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## Direct Democracy During the Progressive Era: A Crack in the Populist Veneer?

Since its inaugural use in Oregon in 1904, direct democracy—as practiced in twenty-seven American states—has garnered its share of defenders and critics.<sup>1</sup> While the debate over the merits and drawbacks of citizen lawmaking remains as contentious as ever, critics and proponents alike usually concur that two extra-legislative tools—the “citizen” initiative and the “popular” referendum—were most effectively used to counteract the legislative might of special interests during the Progressive Era.<sup>2</sup> Citing the clout of corporate monopolies that dominated numerous state legislatures at the turn of the century, contemporary observers of direct democracy approvingly note how citizen groups during the Progressive Era used the mechanisms to take on an array of vested interests. As evidence, they submit the popular adoption of numerous progressive reforms during the 1910s, such as the direct primary, women’s suffrage, prohibition, the abolition of the poll tax, home rule for cities and towns, eight-hour workdays for women and miners, and the regulation of public utility and railroad monopolies.<sup>3</sup> Circumventing their partisan state legislatures, defenders of the plebiscitary mechanisms evoke how citizens successfully employed the initiative and popular referendum, as one Progressive Era supporter of the “pure” democratic process championed, to rouse “a great forward movement toward stability, justice, and public spirit in American political institutions.”<sup>4</sup>

While differing in their final assessments of the present-day practice of direct democracy, journalists and scholars tend to paint the same exalted portrait of the early usage of the initiative and popular

referendum in the American states. Journalists critical of the process especially draw on the Progressive Era to justify how the practice of direct democracy today seems distinctly different from that of yesteryear. Placing the modern-day process in stark contrast with its nascent use, they write wistfully of the days when direct democracy was controlled by “the people.” Invoking an idyllic view of the past, *Washington Post* pundit David Broder writes how “the initiative process has largely discarded its grass-roots origins,” as it is “no longer merely the province of idealistic volunteers.”<sup>5</sup> Rather than citizen groups utilizing the initiative and referendum process, Broder reveals how narrow economic interests now dominate the process. Similarly, Peter Schrag, the former editor of the *Sacramento Bee*, observes how special interests in California “are themselves running and/or bankrolling ballot measures to advance their economic agendas.” For Schrag, “the people’s remedy” has been co-opted by “the interests’—the insurance industry, the tobacco companies, the trial lawyers, public employee unions.”<sup>6</sup>

Whether arguing that direct democracy has become corrupted by special interests or that it continues to be a viable expression of the “vox populi,” numerous scholars also contend that the Progressive Era implementation of direct democracy indeed met its intended “populist” purpose. In his often-quoted historical account, David Schmidt finds that Progressive Era direct legislation served as “a safeguard against the concentration of political power in the hands of a few.”<sup>7</sup> Likewise, Joseph Zimmerman contends that business organizations, with the exceptions of “beverages firms, horseracing, and prizefight promoters—made very little use of the initiative” during the Progressive Era. Rather, he asserts that the initial proponents of ballot measures “sought to make the state legislature more responsive to the citizenry by promoting what they believed to be essential reforms.”<sup>8</sup> Elisabeth Gerber, another scholar generally sympathetic toward the process, contends that the “populist paradox”—“the alleged transformation of direct legislation from a tool of regular citizens to a tool of special interests”—is actually illusory. She maintains that economic interest groups today are “severely constrained” in their ability to wield influence over the process. The premise of her argument (and indeed, the title of her book) rests on the implicit assumption that the initiative process was at one time under the aegis of citizen groups.<sup>9</sup> Embedded in these and other scholarly commentaries of how special interests today dominate direct democracy campaigns is the implicit notion that early initiative and popular

referendum campaigns were not highly professional or commercialized affairs and did not involve special interests.

Unfortunately, many Progressive Era accounts of the practice of direct democracy during its formative stages—upon which contemporary advocates and detractors of the process draw—leave much to be desired. Concentrating on the subject matter of the measures on the ballot, scholars of the epoch did not delve into how nascent initiative and referendum campaigns were actually conducted, overlooking the political and economic motivations of the financial supporters and opponents of the initial measures. Instead, they tended to rehash the rhetorical debates that led up the adoption of direct democracy in the states.<sup>10</sup> Consequently, a century after its *début*, little is known about the actual practice of direct-democracy campaigns during the Progressive Era.<sup>11</sup> This article seeks to fill the historical void by examining the emergence and early use of initiatives and popular referendums in Colorado, with special attention devoted to the role special interests played in ballot campaigns.

### Past as Prologue: Reassessing the “Mythic Narrative” of Direct Democracy in Colorado

In assessing the current practice of direct democracy today, the “mythic narrative” that informs the process as practiced during the Progressive Era continues to hold a certain appeal of convenience.<sup>12</sup> Our investigation of early ballot campaigns in Colorado is intended to complicate this one-dimensional story. Probing Colorado’s public record, we challenge the implicit assumption underlying much of the contemporary literature on direct democracy—that the dual mechanisms of initiative and popular referendum were used by citizens to check the corporate dominance of state legislatures.

Our research specifically reconsiders the 1912 general election, the first opportunity Colorado citizens had to unleash their newfound lawmaking powers. Voters considered a total of thirty-two measures on the ballot that November, a record number of questions that stands to this day in the Centennial State. Our analysis focuses on the interplay of progressive forces and economic interests during the ballot contests. The fundamental questions we address here, are: (1) How populist and citizen-driven were early initiative and popular referendum campaigns in Colorado? and (2) In what ways, if any,

did business interests and wealthy individuals influence the process of direct democracy during the Progressive Era in Colorado?

Although we find evidence supporting the conventional wisdom that citizens combated special interests using direct legislation, Colorado's historical record distinctly reveals how vested interests were also able to use the extra-legislative devices of initiative and popular referendum to shape public policy during the venerated Progressive Era. Our research reveals that certain critical and controversial ballot contests were in fact not amateur, citizen-based endeavors, as is often assumed today. Rather, special interests—most notably mining interests and public utilities—were major players in several of the early ballot campaigns in Colorado. Following our review of the adoption of direct democracy in Colorado, which demonstrates its progressive (and populist) roots, we illustrate the surprising susceptibility of the plebiscitary mechanisms to the very interests they were designed to constrain. By reevaluating the dynamics of ballot initiative and popular referendum campaigns in a single state, we hope to provide a more complete understanding of the inherent opportunity that the mechanisms of direct democracy provide for special interests to adopt legislation and constitutional amendments through direct action. In doing so, we hope to encourage scholars to investigate more closely the dynamics of Progressive Era initiative and popular referendum campaigns in other American states.

### The Adoption of Direct Legislation in Colorado

During the early part of the twentieth century, the establishment of direct democracy in the American states was a key component of the national agenda advanced by Populist and then Progressive reformers. Following the lead of South Dakota, which adopted the initiative and popular referendum in 1898, nearly two dozen states adopted either one or both of the procedural reforms between 1900 and 1920. Coloradoans adopted both mechanisms via a constitutional referendum placed on the ballot by the state legislature in 1910.<sup>13</sup>

Several actors played influential roles in bringing direct democracy to Colorado. As early as 1893, Populist Party members, including the state Attorney General, endorsed the adoption of the initiative and popular referendum. A few years later, medical practi-

tioner Dr. Persifor Cooke and lawyer J. Warner Mills, both of Denver, established the Colorado chapter of the Direct Legislation League (DLL), a national organization established in 1896 to coincide with the Populist Party's presidential nominating convention. By the turn of the century, the DLL had active chapters in a multitude of states, including South Dakota, Massachusetts, California, New Jersey, and Oregon.<sup>14</sup> During the early 1900s, Benjamin B. Lindsey, an internationally renowned juvenile court judge, took over as chair of the Colorado chapter of the DLL. Lindsey, who tirelessly lobbied the legislature for the adoption of direct democracy reforms, also founded the State Voters' League in 1905 to prod the legislature to adopt progressive reforms. He called his reforms, including the adoption of direct legislation, his "ten year program to make Denver and Colorado the most complete democracy in the nation."<sup>15</sup>

The leading political force behind Colorado's eventual adoption of the initiative and referendum, though, was Democratic Governor John Shafroth. Upon returning to his law practice in Denver after serving nearly five terms in Congress, Shafroth became involved with Lindsey's organizations.<sup>16</sup> When Shafroth was elected governor as a progressive Democrat in 1908, he promised to place the subject of direct legislation on the legislative agenda. By the 1909 biennial legislative session, Shafroth and his amalgam of Republican, Democratic, and Progressive party allies in the state legislature had formulated a platform of legislative reforms. The platform included the enactment of the initiative and popular referendum, the creation of a public service commission, a railroad commission, a direct primary, and an Australian "headless" ballot.<sup>17</sup>

Not surprisingly, there was staunch opposition to these reforms—especially to the initiative and popular referendum—by the state's Republican and Democratic party machines as well as by much of the Colorado business establishment. William G. Evans, the son of former territorial Governor John Evans and the Republican state boss, was a leading Colorado businessman who was heavily involved in the state's railroad and local transit systems. On the other side of the aisle, former Denver Mayor Robert W. Speer controlled the state Democrats. Both men opposed direct democracy as well as the other Progressive reforms, fearing such changes would weaken their hold on the state legislature.<sup>18</sup> Prodded by Evans and Speer, the two dominant parties consistently fought Progressive reforms introduced in the state legislature.<sup>19</sup> During the 1909 regular session, the legislative henchmen of Evans and Speer combined to defeat Shafroth's initiative and referendum bill in committee. Shafroth, however, re-

fused to let the issue die; he called for a special legislative session to address his slate of progressive issues.

Amid controversy and tension, the special session opened on 9 August 1910, a year and a half following the adjournment of the 1909 regular session. While Shafroth and his "Platformers" (as the press liked to call them) were determined to enact their goals, Evans, Speer, and their respective party machines were equally intent on leaving the session without passing a single measure. The Platformers were bolstered by the appearance of former President Teddy Roosevelt, who took time out from one of his big-game hunting expeditions in the Rocky Mountains to stump for Shafroth's measure during the session.<sup>20</sup> After twenty-four days of contentious debate, the legislature passed an initiative and referendum bill modeled closely on the "Oregon System."<sup>21</sup> Echoing the sentiments of many observers, journalist George Creel, covering the August proceedings, commented: "The people are not viewing this extra session through political glasses. For them the division is not Democratic or Republican, but Corporations and the People."<sup>22</sup> Governor Shafroth signed the bill on 2 September 1910, much to the delight of the Platformers and the *Rocky Mountain News*, and to the horror of both party establishments and the *Denver Republican*.

The proposed constitutional amendment was placed before the voters that fall as a compulsory referendum. On 8 November 1910, citizens of Colorado voted to grant themselves the power to directly make laws and amend the constitution, approving the measure by a three-to-one margin. The measure had widespread support: only one of the state's sixty counties (at the time), Huerfano, failed to approve the measure.<sup>23</sup> Despite a lingering legal challenge concerning the constitutionality of the 1910 popular vote, the 1912 election ushered in a new political era in Colorado in which citizens could initiate and refer measures to the ballot.<sup>24</sup> And while the movement preceded him, Shafroth deserves much credit for the passage of direct legislation in Colorado. Not only was the measure adopted by the legislature at his insistence through a special session, but Shafroth actively campaigned for the measure during his own reelection bid in 1910.<sup>25</sup>

### The 1912 Colorado Ballot and the Direct Legislation League

Following their hard-earned victory, it came as no surprise that progressive forces tried to use their newfound plebiscitary powers in the

next general election. In 1912, the first opportunity that citizens had the right to place questions on the ballot for statewide public approval, voters encountered thirty-two measures on the ballot: twenty initiatives (eleven statutes and nine constitutional amendments) and six popular referendums, placed on the ballot by various citizen groups and business organizations; and six compulsory referendums (five constitutional and one statutory), placed on the ballot by the legislature. (See Appendix A for Ballot Titles and Appendix B for Election Results.)<sup>26</sup> The proponents of the initiatives had mixed success, whereas the proponents of the popular referendums were well received and the state legislature's referendums were unpopular with voters. A majority of voters approved eight of the twenty initiatives, which established five new statutes and added three new sections to the state constitution. In contrast, the circulators of five of the six popular referendums had reason to celebrate as a majority of voters cast "no" ballots on five of the measures, effectively expurgating the five contested laws from the 1911 statute books.<sup>27</sup> The legislature, in contrast, received no public support for its measures; a majority of voters rejected all six referendums it placed on the ballot for popular approval.<sup>28</sup>

While the 1912 election is considered to be a watershed year for direct democracy in Colorado, what is perhaps most striking is the electorate's low level of engagement concerning the thirty-two initiatives and referendums on the ballot. There was considerable interest in the 5 November election, as it included an open-seat gubernatorial contest and a tight three-way presidential race, with Roosevelt running on the Bull Moose ticket. Roughly 263,000 Coloradoans cast presidential ballots. Based on the 1910 United States Census figures, voter turnout is estimated to be slightly more than 70 percent.<sup>29</sup> Yet, despite the novelty of having initiatives and popular referendums on the ballot for the first time, on average only 93,684 citizens (roughly 36 percent of those who voted for President) cast votes for or against a particular ballot measure.<sup>30</sup> The most popular measure on the ballot was the constitutional amendment calling for statewide prohibition, Measure 1, as 73 percent of those casting a vote for President also voted on the initiative. Perhaps more telling of the general apathy of the electorate toward the array of ballot measures, only three of the twenty initiatives, including the statewide ban on the sale of alcohol, received at least half the popular vote for President. Four initiatives tallied less than 30 percent of the presidential vote, and only one of the 12 popular and compulsory referendums—Measure 32, the construction of a tunnel

through James Peak on the Continental Divide—received at least half the votes cast for President.

Still, progressive reformers did well to place a string of initiatives on the 1912 ballot. They were far less successful, though, convincing voters to support their measures. The progressive group most active and successful in using the new procedure was Judge Lindsey's nonpartisan DLL. Prior to the election, the DLL circulated numerous petitions, qualifying four statutory initiatives and six constitutional amendment initiatives.<sup>31</sup> In all, half of the twenty initiatives for the inaugural 1912 election were placed on the ballot by the DLL. On election day, voters approved three of Lindsey's four statutory initiatives—an eight-hour workday for women (Measure 3), the Australian "headless ballot" (Measure 14), and establishing mother's compensation to dependent and neglected children (Measure 17). By a narrow margin, voters turned down Lindsey's vaguely worded statutory measure that would have required the state to publish a pamphlet with the arguments for and against future ballot propositions (Measure 10). A majority of voters, however, supported only two of the DLL's six constitutional amendments. Voters approved a constitutional amendment permitting citizens to recall elected officials from office (Measure 9),<sup>32</sup> as well as an amendment creating juvenile court systems in all Colorado localities with populations greater than one hundred thousand (Measure 16).<sup>33</sup> Voters rejected the DLL's constitutional amendment proposals to hold special elections for initiated and referred laws (Measure 11), allow trial by jury for contempt in certain cases (Measure 12), create a public utilities court with exclusive power to fix and enforce reasonable rates over public monopolies (Measure 13), and provide wider use and control of the schools by the people (Measure 15). Overall, though, the DLL's partially successful use of the initiative was precisely what Lindsey, Shafroth, and other Progressive leaders had envisioned when they pushed for the direct legislation mechanisms in 1910.<sup>34</sup>

With respect to the other ten initiatives on the 1912 ballot that were not sponsored by the DLL, five more could be labeled "progressive" measures. A majority of voters supported just one of these measures, however. Voters approved a constitutional amendment granting home rule to cities and towns (Measure 8). However, they defeated an initiative calling for the funding of a state immigration bureau (Measure 6), as well as one that would have placed the Internal Improvement Permanent Income Fund under the control of the High-

way Commission (Measure 20). Voters also rejected two prohibition initiatives on the ballot (Measure 1 and Measure 2).<sup>35</sup>

While these citizen-sponsored measures do reinforce the conventional understanding of the early workings of direct legislation during the Progressive Era, there is another side to this pivotal election that is rarely told. Several of the initiatives, as well as half of the six popular referendums, were clearly sponsored by groups with narrow, economic interests at stake. Not all of the measures backed by these economic organizations and businesses were victorious. Yet, it was clear from the very first usage of direct democracy in Colorado that vested interests were not timid about using the extra-legislative devices to promote their own welfare. These efforts heavily foreshadow the contemporary experience of direct democracy in many of the American states that allow citizen lawmaking and point to the susceptibility of the plebiscitary procedures being co-opted by very special interests the populist mechanisms were intended to regulate.<sup>36</sup>

### Economic Interests and the 1912 Ballot

A wide assortment of economic interests immediately tried to take advantage of the new democratic processes available to them. One such group motivated by private gain was clearly behind Measure 5, a statutory initiative that would “establish” a state fair in Pueblo. In actuality, the Colorado state fair had existed in Pueblo for many years. The fair was run by a private association comprised of farmers and ranchers and was subsidized every two years by a general appropriation approved by the state legislature. The biennial legislative review, however, routinely left the state fair in limbo, as the organizers and participants were never sure if the legislature would fully fund its future operations. Using the initiative process to try to remedy the situation, the powerful agricultural interests involved in running the state fair authored a measure proposing that the legislature appropriate permanent funding for the fair. The text of the initiative stipulated that a state commission appointed by the governor would replace the private association that had previously managed the fair, and that the state would pay off all the association’s expenses it had incurred over the previous years. More important, the measure called for the state to appropriate annually at least \$30,000

for the continual operation of the fair.<sup>37</sup> Voters narrowly defeated the measure, as it won slightly more than 48 percent of the vote.

A second brief example of an initiative sponsored by special interests was Measure 7, which on the surface appeared to reduce the costs incurred by the state to publish sample ballots in newspapers prior to elections. In actuality, the statutory initiative was covertly sponsored by a band of newspaper publishers who wanted to ensure they would not lose their monopoly on publishing the often protracted text of ballot measures in their papers. The newspaper publishers placed their measure on the ballot in an attempt to offset the DLL's initiative, Measure 11, which instead of requiring the Secretary of State to publish ballots prior to elections in newspapers, would have required the state to publish a pamphlet with a sample ballot and a nonpartisan analysis and then send it to all registered voters. The publishers' measure would have required sample ballots to be published in two newspapers in every county at the expense of the state and would have allowed newspapers to charge individuals to publish arguments for and against ballot measures. The publishers' stealth initiative was clearly advanced as a counterproposition intended primarily to confuse voters about the merits of Measure 11 put forth by the DLL. Not surprisingly, Measure 7 received virtually no negative press in the daily newspapers. As the Colorado Bar Association noted at the time, if voters approved only Measure 7, it would "probably be held superfluous and might, if followed, add to rather than reduce the cost of publication."<sup>38</sup> Any increase in publication costs, of course, would be a windfall for the newspaper owners.

Although seemingly progressive, two other initiatives, which we discuss in detail below, were in fact sponsored by corporate interests. The first initiative, Measure 4, was intended to create a public utilities commission beholden to the very utility companies it supposedly was designed to regulate. The second initiative, Measure 19, was a specious eight-hour workday for miners sponsored by mining operators. The ballot initiative was virtually identical to a 1905 law that the legislature had replaced with more progressive legislation in 1911.

Besides sponsoring ballot initiatives, vested economic interests also successfully placed on the ballot six popular referendums that expressly challenged reforms passed in 1911 by the progressive-leaning legislature. Once they qualified for the ballot, the popular referendum petitions temporarily halted the implementation of the six laws until they were subjected to the popular approval of the state-

wide electorate in November 1912. Two of the laws passed by progressive reformers during the previous legislative session required examinations for public school teachers (House Bill 91) and extended summer normal schools (House Bill 85). In an effort to repeal the two laws that it unsuccessfully had lobbied against the previous year, the state teachers association successfully circulated petitions to put the two laws (as Measure 24 and Measure 25) up for popular approval. Voters rejected both popular referendums by wide margins, effectively removing the 1911 statutes from the books. In addition, narrow economic interests backed popular referendums aimed at overturning three other regulatory statutes: the branding and marking of livestock (Measure 22), the custody and management of public funds (Measure 23), and the jurisdiction over water rights and irrigation (Measure 26).<sup>39</sup> In each case, a majority of voters—perhaps not fully cognizant what their “no” votes actually meant—struck down the 1911 legislation. The sixth popular referendum (Measure 21) was placed on the ballot by minions of the most powerful corporation in the state, Colorado Fuel and Iron (C.F. & I.), owned by industrialists George Jay Gould and John D. Rockefeller.<sup>40</sup> C.F. & I. wanted to excise from the 1911 statutes House Bill 46, a progressive law mandating a more protective eight-hour workday for miners.<sup>41</sup> Voters narrowly approved the popular referendum (as detailed below), which retained the progressive legislation.

Finally, special interests also participated in the six referred measures submitted by the legislature to the people. Compulsory referendums placed on the ballot by the legislature were not new to voters, as Colorado’s 1876 constitution required popular approval for constitutional amendments. In order of appearance (Measures 27–31), the legislature offered five constitutional amendments that sought to designate mining and smelting as affected with the public interest, create a state tax commission, clarify the way county and precinct officers were paid, raise the limitation on the amount of debt that counties could accumulate, and authorizing a bonded indebtedness for public highways. Garnering little media coverage, voters defeated all five of the constitutional amendment compulsory referendums.<sup>42</sup> In addition, voters considered one statutory referendum that the 1911 legislature opted to submit to the people. Calling for the construction of a tunnel through the Continental Divide, the unsuccessful measure—the last of the thirty-two questions on the ballot—was heavily supported by railroad and business interests.<sup>43</sup> While the legislative history of how the Moffat Tunnel referendum came to be placed on the 1912 ballot is a fascinating

tale that reveals the clout of the Denver, Northwestern and Pacific Railway,<sup>44</sup> we turn our attention to the efforts of two other powerful lobbies that attempted to undermine the progressive efforts of the Colorado 1911 legislature: the public utility companies and the mining and smelter operators.

### Regulating Public Utilities

One of the most pressing issues facing progressive reformers in Colorado, as well as in other states, during the 1910s was the regulation of public utilities. By 1912, fourteen states had created public service commissions, giving public bodies the power to investigate alleged abuses and even sanction an array of corporations, including railroad and streetcar companies, telegraph and telephone companies, and gas, electric, and water companies.<sup>45</sup> In Colorado, public utilities remained largely unregulated at the state level, not coincidentally because W. G. Evans, the Republican party boss (and one-time partner of the Denver, Northwestern and Pacific Railway), owned several public utilities in Denver, most notably the Denver Tramway.<sup>46</sup>

Having little success moving bills through the legislature to regulate public utilities, progressive reformers led by the DLL circulated an initiative aimed at regulating the state's various public utilities, including gas, electric, telephone, and water companies as well as local tramway systems. The ballot title of the initiative, on the ballot as Measure 13, read: "DIRECT LEGISLATION LEAGUE'S AMENDMENT TO ARTICLE VI OF THE CONSTITUTION OF THE STATE OF COLORADO, TO BE KNOWN AS SECTION 31 OF SAID ARTICLE, CREATING A PUBLIC UTILITIES COURT." According to the lengthy text of the proposed initiative, the amendment would create "a new tribunal called a Court, having power to exercise not only judicial but legislative, executive, and administrative functions over all persons and corporations in the state who are engaged in what has heretofore been deemed public service."<sup>47</sup> Measure 13, however, would not be the only public utilities initiative appearing on the 1912 ballot.

Voters were also faced with Measure 4, a statutory initiative, which was apparently sponsored by the state Trades and Labor Assembly. At first glance, the sponsorship of the counterproposition seemed self-evident. The ballot title of the measure clearly read: "DENVER TRADES AND LABOR ASSEMBLY ACT TO ESTABLISH PUBLIC SERVICE COMMISSION, AND TO PROVIDE FOR THE REGULATION OF

PUBLIC SERVICE CORPORATIONS.” The proposed statutory measure, like the DLL’s constitutional amendment, ostensibly would create a state commission to oversee public utility companies and review their policies. Substantively, though, the two bills could not have been more different with respect to the degree of regulatory oversight the commission or court could have exerted over public utilities.

Although the specific differences between the two initiatives are indeed intriguing and worthy of comparison, the matter most relevant to this discussion concerns the authorship and the intent of each measure. Judge Lindsey of the DLL was the unmistakable author of Measure 13, the initiative that would have created a public utilities court. The content of Lindsey’s constitutional amendment was the target of much early criticism for the great powers it gave to the court and the limitations it put on corporations. For instance, the DLL’s measure would have given the court the power to declare any business a public utility and thus give the court the authority to regulate its business dealings. What constituted a public utility in those days was still open to speculation, as evidenced by a 1914 initiative that attempted to make newspapers a public utility.<sup>48</sup> Other controversial provisions of the proposed constitutional amendment included the court’s ability to prescribe virtually any punishment it deemed appropriate, as well as the court’s free access to the state treasury without prior appropriation from the legislature. Although many considered these provisions crude, unwise, and unprecedented, the focus for the debate soon shifted to the initiative presumably sponsored by the Trades and Labor Assembly.

In early October 1912, rumors began to surface that the statutory initiative supposedly sponsored by the state Trades and Labor Assembly had not in fact been authored by the union. Furthermore, it was alleged that some of the very corporations that such a bill would regulate had actually played a central role in its drafting. At a meeting of the Denver Chamber of Commerce on 9 October John Rush, a member of the Chamber, said of the Trades and Labor bill: “If W.G. Evans and E.B. Field [president of Mountain States phone company] have not paid for drafting your bill they certainly ought to do so. . . . If ever a bill was drawn in the interest of the public utility corporations, this is one, and it should be defeated by an overwhelming vote.”<sup>49</sup> Several weeks later, according to the *Denver Republican*, the Denver Business Men’s Association began handing out leaflets stating that the Trades and Labor bill had been written under the direction of the Mountain States Telephone and Telegraph Company and that the company also paid for the circulation and signa-

ture gathering to get the measure on the ballot. The allegation, made by former Mountain States employee E. J. Richards, was that E. B. Field's personal assistant, Philip Hamlin, coordinated the drafting and circulation of the measure.<sup>50</sup> Despite denials by both the Trades and Labor Assembly and Henry Cohen, a lawyer who evidently was commissioned to draft the measure by the Assembly, the issue stayed the focal point of the campaign.

There is ample and compelling evidence that the Trades and Labor Assembly's measure was indeed the brainchild of corporate actors, most notably Evans and Field. First, regarding the influence of the telephone operators' on the initiative, section 19 of the measure virtually exempted telephone toll charges from any oversight by the proposed public utilities commission, making the industry immune from any regulation.<sup>51</sup> Second, the initiative, containing sixty-five sections, was by far more lengthy and complicated than any other measure on the ballot, indicating that it was drafted by an experienced and costly legal hand. Third, section 41 of the measure allowed competing public utility companies to purchase each others' stock or bonds without review from the commission. Coupled with the preceding section 40, which prohibited the construction of a new public utility in any area already adequately served by an existing company, many feared that the initiative would legalize monopolies and unreasonably protect public utilities already in operation.<sup>52</sup> Finally, in what was called the "big joker" by opponents, section 55 allowed the utilities to appeal regulatory rulings by the commission; in the event of such an appeal, the order of the commission was stayed until a final court ruling was issued, meaning that "the old rates if complained shall remain in effect pending the decision of the courts."<sup>53</sup> In practice, this provision would have allowed a public utility that was unsatisfied with the commission's ruling to postpone the changes from taking effect for years by litigating the decision through the appeals process. These and several other provisions distinguished the business-friendly initiative from the DLL's measure. The initiative advanced by Evans and Field would have made Colorado public utilities significantly more powerful than utilities in other regulated states.

In the months preceding the election, supporters and opponents of the two initiatives volleyed allegations and tried to build coalitions. Endorsements for the two bills were split, as most organizations endorsed one utility bill while formally denouncing the other. The DLL elicited the support of the Real Estate Exchange and the local newspapers, while the Trades and Labor Assembly measure was

avored by the Denver Building Trades Council. Interestingly enough, the City Affairs committee of the Denver Chamber of Commerce condemned both bills—the sham Trades and Labor Assembly measure for being subverted by the public utility interests it was intended to regulate, and the measure proposed by the DLL for being too crude and far-reaching. Perhaps due to the confusion over the differences between the two initiatives during the campaign, citizens ultimately defeated both measures on election day. The Trades and Labor Assembly statute garnered just 32.1 percent of the vote, while the DLL's constitutional amendment similarly tallied only 34.7 percent.<sup>54</sup>

In decisive fashion, Colorado voters elected not to adopt a public utilities measure at the polls. Why they rejected both measures, however, is difficult to discern from the historical record. One plausible explanation, though impossible to empirically verify, is that voters were confused by the intent of two competing measures. Indeed, countywide support was either very strong or very weak for *both* of the public utility measures, indicating that voters may not have understood the true substance of the competing measures.<sup>55</sup> If this was indeed the case, the owners of the public utilities, by placing their counterproposition measure on the ballot, were successful in creating confusion in the minds of the voters. Alternatively, judging by the paltry number of voters who cast ballots for or against the two regulatory measures, the electorate was not nearly as excited about reining in public utilities as, for example, it was about keeping legal the sale of alcohol.<sup>56</sup> Certainly the dubious origins of the statute supposedly authored by the Trades and Labor Assembly and the unrestrained language of the DLL's amendment gave voters pause not to alter the status quo.

Following the 1912 popular vote, it appeared as though the corporate interests, led by Evans, would be victorious in stifling any progressive reforms regulating utilities. Ironically, though, the state legislature during the first week of the 1913 legislative session acted to regulate public utility corporations. Countervailing the will of the people expressed just two months earlier, Democratic Senators Samuel Burris and L. A. Van Tillborg, along with Democratic Representative Charles Leftwich, introduced three bills, two in the Senate and one in the House, to create a public utilities commission in Colorado. Over the next few months, the three bills were consolidated into a single bill, Senator Burris's Senate Bill 1. With more than one hundred amendments made to it, as well as a final conference committee needed to make the bill acceptable to both chambers, the Burris bill passed despite strong opposition from the utility

companies.<sup>57</sup> Although several legislators either abstained or were absent for the final vote, the bill won unanimous votes in both chambers and was signed into law by first-term Governor Elias Ammons, a Democrat.<sup>58</sup>

In this intriguing tale of formative public utilities regulation in Colorado, it turned out to be the legislature, and not newly empowered citizen lawmakers, that ultimately advanced progressive legislation, trumping the best efforts of vested corporate interests. In this case, it was not the mechanism of the initiative that brought about progressive reform. Quite the contrary, the case demonstrates how special interests during the Progressive Era were able to subvert the initiative process by intentionally placing a measure on the ballot to confuse voters, or worse, have citizens unwittingly pass legislation that would have undermined the regulation of public utilities.

### Eight-Hour Workday for Miners

As historians of the period have documented, the swift and dramatic economic transformation that occurred in Colorado during the late nineteenth century engendered broad social conflict between workers and corporate capitalism. Violent strikes, such as the bloody conflict in Cripple Creek in 1894, were not uncommon in company towns. More broadly, class warfare against the standing order emerged in many communities, largely in the form of disillusioned workers combating absentee owners—“foreign’ capitalists”—and their local agents. The situation was highly political, with the Western Federation of Miners, and later the militant International Workers of the World (the IWW or “Wobblies”), clashing with mine operators and enlisted state agencies.<sup>59</sup> As early as the 1880s, the Colorado legislature had entered the conflict, debating the merits of various eight-hour workday bills. By 1893, the legislature passed the state’s first law mandating an eight-hour workday law, though the legislation applied only to public employees. Passing similar legislation that covered mining-related activities would prove to be more difficult. It was not until 1905 that the legislature finally passed an eight-hour workday law covering miners, albeit chock-full of loopholes. As one early reformer lamented, “It was easy for the corporations to manipulate things to defeat the eight-hour law.”<sup>60</sup>

Six years later, progressive reformers again offered legislation for an eight-hour workday for miners with the hopes of revamping the 1905 legislation. Democratic Representative Joseph Hurd of

Boulder sponsored a bill during the 1911 legislative session that would substantially strengthen the existing law for miners. Most notably, Hurd's bill aimed to limit the number of hours all miners could work to eight hours in any twenty-four-hour span, regardless of whether the workers were in "direct contact with furnaces and noxious fumes."<sup>61</sup> As expected, lobbying against the bill by the mining and smelting operators was intense. When the bill finally passed both chambers and was signed into law by the governor, unions praised the law with the mining operators denouncing it as too restrictive. As historian David Lonsdale writes: "This was the law that the miners and smelter workers had wanted in 1905. After a six-year delay, it was finally enacted and signed into law by reform-minded Governor Shafroth."<sup>62</sup>

Shortly after Shafroth signed the bill, corporate opponents of the progressive reform began to scheme how to undermine the eight-hour workday legislation. Quite unexpectedly, it would be the very corporate adversaries who warned against the passage of the 1910 constitutional amendment that brought the initiative and popular referendum to Colorado who would become the first "citizens" to utilize the plebiscitary mechanisms. Indeed, one of their strategies, which would not have been possible just a year earlier, was to place a popular referendum on the ballot to require the statewide approval of the recently enacted legislation. Union leaders quickly deciphered who masterminded the popular referendum. An editorial in a leading union periodical, *Miners' Magazine*, which criticized the petition, stated: "The fact that the C.F. & I. Company is pushing this bill proves conclusively that the bill has a 'joker.' All working men are requested to treat this bill as a fraud and refuse to sign the petition."<sup>63</sup>

In addition to rekindling class tensions, the uncharted procedural aspects of placing a popular referendum on the ballot proved to be quite contentious. There is no hard evidence that Rockefeller's C.F. & I. along with allied mining and smelter operators paid circulators to gather petitions (which was not prohibited by law). Yet, it was widely reported in newspapers that many of the women who circulated petitions later admitted they thought they were soliciting signatures to support eight-hour workday legislation, not to repeal the recently enacted law.<sup>64</sup> In addition, there was speculation that many of signatures gathered for the 1912 popular referendum (as well as signatures on several other initiative and popular referendum petitions) were forged.<sup>65</sup> Several labor unions, most notably the Western Federation of Miners, conducted independent investigations

into the gathering of signatures, and even amassed enough evidence to file suit to temporarily keep the mining operators' popular referendum from appearing on the ballot.<sup>66</sup> As with other cases brought to his attention, Secretary of State James Pearce agreed that many of the petitioned signatures to strike down the 1911 eight-hour workday legislation were indeed forgeries, but he claimed he was powerless to do anything but keep the popular referendum (Measure 21) on the ballot.

Placing a popular referendum on the ballot was not the only effort of the mining and smelting corporations to eviscerate the legislature's progressive eight-hour law. In addition to circulating the popular referendum, the same corporate players filed an initiative with the Secretary of State's office in July 1912 that advanced their own watered-down version of an eight-hour workday law for miners and smelters. Weakening the legislature's 1911 law, the operators' statutory initiative stipulated that no miner or smelter could work "in continuous contact with noxious fumes" in excess of eight hours per day, "averaged over a given month."<sup>67</sup> While the authors of the initiative were not immediately known, the unions had their suspicions. According to the Western Federation of Miners, the intention of both the popular referendum and initiative was to render the legislature's 1911 law "inoperative for a period of two years by invoking the referendum but in addition, [advancing] a substitute law proposed that is worse than useless. The sinister hand of the Guggenheims [who operated the American Smelting and Refining Company] and the Colorado Fuel & Iron Co. is plainly discernible in the matter."<sup>68</sup> Although the language of the operators' proposed eight-hour workday initiative seemed harmless enough, it in fact directly contravened the legislature's earlier effort to protect workers. The dangers of the initiative were twofold. First, and most blatantly, by limiting application of the law only to those workers in "continuous contact with noxious fumes," the measure returned to the status quo ante language of the inadequate 1905 legislation. The second shortcoming of the measure was subtle, but more insidious. As the Colorado Bar Association accurately explicated, by calculating the average hours worked per day over the course of an entire month, "We would see men working ten hours a day for three weeks, and being laid off for a week to make the legal average."<sup>69</sup> Clearly, the operators' tacit intent was to gut the 1911 progressive legislation.

By the summer of 1912, unions were working diligently to educate their members about the regressive nature of the mining opera-

tors' initiative and popular referendum. Following the November election, it appeared the unions' efforts had paid dividends. Preliminary results indicated that the mining operators' sham eight-hour workday ballot initiative (Measure 19) had failed by a slim margin. Concomitantly, the operators' popular referendum (Measure 21) received more than two-thirds of the "yes" vote, which effectively upheld the 1911 progressive law. But on 21 December, more than a month after the election, the Secretary of State's office announced that an official ballot recount established that the initiative, by a narrow margin, actually received a majority of votes. The abridged results, of course, meant that the approval of the initiative, which replaced the 1911 legislation with the antedated language favoring the mining operators, would be in direct conflict with the approval of the popular referendum upholding the 1911 progressive law.<sup>70</sup>

During the ensuing legislative session, Senator Sherman Bellesfield, a Democrat from Pueblo, the home of C.F. & I., introduced two bills to correct the seemingly intractable situation. Senate Bill 47 sought to resolve the situation by repealing the 1912 statutory initiative sponsored by the mining and smelting operators, and replacing it with a new law virtually identical to Representative Hurd's 1911 bill. In addition, Senator Bellesfield sponsored Senate Resolution 4, a legislative interrogatory that was sent to the Colorado State Supreme Court, asking the justices for clarification and guidance on how to resolve the matter of the incompatible laws, and asking advice about how to avoid such conflicts in the future. While the full Senate passed SB 47 on its second (penultimate) reading, the chamber withheld its final approval until the court delivered its decision. In its ruling, the court made two significant judgments. First, it found that Senator Bellesfield's legislative solution was both adequate and constitutional. Second, and more lasting, drawing on language from the original 1910 initiative and referendum constitutional amendment, the court ruled that the legislature could protect its own laws from future popular referendums by attaching an "emergency clause" at the end of bills.<sup>71</sup> Upon news of the court's ruling, the full Senate amended Bellesfield's bill to add such an emergency clause and proceeded to pass the bill on its final vote, 26 to 5. The House subsequently passed the Senate bill unanimously, 59 to 0, and it was shortly thereafter signed into law by Governor Ammons. Again, as in the case of the public utilities measures, it was the legislature that ultimately took progressive action, in effect overruling the electorate's stated preference to pass Measure 19, the operators' more regressive alternative.<sup>72</sup>

## Conclusion

It is unfortunate that scholars and journalists have not examined more carefully the motivations behind and the dynamics of early initiative and popular referendum campaigns. As Richard Ellis wisely notes, "Identifying the democratic delusions that shroud the initiative process in a sacrosanct veil is one small but necessary step in the larger project of restoring our collective faith in deliberative and representative government."<sup>73</sup> We hope our investigation of the 1912 Colorado election provides the beginning of a broader effort to lift the "sacrosanct veil" from the process of direct democracy during the Progressive Era. It is clear from our research that the record number of initiatives and popular referenda in the 1912 Colorado election were not only the by-product of citizen groups, but also narrow economic interests, including ranchers and farmers, the teachers association, newspaper publishers, railroad companies, mining and smelting operators, and public utility corporations. The historical record, in Colorado at least, reveals that direct democracy as practiced during the Progressive Era could be just as dangerous to progressive forces as it was empowering.

As the case studies reveal, special interests learned quickly that the new plebiscitary mechanisms originally designed to curtail their legislative influence could be used to advance their own causes. Besides challenging ballot initiatives sponsored by progressive groups, economic interests could propose their own business-friendly counterpropositions, or through the popular referendum, challenge progressive legislation at the polls. In a concerted effort, mine and smelter operators took advantage of both processes, offering their own "joker" eight-hour workday initiative as well as a popular referendum in an effort to annul the progressive legislation passed in 1911. Public utilities companies offered their own deceptive initiative that would have given a public utilities commission virtually no power to regulate their industries. Although voters defeated the public utilities' sham initiative, it served a purpose by raising doubts among the electorate about the DLL's truly progressive measure.

Although not a focal point of this article, both electoral contests over the eight-hour workday and the regulation of public utilities raise the question of whether or not voters were fully cognizant of what their "yes" or "no" votes actually meant. It is not difficult to imagine how the ambiguous wording of many of the initiatives, and

especially the popular referendum questions, would challenge even the best legal minds. As the Western Federation of Labor somberly concluded in its assessment of the role of special interests in early direct democracy contests, "The initiative and referendum is but a tool in the hands of the voter, useless to him who does not know how to use it and thoroughly acquainted with the issues that are to be decided by his ballot. Our greatest foe is ignorance, knowledge is the only emancipator."<sup>74</sup> While it is not possible to determine the knowledge voters had about the issues on which they were voting, it is clear from the low vote counts that Colorado voters in the 1912 general election were not nearly as captivated by the thirty-two questions on the ballot as they were with the presidential and gubernatorial contests.

Ironically, the real populist paradox concerning direct democracy may be that the mechanisms of the initiative and popular referendum were easily manipulated during the Progressive Era by the same special interests they originally targeted. In his classic study of political reform during the Populist and Progressive eras, Richard Hofstadter cautioned, "It is not surprising, then, that so much of the political machinery designed to implement the aims of direct democracy should have been found of very limited use."<sup>75</sup> Progressive forces certainly found this to be true during the formative years of direct democracy in Colorado. More optimistically, a realistic portrayal of early initiative and popular referendum campaigns and the special interests behind them might begin to dissolve some of the gild that casts our understandings of early ballot contests. Perhaps supporters and opponents of direct democracy who today "bemoan its lost 'innocence'" should not feel so much "dismay" due to "the perceived decline in its amateur status."<sup>76</sup> As our investigation of Colorado's 1912 election demonstrates, the innocence of direct democracy was lost quite early. While the contemporary debate over the representation and participation of citizen interests in direct-democracy campaigns show no signs of abatement in the American states, defenders and critics of direct democracy would be wise not to draw facile comparisons with the supposed halcyon days of citizen lawmaking during the Progressive Era.

*Univeristy of Denver and  
Univeristy of Colorado at Boulder*

## Appendix A: 1912 Ballot Titles

*Initiatives*

- Measure 1: The state-wide prohibition Amendment to Constitution adding Article XXI
- Measure 2: The enforcement by search and seizure of Laws prohibiting the sale of intoxicating liquors
- Measure 3: Women's eight hour Act declaring the employment of females in certain occupations injurious; to regulate and limit the hours of employment\*
- Measure 4: Denver trades and labor assembly Act to establish public service commission, and to provide for the regulation of public service corporations
- Measure 5: An Act to establish a state fair
- Measure 6: Amendment to Article X of the Constitution adding Section 17, "Special fund for the state immigration bureau"
- Measure 7: Colorado state editorial association Act reducing the cost of publishing Constitutional Amendments, Initiated and Referred Laws, and for the publishing arguments for and against the same
- Measure 8: Amendment to Section 6 of Article XX of the Constitution granting home rule to cities and towns
- Measure 9: Direct Legislation League's Amendment to the Constitution of the State of Colorado, entitled, "Constitutional Amendment. An Amendment to the Constitution of the State of Colorado adding thereto a new Article to be known as Article XXI—Recall from Office"\*
- Measure 10: Direct Legislation League's Amendment to Section 2 of Article XIX of the Constitution\*
- Measure 11: Direct Legislation League's Act Concerning Elections\*
- Measure 12: Direct Legislation League's Contempt Amendment, being Section 31 of Article VI of the Constitution\*
- Measure 13: Direct Legislation League's Amendment creating a public utilities court\*
- Measure 14: Direct Legislation League's Measure entitled, "An Act concerning the official ballot and the method of voting at elections in this State, fixing penalties for the violation of the provisions created thereof, and to repeal all acts and parts of acts inconsistent therewith"\*
- Measure 15: Direct Legislation League's Amendment to Section 7 of Article XX of the Constitution, providing for the wider use and control of the schools by the people\*

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\* Denotes measure was sponsored by the Direct Legislation League (DLL)

- Measure 16: Amendment to Section 1 of Article 6 of the Constitution giving the people the right to overrule or recall the decisions of the Supreme Court declaring laws unconstitutional, and concerning the judicial power of the state and courts for the protection of children\*
- Measure 17: The Mother's Compensation Act, being an Act concerning dependent and neglected children, and permitting keeping such children in family homes, and for workhouses for men convicted of non-support\*
- Measure 18: An Act relating to civil service
- Measure 19: An Act to regulate and limit the hours of employment in underground mines, smelters, mills and coke ovens, to declare certain employment injurious to the health and dangerous to life and limb
- Measure 20: The establishment of an Amendment to the law establishing a State Highway Commission, and the placing of Internal Improvement Permanent Income Fund under the control of the said Highway Commission

*Popular Referendums*

- Measure 21: House Bill No. 46, Laws 1911, Eight hour law for miners
- Measure 22: Senate Bill No. 219, Laws 1911, Branding and marking of livestock
- Measure 23: Senate Bill No. 459, Laws 1911, Public funds
- Measure 24: House Bill No. 85, Laws 1911, Teachers' summer normal school districts
- Measure 25: House Bill No. 91, Laws 1911, Examinations for teachers
- Measure 26: Part of Section FOUR (4) of Senate Bill No. 134, Laws 1911, Relation to irrigation

*Referendums Submitted by the Eighteenth General Assembly*

- Measure 27: The amendment concerning mills and smelters
- Measure 28: The amendment concerning a state tax commission and county board of equalization
- Measure 29: The amendment to Section 15 of Article 14, concerning the fees and compensation of county, precinct, and other officers
- Measure 30: The amendment enlarging the limitation upon county debts for highway and other purposes
- Measure 31: The amendment to Section 3 of Article XI of the Constitution, authorizing a bonded indebtedness for the creation of a fund for the construction and improvement of public highways
- Measure 32: An act to promote and increase the general prosperity of the State, by constructing a tunnel under and through the base of James Peak, a spur of the Rocky Mountains, to be used for public or semi-public purposes

Appendix B: 1912 Election Results					
Measure	Subject	"Yes" Votes	"No" Votes	Total Votes	Percent "Yes"
	Type				
1	Statewide Prohibition	75,877	116,774	192,651	39.39%
2	Constitutional Amendment Initiative				
	Enforcement of Prohibition Laws				
	Statutory Initiative	64,616	79,190	143,806	44.93%
3	Women's Eight-hour Work Day	108,959	32,019	140,978	77.29%
4	Regulation of Public Utilities				
	Statutory Initiative	30,347	64,138	94,485	32.12%
5	Establishment of a State Fair				
	Statutory Initiative	49,102	52,462	101,564	48.35%
6	Creation of State Immigration Bureau				
	Constitutional Amendment Initiative	30,359	54,272	84,631	35.87%
7	Publishing Initiatives and Referendums in Newspapers				
	Statutory Initiative	39,551	50,635	90,186	43.85%
8	Granting Home Rule to Cities and Towns				
	Constitutional Amendment Initiative	49,596	44,778	94,374	52.55%
9	Providing Recall from Office				
	Constitutional Amendment Initiative	53,620	39,564	93,184	57.54%
10	Publishing Ballot Pamphlet				
	Statutory Initiative	37,616	38,537	76,153	49.40%
11	Providing Special Elections for Initiatives and Referendums				
	Constitutional Amendment Initiative	33,413	40,634	74,047	45.12%
12	Defining Contempt of Court and Providing for Trial by Jury				
	Constitutional Amendment Initiative	31,850	41,855	73,705	43.21%
13	Regulation of Public Utilities				
	Constitutional Amendment Initiative	27,534	51,820	79,354	34.70%
14	Amending Election Laws and Providing for a "Headless Ballot"				
	Statutory Initiative	43,390	39,504	82,894	52.34%
15	Providing for Wider Control of Public Schools				
	Constitutional Amendment Initiative	38,318	55,691	94,009	40.76%

16	Overrule Supreme Court Decisions & Create Juvenile Courts Constitutional Amendment Initiative	55,416	40,891	96,307	57.54%
17	Mothers' Compensation and Aid to Dependent Children Statutory Initiative	82,337	37,870	120,207	68.50%
18	Regulating Civil Service Statutory Initiative	38,426	35,282	73,708	52.13%
19	Eight-hour Work Day for Miners Statutory Initiative	52,525	48,777	101,302	51.85%
20	Funds for State Highways Statutory Initiative	44,568	45,101	89,669	49.70%
21	Eight-hour Work Day for Miners Popular Referendum	69,489	30,992	100,481	69.16%
22	Regulating Branding and Marking of Livestock Popular Referendum	37,387	37,740	75,127	49.77%
23	Custody and Management of Public Funds Popular Referendum	20,968	44,322	65,290	32.12%
24	Establishing Teachers' Summer Normal Schools Popular Referendum	23,521	63,266	86,787	27.10%
25	Examinations of Teachers Popular Referendum	25,369	54,086	79,455	31.93%
26	Concerning Water Rights and Irrigation Popular Referendum	22,931	47,614	70,545	32.51%
27	Designating Mining and Smelting Business as in Public Interest Constitutional Amendment Legislative Referendum	35,997	37,953	73,950	48.68%
28	Creating a State Tax Commission Constitutional Amendment Legislative Referendum	32,548	40,012	72,560	44.86%
29	Linking Fees and Salaries of Local Officials Constitutional Amendment Legislative Referendum	28,889	41,622	70,511	40.97%
30	Raising Limitation on County Debts Constitutional Amendment Legislative Referendum	29,741	47,284	77,025	38.61%
31	Authorizing a Bonded Indebtedness for Public Highways Constitutional Amendment Legislative Referendum	36,636	53,327	89,963	40.72%
32	Construction of Tunnel Through James Peak Statutory Legislative Referendum	45,800	93,183	138,983	32.95%

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### Notes

1. For concise overviews of the main substantive and normative issues concerning the direct-democracy debate, see Daniel A. Smith, “Direct Democracy and Its Critics,” in Peter Woolley and Albert Papa, eds., *American Politics: Core Argument/Current Controversy*, 2d ed. (Englewood Cliffs, N.J., 2002); Todd Donovan and Shaun Bowler, “An Overview of Direct Democracy in the American States,” in Shaun Bowler, Todd Donovan, and Caroline Tolbert, eds., *Citizens as Legislators* (Columbus, Ohio, 1998); David Schmidt, *Citizen Lawmakers: The Ballot Initiative Revolution* (Philadelphia, 1989); and David Magleby, *Direct Legislation: Voting on Ballot Propositions in the United States* (Baltimore, 1984), chap. 10.

2. Direct democracy (often referred to as direct legislation)—which includes the plebiscitary devices of initiative, popular referendum, and recall—is the political process whereby citizens participate directly in the making of public policy by casting their votes on ballot measures. With the initiative, citizens collect a specified number of valid signatures in order to place either a statutory measure or a constitutional amendment on the ballot for fellow voters to adopt or reject. With the popular referendum, citizens petition their legislatures to place a disputed legislative action on the ballot for the voters to reconsider. The recall enables citizens to collect signatures to force a retention vote of an elected official.

3. For an overview of many of the ballot measures adopted during the Progressive Era, see Schmidt, *Citizen Lawmakers*, 25–26.

4. Delos Wilcox, *Government by All the People* (New York, 1912), 3–10.

5. David Broder, “Ballot Initiatives Subvert Election Process,” *Denver Post*, 14 May 2000, K1; idem, *Democracy Derailed: Initiative Campaigns and the Power of Money* (New York, 2000).

6. Peter Schrag, *Paradise Lost: California’s Experience, America’s Future* (New York, 1998), 195. In passing, Schrag does allude to “that very same Southern Pacific Railroad” in his list of “interests,” but his point of reference is not the Progressive Era, but a successful June 1990 railway bond project (Proposition 116), which Southern Pacific supported with \$500,000 in contributions. Schrag, *Paradise Lost*, 219. In fact, Southern Pacific (now Union Pacific Railroad) was involved in numerous California ballot campaigns, from an unsuccessful 1911 legislative referendum that would have allowed public officials to ride for free on trains, to a successful 1948 statutory initiative that required the public Utilities Commission to specify the number of brakemen on trains. See John Allswang, *The Initiative and Referendum in California, 1898–1998* (Stanford, 2000), 83. There are numerous other journalistic accounts critical of direct democracy. See especially Lydia Chavez, *The Color Bind: California’s Battle to End Affirmative Action* (Berkeley and Los Angeles, 1998),

and Charles Mahtesian, "Grassroots Charade," *Governing* (November 1998): 38–42.

7. Schmidt, *Citizen Lawmakers*, 25–26.

8. Joseph Zimmerman, *The Initiative: Citizen Law-Making* (Westport, Conn., 1999), 94–95.

9. Elisabeth Gerber, *The Populist Paradox: Interest Group Influence and the Promise of Direct Legislation* (Princeton, 1999), 5.

10. See, for instance, Ellis Oberholtzer, *The Referendum in America* (New York, 1900); Charles Beard and Birl Shultz, *Documents on the State-wide Initiative, Referendum and Recall* (New York, 1912); William Munro, ed., *The Initiative, Referendum, and Recall* (New York, 1912); George Haynes, "People's Rule on Trial," *Political Science Quarterly* 28 (1913): 18–33; Lawrence Lowell, *Public Opinion and Popular Government* (New York, 1913); James Barnett, *The Operation of the Initiative, Referendum, and Recall in Oregon* (New York, 1915); Robert Cushman, "Recent Experience with the Initiative and Referendum," *American Political Science Review* 10 (1916): 532–39; Arnold Hall, *Popular Government* (New York, 1921). Not all eyewitness accounts during the Progressive Era, however, were sanguine about the process. For an overview, see Shaun Bowler and Todd Donovan, *Demanding Choices* (Ann Arbor, 1998), 7–20.

11. For example, Link and McCormick write, "Two new formal mechanisms of public opinion," the initiative and referendum, "permitted voters themselves to propose and enact legislation even against the will of the legislature," and "seemingly gave everyone an equal opportunity to change the laws, but in practice they were used most effectively by well-organized interest groups, such as labor unions, prohibitionists, and woman suffragists." Link and McCormick make no mention of how corporate interests also used the mechanisms. Arthur Link and Richard McCormick, *Progressivism* (Arlington Heights, Ill., 1983).

12. The term "mythic narrative" is borrowed from Richard Ellis, *Democratic Delusions: The Initiative Process in America* (Lawrence, Kan., 2002), 177.

13. Schmidt erroneously reports that Colorado also adopted the recall in 1910. In fact, Coloradoans approved a constitutional amendment ballot initiative (Measure 9) in 1912 that permitted the recall of public officials. See Schmidt, *Citizen Lawmakers*, 226. There are several other inaccuracies in works concerning the adoption of public policies in Colorado via the initiative. For instance, Cronin reports incorrectly that "after several failed attempts, initiative petition in Colorado . . . granted the vote to women." Thomas Cronin, *Direct Democracy: The Politics of Initiative, Referendum, and Recall* (Cambridge, Mass., 1989), 97. In actuality, women in Colorado gained the right to vote after male voters in November 1893 passed a constitutional amendment referendum placed on the ballot by the state legislature.

14. For brief histories of the adoption of initiative and referendum in Colorado, see Curtis Martin and Rudolph Gomez, *Colorado Government and Politics*, 4th ed. (Boulder, 1976), 205; Schmidt, *Citizen Lawmakers*, 15–20. For especially good accounts of the campaigns to adopt initiative and referendum mechanisms in other states, see Thomas Goebel, "A Case of Democratic Contagion: Direct Democracy in the American West, 1890–1920," *Pacific Historical Review* (May 1997): 213–30; Steven Piott, "The Origins of the Initiative and Referendum in America," *Hayes Historical Journal* 11 (Spring 1992): 5–17; and in the case of California, Allswang, *The Initiative and Referendum in California*, 8–18.

15. Francis Anne Huber, "The Progressive Career of Ben B. Lindsey, 1900–1920" (Ph.D. diss., University of Michigan, Ann Arbor, 1963), 332–34.

16. Shafroth was elected to the U.S. House of Representatives as a Republican in 1894 and then as a Silver Republican for two more terms (1896 and 1898). He was reelected to a fourth term in 1900 as a Democrat. In 1902, Shafroth was reelected as a Democrat, but he resigned his seat in 1903 after allegations of fraud

were made by his opponent. He was unsuccessful in another bid for Congress in 1904. Following his two terms as governor, Shafroth was elected to the U.S. Senate as a Democrat in 1912. He served only one term, defeated by Republican Lawrence Phipps in 1918. Colorado State Archives, "The Governor John F. Shafroth Collection." <[www.archives.state.co.us/govs/shafroth.html](http://www.archives.state.co.us/govs/shafroth.html)>.

17. Huber, "The Progressive Career of Ben B. Lindsey," 332–34.

18. California, Oregon, and several other states had parallel partisan experiences during this period. See Allswang, *The Initiative and Referendum in California*, 8–18; Ellis, *Democratic Delusions*, 26–30. For the reemergence of party involvement in ballot campaigns, see Daniel A. Smith and Caroline Tolbert, "The Initiative to Party: Partisanship and Ballot Initiatives in California," *Party Politics* 7 (Winter 2001): 781–99.

19. Speer and Evans had another reason to be allies. In 1911, the state legislature was called upon to choose a new United States Senator. Although Speer's Democrats controlled both chambers of the legislature, the Progressives were a prevalent enough force in both parties to ensure that neither establishment could have a majority. As such, Speer allied himself with his party adversary in the hopes of getting enough votes to be chosen as senator. However, the alliance was publicly revealed in the *Rocky Mountain News*, owned by former U.S. Senator Thomas Patterson, a civic reformer. Once the scheme was disclosed publicly, enough legislators refused to endorse it; Speer never won his coveted U.S. Senate seat. See "Citizens' League Petitions Are Filed with Supervisors," *Rocky Mountain News*, 13 April 1910; "Evans-Speer Gangs Vote Bosses' Will at Primaries," *Rocky Mountain News*, 22 April 1910; "Senator Patterson Asks W. G. Evans for Definite Statement of Moffat Road's Future," *Rocky Mountain News*, 12 April 1911.

20. Interpretations of Roosevelt's speech at the special session vary. Musselman claims that Roosevelt was "equivocal," at best, in his support of the direct legislation measure. See Lloyd Musselman, "Govern John F. Shafroth and the Colorado Progressives: Their Fight for Direct Legislation, 1909–1910" (M.A. thesis, University of Denver, 1961), 86–89. Roosevelt did exclaim that the legislators should "BE PROGRESSIVE. A great democracy has got to be progressive or it will soon cease to be either great or a democracy." See Colorado Senate, *Senate Journal of the Seventeenth General Assembly of the State of Colorado*. Extraordinary Session (Denver, 1910), 138–39. After visiting with Roosevelt, Judge Lindsey stated that he thought Roosevelt was "radical—just as radical as we want him," and that he supported the initiative, referendum, and recall, much to the chagrin of conservatives. Quoted in Huber, "The Progressive Career of Ben B. Lindsey," 254–55. Schmidt, who does not mention his 1910 visit to Colorado, cites Roosevelt's 1912 "Charter of Democracy" speech as his first explicit advocacy of direct-democracy reforms. See Schmidt, *Citizen Lawmakers*, 9.

21. Colorado Senate, *Senate Journal*, 152–58. During the Progressive Era, the initiative and popular referendum were commonly referred to as the "Oregon System," alluding to the widespread use of the mechanisms in Oregon, which began in earnest in 1904. Although South Dakota (1898) and Utah (1900) had established direct-democracy mechanisms before Oregon (1902), citizens in Oregon were the first to use the statewide plebiscitary reforms. See Barnett, *The Operation of The Initiative, Referendum, and Recall in Oregon*, 75–85; Ellis, *Democratic Delusions*, 30–35.

22. The *Denver Post* and *The Denver Times* took no official stance on the merits of direct democracy. At the time, the *Denver Post* was being sued for libel, so it understandably kept its editorializing to a minimum. See Harlan Knautz, *The Colorado Progressive Party of 1912* (M.A. thesis, University of Denver, 1964).

23. The final vote tally was 88,948 votes (75.4 percent) in favor of the constitutional amendment and 29,098 votes (24.6 percent) against the referendum. Colo-

rado Secretary of State, *State of Colorado: Roster of Elected Officers and Tabulated Statement of the Votes Cast for the Several Candidates, Tuesday, November 8, A.D. 1910* (Denver, 1911).

24. Immediately following the 1910 popular vote, opponents challenged the measure in court, arguing that the special session bill had not been submitted properly to the people under Colorado's constitution. In August 1912, a Denver district judge, Harry Riddle, agreed with the plaintiffs, and it looked as though Coloradoans would still be without the initiative and referendum. On appeal, however, the Colorado Supreme Court overturned the decision by Riddle and allowed the popular vote on the measure to stand. See "Initiative and Referendum Held Valid," *Denver Post*, 24 September 1912. Opponents of direct democracy then tried to convince Secretary of State James Pearce, a Democrat, that the vast majority of the signatures on the various petitions circulating for the 1912 election were forgeries. William Malone, a member of the DLL and secretary to Governor Shafroth responded by saying, "Corporation influence is being brought to bear to prevent the submission of the public utilities court bill and the headless ballot initiated by the Direct Legislation League." See "Corporations Lend Influence to Kill Initiative Bills," *Rocky Mountain News*, 10 July 1912. Although Pearce agreed that many of the signatures were indeed forgeries, he insisted that he was powerless to do anything because the 1910 law gave no remedy for fake signatures on petitions.

25. Despite opposition by the influential *Denver Republican* newspaper and many public officials from both major parties, voters reelected Governor Shafroth in 1910 with 54 percent of the vote. Richard Lamm and Duane Smith, *Pioneers and Politicians: 10 Colorado Governors in Profile* (Boulder, 1984), 99.

26. It should be noted that there are many vote discrepancies in the public record concerning the actual vote totals for and against the thirty-two measures. In several cases, the vote totals on the actual county returns do not match the entries on the state abstract of the vote; in other cases, there are vote totals in parentheses on the county returns that are slightly different from the official typed count. In reporting the figures, we have done our best to cross-reference the official results of all thirty-two measures.

27. As in other states, when a popular referendum in Colorado receives a majority "yes" vote, it means that the legislation in question is approvingly retained by the voters. Hence, when a measure "passes" with a majority vote, the proponents of the popular referendum actually lose. In Colorado, the five 1912 popular referendums (Measures 22–26) that received less than 50 percent of the vote were removed from the Colorado statute books in 1913. For an excellent explanation (and frank admission of the inherent confusion) of the popular referendum in California, see Allswang, *The Initiative and Referendum in California*, 18–19.

28. These early results contradict the established finding that compulsory referendums placed on the ballot by state legislatures are historically much more likely to pass than initiatives and popular referendums. See David Magleby, "Direct Legislation in the American States," in David Butler and Austin Ranney, eds., *Referendums around the World* (Washington, D.C., 1994), 230–31. Among the factual errors found in Schmidt's work, which other scholars have unquestionably praised as an "excellent history of the initiative in the United States" (Philip DuBois and Floyd Feeney, *Lawmaking by Initiative: Issues, Options, and Comparisons* [New York, 1998], 20), is his account of Colorado's development of the initiative. Schmidt wrongly states that there were "22 Initiatives on the ballot, of which nine passed." Schmidt, *Citizen Legislators*, 226. Despite the tireless efforts of M. Dane Waters and the Initiative and Referendum Institute, much work remains simply to provide a full and accurate account of the ballot titles and texts of all the measures approved and rejected by citizens during the Progressive Era.

29. No official records on turnout are available for the 1912 election. For estimates of voter turnout in Colorado during the Progressive Era, see R. C. Spencer, "Activities of the Colorado Electorate," *American Political Science Review* 17 (1923): 101–8.

30. On average, 38 percent of those who cast votes for President voted on the twenty initiatives on the ballot; 33 percent voted on the six compulsory referendums; and only 30 percent voted on the six popular referendums. Colorado Secretary of State, *State of Colorado: Roster of Elected Officers and Tabulated Statement of the Votes Cast for the Several Candidates, Tuesday, November 5, A.D. 1912* (Denver, 1913). While in line with recent studies showing that voter fatigue is more prevalent among legislative referendums than initiatives, the average ballot roll-off on the thirty-two measures in the 1912 election was nevertheless quite striking. For initiative and referendum passage rates in the states, see Magleby, *Direct Legislation*, 90–95.

31. Unfortunately, most of the DLL's records from Colorado are not available. Although the DLL stayed active in 1913 and tried to get several progressive measures through the legislature, in 1914 Lindsey incorporated the Colorado Social Service League and the DLL floundered in his absence. Huber, "The Progressive Career of Ben B. Lindsey," 345–46. In his remarkable career as a Denver judge and social reformer, Lindsey was harassed by the Ku Klux Klan, disbarred in Colorado in 1929 (and later reinstated in 1935), and eventually moved to California to practice law.

32. Ironically, Judge Lindsey, the principal author of the initiative calling for the recall of elected officials, was himself nearly recalled in one of the measure's first applications. Huber, "The Progressive Career of Ben B. Lindsey," 343.

33. Citing federal law, the Colorado courts struck down as unconstitutional the provision of Measure 16 that allowed voters to overturn the decisions of the Colorado Supreme Court by declaring laws unconstitutional.

34. The *Denver Republican* called the leaders of the DLL a bunch of "professional reformers and agitators." The Colorado Stock Growers Association and the Humane Society separately assailed Lindsey and his "pet" initiative, the successful mother's compensation act. "Mothers' Compensation Bill Menace to Children's Home," *Denver Republican*, 26 October 1912. Several newspapers, along with a coalition of public school teachers, strongly condemned Lindsey's amendment that would have opened public schools to wider popular control. See "League Preparing Reply to Foes of School Measure," *Denver Times*, 18 October 1912; "Teachers Outline Attitude Toward New School Law," *Denver Times*, 19 October 1912; "Judge Lindsey Is Answered," *Rocky Mountain News*, 24 October 1912; and "Two Initiated Measures Which School Well Wishers Condemn," *Denver Republican*, 3 November 1912. In 1913, the DLL, as well as some Democratic members of the House, circulated a petition for an initiative on the 1914 ballot that would have dissolved the state Senate. Although it never made it on the ballot, during the circulation phase proponents of the measure claimed it was the upper chamber of the legislature that had become corrupted by corporate influences, and that the only cure was to abolish the Senate. "Bill to Abolish State Senate as Corporation Tool and Bar to Progress to be Initiated," *Rocky Mountain News*, 8 January 1913; "House Democrats Plan to Head Petitions for Abolition of State Senate," *Rocky Mountain News*, 9 January 1913.

35. Although Measure 1, which sought to make Colorado a "dry" state, lost handily, garnering slightly more than 39 percent of the vote, Coloradoans would narrowly pass a similar prohibition initiative in 1914. Unfortunately, few accounts exist concerning the electioneering of these and other measures.

36. See Elizabeth Garrett, "Perspective on Direct Democracy: Who Directs Direct Democracy?" *University of Chicago Law School Roundtable* 4 (1997): 17–36;

Daniel A. Smith, *Tax Crusaders and the Politics of Direct Democracy* (New York, 1998); idem, "Reevaluating the Causes of Proposition 13," *Social Science History* 23:2 (Summer 1999): 173–210; idem, "Campaign Financing of Ballot Initiatives in the American States," in Larry Sabato, Bruce Larson, and Howard Ernst, eds., *Dangerous Democracy? The Battle Over Ballot Initiatives in America* (Lanham, Md., 2001); idem, "Special Interests and Direct Democracy: An Historical Glimpse," in M. Dane Waters, ed., *The Battle Over Citizen Lawmaking* (Durham, N.C., 2001).

37. Colorado Bar Association, *Analysis of Thirty-Two Measures Submitted to the Electors of Colorado Under the Initiative and Referendum Amendment and by the 18th General Assembly* (Denver, 1912), 26.

38. *Ibid.*

39. Measure 22, the livestock referendum, proposed to transfer control of branding from the Secretary of State to a new board, in whom all authority would be vested. As the Colorado Bar observed, "There will by this law be concentrated with the said commissioners full control and authority." Colorado Bar Association, *Analysis of Thirty-Two Measures*, 73. This authority arguably conflicted with Measure 23, which vested custody over all public funds in the state treasurer. There were, naturally, strong interests looking for control over the branding of livestock in the state and in keeping state funds decentralized. Finally, Measure 26 sought to restrict the rights of reservoir owners to impound water in their reservoirs. While some such restrictions had always applied, the scope of the new law was much more broad. See Colorado Bar Association, *Analysis of Thirty-Two Measures*, 73, 75, 83–84; "Vote for Eighteen of the Proposed Measures, Cast Your Vote Against Fourteen of the Bills," *Denver Post*, 30 October 1912.

40. Lee Scamehorn, *Mill & Mine: The C.F. & I. in the Twentieth Century* (Lincoln, 1992), 21.

41. David Lonsdale, "The Movement for an Eight-Hour Law in Colorado, 1893–1913" (Ph.D. diss., University of Colorado at Boulder, 1963), 274–77.

42. Looking at the total votes cast in the election, even Measure 31, which had the most votes of the five legislatively referred measures, was voted upon by less than half of the people who voted on the prohibition initiative. Election-goers cast 192,651 votes on the prohibition question (Measure 1), compared to only 89,963 votes cast upon Measure 31, which authorized bonded indebtedness for the construction of state highways.

43. In its nonpartisan analysis of the thirty-two ballot measures, the Colorado Bar Association minced no words: "The purpose of the proposed law is to give state aid to The Denver, Northwestern, and Pacific Railway Company, in the construction of its line from Denver to Salt Lake City." Colorado Bar Association, *Analysis of Thirty-Two Measures*, 97.

44. See P. R. Griswold, *David Moffat's Denver, Northwestern and Pacific: "The Moffat Road"* (Denver, 1995), and Edgar McMechen, *The Moffat Tunnel of Colorado: An Epic of Empire* (Denver, 1927). Griswold's history of the Moffat Road, written sixty-eight years after McMechen's 1927 study, draws heavily from his predecessor's work. Unfortunately, both works have numerous inaccuracies concerning the 1912 election. For example, McMechen and Griswold both misinterpret the way in which the bill became a compulsory statutory referendum. Both incorrectly report that the bill went to the people by legislative default. According to their reading of events, Governor John Shafroth neither signed nor vetoed the bill, which caused the measure to be referred automatically to a vote of the people as per the Constitution. There are two problems with this analysis. First, the House of Representatives amended the bill to make it a referendum and thus send it to the people. Once the amended bill had passed through both chambers of the legislature, it went directly to the ballot for November, bypassing the governor's desk all together. The governor did not have the opportunity either to endorse or veto the

measure. Second, there is no provision in the Colorado constitution that refers bills to the people that are left unsigned by the governor.

45. In order of adoption, the states that adopted public utilities commissions were: New York and Wisconsin, 1907; Vermont, 1908; Maryland, 1910; Washington, New Hampshire, Kansas, Nevada, New Jersey, Connecticut, and Ohio, 1911; California and Rhode Island, 1912. See John Lapp, "Public Utilities," *American Political Science Review* 6 (1912): 576–78. It should be noted that the Oregon legislature had passed a law creating a public utilities commission in 1911, but it was challenged (and thereby temporarily suspended) by a popular referendum that was placed on the ballot in 1912. The referendum, Measure 8, was approved by the voters, thereby reinstating the legislation. See *Oregon Blue Book*, "Initiative, Referendum and Recall 1912–1914." <<http://bluebook.state.or.us/state/elections/elections12.htm>>.

46. Newspapers of the day rarely referred to the specific corporate holdings of Evans. When they did, it was usually limited to his involvement with the Denver Tramway or prior holdings in the railroad. For instance, in 1914 the *Denver Post* opposed a plan to make newspapers a public utility. In voicing its opposition, the paper read, "This amendment was gotten up by William G. Evans and the *corrupt corporations which he represents and controls*, and which he destroyed and ruined." "So the People May Know," *Denver Post*, 2 November 1914 (emphasis added).

47. Colorado Bar Association, *Analysis of Thirty-Two Measures*, 46.

48. The 1914 initiative, Measure 8, sought to put the "public press" under the control of the Public Utilities Commission. Not surprisingly, the proposal was roundly condemned by area newspapers. See "So the People May Know," *Denver Post*, 2 November 1914.

49. "Business Men in Public War over Utilities Bill," *Denver Post*, 10 October 1912.

50. "Utilities Bill Is Drawn by Phone Heads, Is Charge," *Denver Republican*, 25 October 1912.

51. "The Two 'Utilities' Bills," *Rocky Mountain News*, 17 October 1912.

52. Colorado Bar Association, *Analysis of Thirty-Two Measures*, 8–25.

53. "The Two 'Utilities' Bills," *Rocky Mountain News*, 17 October 1912.

54. Colorado Secretary of State, *State of Colorado: Roster of Elected Officers and Tabulated Statement of the Votes Cast for the Several Candidates*, 1913.

55. Since the Progressive Era, many scholars have expressed deep reservations over the ability of citizens to vote on ballot measures that support their core beliefs and attitudes. In 1907, for example, political scientist George Haynes wrote how "[i]t is commonly assumed that, in a heated campaign, the average voter will 'keep in touch'—a very fitting phrase—with the questions of the day. But in every state there are thousands of voters who read no newspapers regularly, whose circumstances and associations are such that they have little opportunity to read or hear any informing discussion, and who come to the polls with but the haziest notions as to what the election is all about." George Haynes, "The Education of Voters," *Political Science Quarterly* 22:3 (1907): 484–97, 485. Indeed, while the Colorado electorate summarily rejected both public utility measures in 1912, a county-level analysis of the two votes reveals that voters in the state's sixty-two counties did not vote at the aggregate level as consistently on the two measures as might be expected. Notwithstanding the possibility of committing an ecological fallacy, one might expect the county-level vote on the two measures to be inversely related. For example, voters in counties that broadly supported the DLL's Measure 13 would be expected not to support the utility companies' sham initiative, Measure 4. Yet the bivariate Pearson product moment correlation between the percentage of the county "yes" vote for both measures is positively related ( $r = .600$ ) and significant ( $p < .01$ , 2-tailed,  $n = 62$ ), indicating that there may have been considerable voter confusion

about the two initiatives. Despite serious concerns about voter competence during the Progressive Era, political scientists today generally concur that voters are capable “of meeting minimal requirements for decision making in direct-democracy elections.” Bowler and Donovan, *Demanding Choices*, 20. See also Arthur Lupia, “Dumber than Chimps? An Assessment of Direct Democracy Voters,” in Sabato, Ernst, and Larson, eds., *Dangerous Democracy? The Battle Over Ballot Initiatives in America*; Arthur Lupia, “Shortcuts versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections,” *American Political Science Review* 88 (1994): 63–76.

56. Only 94,485 voters (out of the more than 263,000 who voted for President) cast ballots on Measure 13, and just 79,354 voted on Measure 4; in contrast, 192,651 voters cast ballots on Measure 1—which received the highest tally of any ballot measure—calling for statewide prohibition. Colorado Secretary of State, *State of Colorado: Roster of Elected Officers and Tabulated Statement of the Votes Cast for the Several Candidates*, 1913. For the keen interest of voters regarding prohibition measures in other states during the Progressive Era, see Lester Shippee, “Washington’s First Experiment in Direct Legislation,” *Political Science Quarterly* 30 (1915), 235–53; Barnett, *The Operation of the Initiative, Referendum, and Recall in Oregon*, 1915; Allswang, *The Initiative and Referendum in California, 1898–1998*; Beard and Shultz, *Documents on the State-wide Initiative, Referendum and Recall*, 1912.

57. Burris’s bill was opposed by the public utility corporations. Corporate opposition to the law was evidenced by the three popular referendum petitions that were circulated immediately following the bill’s passage. Of the three popular referendums, two (Measure 9 and Measure 13) were successfully placed on the 1914 ballot. Measure 9 sought to excise two sections from the 1913 law, while Measure 13 sought to repeal three sections, effectively repealing the entire law. On the actual 1914 ballot, however, only the proposed sections of the law to be repealed were listed. Voters had no way of knowing, from their ballot, what those sections contained. See the sample ballot published in the *Denver Post*, 2 November 1914.

58. Like Shafroth, Ammons switched party allegiances in 1896, joining the Democratic party after serving in the state legislature as a Republican during the early 1890s. In addition to strengthening the regulation of the public utilities commission, Ammons continued Shafroth’s progressive vision by creating new public institutions of higher education, bolstering civil service requirements, establishing a more equitable tax system, and expanding public highways and state parks. Ammons’s administration was blemished, however, by his handling of the September 1913 strike by coal miners around Trinidad and the subsequent “Ludlow Massacre” in April 1914 carried out by the Colorado state militia after the mine owners convinced Ammons to send in the National Guard to keep the mines in operation. See Howard Gitelman, *Legacy of the Ludlow Massacre: A Chapter in American Industrial Relations* (Philadelphia, 1988); Colorado State Archives, “The Governor Elias M. Ammons Collection at the Colorado State Archives.” <[www.archives.state.co.us/govs/eammons.html](http://www.archives.state.co.us/govs/eammons.html)>.

59. See Melvyn Dubofsky, *We Shall Be All: A History of the Industrial Workers of the World* (Chicago, 1969); Philip Foner, *History of the Labor Movement in the United States*, vol. 4 (New York, 1965); Robert Wiebe, *The Search for Order, 1877–1920* (New York, 1967); David Brody, ed., *The American Labor Movement* (New York, 1971); Benjamin Hanford, *The Labor War in Colorado* (New York, 1904).

60. Walter Wellman, “Walter Wellman’s Indictment of Moyer, Haywood and the Western Federation of Miners,” unpublished manuscript, Denver Public Library, Western History and Genealogy, 1910, 10.

61. Originally, Hurd’s bill was set to include all underground workers, but as Knight points out, “Colorado Fuel & Iron and the smelter lobby were able to restrict it to miners and smelters. In effect, the law only covered one-fifth of all un-

derground workers. See Harold Knight, *Working in Colorado: A Brief History of the Colorado Labor Movement* (Boulder, 1971), 49.

62. Lonsdale, "The Movement for an Eight-Hour Law in Colorado," 271.

63. *Miners' Magazine*, vol. 12, no. 487, 24 October 1912, 3.

64. *Denver Post*, 2 August 1911; *Rocky Mountain News*, 2 August 1911.

65. W. A. Schnader, "Proper Safeguards for the Initiative and Referendum," *American Political Science Review* 10 (1916): 515–31, 519.

66. As Lonsdale writes: "The Federation obtained affidavits from many whose names appeared on the petition stating that they had never seen the petition. These affidavits were given to the Secretary of State." Lonsdale, "The Movement for an Eight-Hour Law in Colorado," 274.

67. Again, the only way for a voter to know these details would be to look at a supplement, such as the one published by the Colorado Bar. See Colorado Bar Association, *Analysis of Thirty-Two Measures*, 66.

68. Western Federation of Miners, *Official Proceedings of the Annual Convention of the Western Federation of Miners of America, August 2, 1910–July 29, 1916* (Denver, 1916), 409. The indictment of the Guggenheims alongside Rockefeller's C.F. & I was not surprising. The Guggenheim family operated the American Smelting and Refining Company (ASARCO) in Pueblo as well as several large mines in Colorado. See Milton Lomask, *Seed Money: The Guggenheim Story* (New York, 1964).

69. Colorado Bar Association, *Analysis of Thirty-Two Measures*, 66; "The Eight-Hour Laws." *Rocky Mountain News*, 24 October 1912.

70. The adoption of the two counterpropositions that so patently conflicted with each other indicates that voters may not have understood the substantive implications of the initiative and popular referendum. The ballot titles did little to clarify the intent of the two measures. (At the time in Colorado, the sponsors of initiatives and popular referendums—and not a state agency—composed the ballot title and actual text of the measures.) The ballot title of Measure 19 stated: "AN ACT TO REGULATE AND LIMIT THE HOURS OF EMPLOYMENT IN UNDERGROUND MINES, SMELTERS, MILLS AND COKE OVENS; TO DECLARE CERTAIN EMPLOYMENT INJURIOUS TO THE HEALTH AND DANGEROUS TO LIFE AND LIMB." Even more cryptically, the popular referendum, Measure 21, read: HOUSE BILL NO. 46, LAWS 1911, EIGHT HOUR LAW FOR MINERS. How voters on election day interpreted the intent of these measures, much less understood what a "yes" or "no" vote meant on the aforesaid popular referendum, is impossible to determine. An examination of the county-level votes on the two measures is perhaps indicative of the confusion many voters had in determining what their vote actually meant. Again, one might expect the county-level vote on the two measures to be inversely related, as a "yes" vote on the initiative, which would reinstate the language of the 1905 legislation, would have the same effect as voting "no" on the popular referendum. Yet the bivariate Pearson product moment correlation between the percentage of the county "yes" vote for both measures is positively related ( $r = .474$ ) and significant ( $p < .01$ , 2-tailed,  $n = 62$ ), indicating again, as in the case of the competing regulation of public utilities measures, that there may have been considerable voter confusion. Finally, it should be noted that the occasional adoption of conflicting ballot measures occurred in other states. In Oregon, for instance, voters approved two initiatives in June 1908, which were placed on the ballot by upstream and downstream fisherman, that effectively eradicated the other's right to fish for salmon on the Columbia River. At the time, the adoption by voters of these two competing measures was interpreted alternatively as both an irrational and a rational decision. For a discussion of the debate over salmon fishing in Oregon, see Bowler and Donovan, *Demanding Choices*, 118–28.

71. The court's exact language on this matter is as follows: "It provides that the power reserved designated the 'referendum,' 'may be ordered, except as to laws

necessary for the immediate preservation of the public peace, health or safety.” Colorado Senate, 1913. *In Re Senate Resolution, No. 4*. 54 Colo. 262 (Denver, 1913).

72. The evidence is mixed that public policies come closer to citizen preferences in initiative states than in noninitiative states. See John Matsusaka, “Fiscal Effects of the Voter Initiative: Evidence from the Last 30 Years,” *Journal of Political Economy* 103 (1995): 587–623; idem, “Problems with a Methodology Used to Evaluate the Voter Initiative,” *Journal of Politics* 63 (2001): 1250–56; Elisabeth Gerber, “Legislative Response to the Threat of Popular Initiatives,” *American Journal of Political Science* 40 (1996): 99–128; but see Edward Lascher, Michael Hagen, and Steven Rochlin, “Gun Behind the Door? Ballot Initiatives, State Policies, and Public Opinion,” *Journal of Politics* 58 (1996): 760–75; John Camobreco, “Preferences, Fiscal Policies, and the Initiative Process,” *Journal of Politics* 60 (1998): 819–29; Michael Hagen, Edward Lascher, and John Camobreco, “Response to Matsusaka: Estimating the Effect of Ballot Initiatives on Policy Responsiveness,” *Journal of Politics* 63 (2001): 1257–63. Irrespective of whether public policy in states permitting the initiative is more consistent with the median voter than in noninitiative states, individual legislators in initiative states seem to interpret initiative results from a rational, selfish perspective, which includes noting how their own constituents voted on ballot measures. See Daniel A. Smith, “Homeward Bound? Micro-Level Legislative Responsiveness to Ballot Initiatives,” *State Politics and Policy Quarterly* 1 (2001): 50–61.

73. Ellis, *Democratic Delusions*, 203.

74. Western Federation of Miners, *Official Proceedings*, 409–10.

75. Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.* (New York, 1955), 261.

76. David McCuan, “California’s Political Warriors: Campaign Professionals and the Initiative Process,” in Shaun Bowler, Todd Donovan, and Caroline Tolbert, eds., *Citizens as Legislators* (Columbus, Ohio, 1998), 55–56.