the ballot or go before legislatures for consideration; and incorporation of public hearings or assembly disclosure requirements. Any of these structural choices could help initiative assemblies fulfill their core goal: to inject greater citizen control into the

¹⁴⁰ See *supra* note 124 and accompanying text.

¹⁴¹ Cf. Glennon, *supra* note 109 (discussing opportunities to extend Canadian assemblies into new areas of law).

¹⁴² CAMBRIDGE CHARTER REV. COMM., *supra* note 23, at 47–48.

democratic process, and to improve civic participation and policymaking as a result.

Systematization would help initiative assemblies run better over time, turning them into integral partners in the legislative process. The mere existence of citizens' assemblies can push legislatures in the right direction. There is evidence that legislatures in ballot-initiative states pass laws more closely aligned with voter preferences;¹⁴³ that relationship could grow stronger with assemblies that better align initiatives with voter priorities. And reliable, systematic initiative generation can build an iterative relationship between direct and representative democracy.¹⁴⁴ Even when initiative ideas are voted down or fail in assemblies, legislatures can take cues from those deliberative processes. The process also works in the reverse. Assemblies can take up popular policy ideas that stall in the legislature. Expanding assemblies' scope can thus stimulate a democracy-reinforcing dialogue between voters and their representatives.

B. *Realizing the Initiative Assembly*

Whatever form they take, assemblies will face political obstacles. Most pertinently, assemblies will require support from legislators — legislators who would be signing up to delegate even more authority to direct democracy. Even if voters can use ballot initiatives to enact assemblies, those assemblies could themselves face the same kinds of legislative pushback and noncompliance that this proposal means to address.¹⁴⁵ Success will entail at least some cooperation. So how can assemblies find it?

First, assembly advocates should stress that better initiative processes benefit everyone with an interest in responsive government — legislators included. Though initiatives work at least in part through the political pressure they put on legislatures,¹⁴⁶ assemblies provide an opportunity to reconceptualize the relationship between the public and their representatives as collaborative rather than competitive. A commitment to genuinely *public* policymaking can put representatives in a different role as “facilitators of a public dialogue, energizers for public

¹⁴³ See Stephanopoulos, *supra* note 54, at 361 & n.352; Gerber, *supra* note 28, at 101, 112.

¹⁴⁴ Advocates have described this benefit as central to another promising European proposal: Belgian citizens' assemblies, initiated in the country's small German-speaking region and recently cleared for national use. See, e.g., David Van Reybrouck, Opinion, *Belgium's Democratic Experiment*, POLITICO (Apr. 25, 2019, 4:01 AM), <https://www.politico.eu/article/belgium-democratic-experiment-citizens-assembly> [<https://perma.cc/6UFN-59J9>]; *Way Clear for Citizens' Assemblies in Belgium*, BÜRGERRAT (Feb. 11, 2023), <https://www.buergerrat.de/en/news/way-clear-for-citizens-assemblies-in-belgium> [<https://perma.cc/A3PW-TY7A>]. The Belgian model also includes “deliberative committees,” putting randomly selected citizens in deliberation with members of Parliament and referring recommendations to full legislatures, rather than directly to voters. See *id.*

¹⁴⁵ See *supra* notes 66–76 and accompanying text.

¹⁴⁶ See Gerber, *supra* note 28, at 125 (discussing how the “threat of initiatives moves legislative . . . positions”).

action, or organizers of public problem solving.”¹⁴⁷ That may be an overly optimistic view of democratic representation, but legislative behavior supports it. Across states and issues, initiative processes encourage legislators to align themselves with constituents by understanding their views and adopting congruent policies.¹⁴⁸ Even if for cynical reasons, legislatures have an interest in responsiveness that assemblies can facilitate.

Beyond expedience, initiative assemblies provide another critical benefit: They may provide an answer to the widely acknowledged problem of political participation.¹⁴⁹ Many proponents of assemblies advocate for deliberation as a way to repair frayed relationships between government and the public. In an era plagued by distrust¹⁵⁰ and polarization,¹⁵¹ face-to-face deliberation has an intuitive appeal. Experiments in deliberation have demonstrated the practice’s positive effects. Participants leave deliberation feeling better informed, less polarized, more respected, and more prepared to engage.¹⁵² Initiative assemblies can have the dual effect of generating better, more responsive policy, and building a healthier politics along the way.

That is easier said for small cities like Cambridge than for large states like California. Scaling deliberative democracy has long been a challenge for its advocates.¹⁵³ But initiative assemblies seem as good a place to start as any. Assemblies can provide both participatory benefits and incorporate other mechanisms of public access that extend their benefits even further. A notice-and-comment period for initiatives, for example, could make assemblies visible to and inclusive of many more voters. A CIR may appear to Oregon voters as little more than a public service pamphlet, but a full-on initiative assembly could be much more: a cross-section of voters with meaningful power to sort through public proposals and set policy agendas. Greater benefits of trust, cooperation, and enthusiasm could follow. And those benefits could compound into further participation, delivering even more of the democratic creativity and empowerment that ballot initiatives aim to provide.

¹⁴⁷ Guinier, *supra* note 98, at 33.

¹⁴⁸ See STEPHANOPOULOS, *supra* note 28, at 278–79 (reviewing political science literature demonstrating and explaining the policy-aligning effects of ballot initiatives).

¹⁴⁹ Traub, *supra* note 19; FISHKIN, *supra* note 26, at 57–58; cf. Richard Wike & Alexandra Castillo, *Many Around the World Are Disengaged from Politics*, PEW RSCH. CTR. (Oct. 17, 2018), <https://www.pewresearch.org/global/2018/10/17/international-political-engagement> [<https://perma.cc/HML4-HJNP>].

¹⁵⁰ *Public Trust in Government: 1958–2024*, PEW RSCH. CTR. (June 24, 2024), <https://www.pewresearch.org/politics/2024/06/24/public-trust-in-government-1958-2024> [<https://perma.cc/ZS4U-ZSWR>].

¹⁵¹ *As Partisan Hostility Grows, Signs of Frustration With the Two-Party System*, PEW RSCH. CTR. (Aug. 9, 2022), <https://www.pewresearch.org/politics/2022/08/09/as-partisan-hostility-grows-signs-of-frustration-with-the-two-party-system> [<https://perma.cc/B4JS-QGCT>].

¹⁵² See Knobloch et al., *supra* note 120, at 3–6; Traub, *supra* note 19; Glennon, *supra* note 109.

¹⁵³ See Niemeyer & Jennstal, *supra* note 118, at 339–40; Bouricius, *supra* note 14, at 3–4.

CONCLUSION

The initiative is in a moment of crisis. Despite lofty ambitions and a distinguished record, the initiative today suffers from many of the flaws it set out to address. Those flaws prevent initiatives from achieving their full potential as tools of effective, responsive government. They also make initiatives vulnerable to attacks from opponents who would rather see no instruments of direct democracy at all. To save the initiative, its defenders should reform it.

They should turn to the citizens' assembly. Initiative assemblies can make good on the ballot initiative's democratic ideals by injecting it with the meaningful deliberation and genuine representation that it currently lacks. As a moderator of state initiative processes, assemblies can effectively respond to each of the initiative's core critiques. Assemblies can democratize control of the agenda by giving representative panels opportunities to identify the public's priorities and formulate their preferred solutions. Initiative assemblies can limit the influence of wealthy, organized interests by making ballot access a product of deliberation, rather than signature campaigns. And initiative assemblies can make the ballot initiative a more efficient and effective tool of governance, working in concert with legislatures instead of in opposition to them.

Finally, the citizens' initiative assembly provides one answer to the participatory challenges that plague American civic life. Direct democracy counts on a public that is able, eager, and prepared to engage in the hard work of policymaking. Deliberative democracy demands — and facilitates — that participation. Citizens' assemblies offer an opportunity to make a government that is genuinely of the people, rather than apart from them. Returning the reins of direct democracy to citizens can help them build faith in the process and in one another. That may give them good reason to keep coming back.