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The Property Rights Battle in Oregon: The Influence of Ballot Titles on Voter Opinion

Annette d'Autremont
University of Puget Sound

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I: Introduction

Oregon's land management system was introduced in 1973 has been the foremost example in the United States for states trying to balance the desires of opposing interests; planners (city planners, urban dwellers, environmentalists) and land owners (those owning land in urban or rural areas). Oregon's system seemed to be the answer state planners were looking for in creating both a comprehensive and effective land use system which the majority of citizens could get on board with. The 1970s was an era, often noted as the "golden" era for environmental policymaking because so many laws were passed in this decade which sought to preserve the natural landscape for future generations. Oregon's statewide land management plan fell into this category since it seemed to share the country's shifting opinion on the best "use" for the land for future generations. This theme of preservation v. economic productivity in environmental politics is one which has been disputed and argued over for decades.

It was not until 30 years later, after the new millennium that Oregon public opinion began shifting more in favor of landowners and consequently, away from championing Oregon's land management plan which had worked (relatively problem free) since its initiation in 1973. It is of interest *why* Oregon public opinion on the statewide land management plan changed so abruptly with the introduction and passage of Measure 7/37 in 2004, after decades of support.

Furthermore, Measure 7/37 was overturned or "fixed" in 2007 by ballot Measure 49 which rewrote many of the amendments which Measure 7/37 introduced. Since public opinion usually takes decades to shift, it is odd that the citizens of Oregon changed their opinion of property rights so speedily: multiple times within a period of about eight years. I believe that the root of this public opinion shift originated from the framing of the campaigns to pass both measures.

The importance of frames (messages, images, words) in current environmental

policymaking efforts is great and has a lot of wielding power among uninformed or ambivalent citizens. The goal of this research paper is to determine if, and then how effective frames were in shifting Oregonian's public opinion about property rights in an attempt to provide broader insight into the usefulness of ballot measures in environmental policymaking. We will start by providing a brief overview of Oregon's land use story, then continue to dive deeper into the use of frames in the political sphere, specifically in environmental policymaking decisions. We will then continue on to a review of the media analysis conducted to determine what frames were used in both campaigns. We will end with conclusions about how frames were used in the Oregon property rights battle and what this tells us in the broader scheme of things for other land management and environmental policymaking issues.

II: Oregon's Land Use Story

Oregon has long been the state which other states look up to, when deciding how to manage their land. Past the obvious "green-ness" of Oregon's landscape and environmental consciousness, Oregon championed statewide land management systems because it not only introduced one of the first comprehensive plans but the first one that actually worked. It balanced the desire for green open space among urban dwellers who wanted to get out of the city for recreation while giving property owners the ability to manage their own farm, forest or other forms of privately owned land. However, the *limited* rights of landowners started a debate in the 1970s which tried to change the land use system. The challengers were largely unsuccessful in their campaigns for passing ballot measures which overturned the system. These ballot measures spanning a period of 30 years, received, at most only 39% "yes" votes. It was very clear that Oregonians did not want to change their prized land management system.

Oregon's Senate Bill 100, which was championed by the beloved Governor Tom McCall can be included in this assortment of "golden era" laws, as it puts the environment and public's best interests forthright, despite of both economic and business pressures. Unfortunately, Oregon's land management policy was not enjoyed by all Oregonians. This can be seen from a backlash of landowner interest groups who tend to value private property rights to the egalitarian values set forth by Oregon's land use system. In response to these opposing values between the state and landowners, subsequent ballot measures have been put forth which sought to amend the land use system. From 1976 until 1998, no ballot measure was successfully passed by the voters at the polls. It was not until the passage of Measure 7 in 2000 (although it was overturned by the Oregon Supreme Court), which got landowners the justice they felt they deserved. However, two subsequent ballot measures 37 (2004) and 49 (2007), which respectively sought to restrict state regulations and then to reinstate that same power questions the effectiveness of citizen-proposed initiatives. In a time when Congress is gridlocked, the Executive power is controversial and very centralized, and the courts seem to be the best (if only legitimate) venue for policymaking; the country needs strong state action to tackle the environmental issues of the present. Yet, prospects are dim for such success by states as ballot measures cost time, money and in Oregon's land use case, get overturned by subsequent measures, and the cycle repeats itself.

III: Literature Review on the Concept of "Framing"

Central to this idea of "framing" in the world of politics, is Frank Luntz's work on framing environmental issues in his memo to President Bush "The Environment: A Cleaner, Safer, Healthier America." Luntz also supports the concept of "myth-making" as central to persuading and motivating ambivalent citizens to get involved in the environmental movement.

However, Luntz's intentions don't seem to correlate with furthering and improving the environmental policymaking process. Instead, he makes suggestions in his Memo as to which are the most convincing and persuasive frames for Americans by employing the core American values (equity, security, liberty and efficiency) to be used by policymakers in campaigns to pass legislation. From the Memo, we can identify that frames are impossible to get away from in any politically motivated situation, and unfortunately, they are used in a deceptive manner to garner support for one side of an issue. Therefore, we must be wary when seeing, hearing or reading advertisements which may exhibit this usage of "tweaking the truth." We must have a subjective eye and look for conflicts in their argument. More importantly, we must be able to identify when they are making exaggeratory claims about the environmental movement that aren't really very substantiated, once we look past the effectiveness of their powerful words and frames.

In addition, it is important to recognize the work of George Lakoff whose research on framing relates to the broader politicking environment. Nonetheless, Lakoff recognizes many of the same "turns of the truth" which Luntz does, but in a broader sense. Therefore, his research applies more so to candidates running for office or once they are in office, the best way to stay there by using persuasive and popular frames. In particular, Lakoff says about framing "Language always comes with what is called "framing." Every word is defined relative to a conceptual framework. If you have something like "revolt," that implies a population that is being ruled unfairly, or assumes it is being ruled unfairly, and that they are throwing off their rulers, which would be considered a good thing. That's a frame" (Lakoff UC Berkeley article 2003).

IV: Research Design and Methodology

The research design of this research project took the form of library research (books, scholarly articles), interviews with representatives on both sides of the issue, as well as a media audit. The articles consulted can be found in the bibliography and the interviewees in Appendix B. The media audit namely looked at the tactics the campaigns employed: emotional and mobilizing images, provocative language, and symbols, used to persuade ambivalent and ill-informed citizens to side with them. I consulted regional and national newspaper articles, local news station reports, TV commercials, and other media mediums e.g. radio show interviews and press releases. It proved to be a good venue for organizing my research, although the results it displayed were not necessarily the findings of my research.

V: Findings

The findings of this paper could be easily summed up by listing the specific frames used and explaining the ones that seemed to have the greatest impact among voters. That could easily go on for many pages; going through each frame individually. Instead, you can look through the media audit and analysis to clearly see what I won't waste time to describe. I would rather discuss the importance of the frames *collectively* in each of the ballot campaigns and not focus on what frames were used. I think it is important to interpret the importance of the frames which seemed to have shaped public opinion in lieu of what my interviewees have told me. There are a number of additional factors which influenced voter opinion and it is important to acknowledge these and not become biased by my main area of focus: the frames.

When interviewing the array of people I was able to talk to, a common theme that emerged was that they all cautioned me that frames were not the only factor which played a role in shaping voter opinion. They reminded me of the budgets of the campaigns running the measure, the ballot title and language, as well as voter turnout are all extremely important

components in the success (or failure) of a ballot measure. So from the get go, it was clear to me that I needed to be wary about how much importance I assigned to frames, as there are other factors which I did not recognize or have time to study.

Secondly, I originally framed my research question in terms of the Oregon Urban Growth Boundary (UGB) as a representation of the property rights battle in Oregon. Early on in my research, when I was setting up contact with interviewees via email, many commented back to inform me that ballot measures 37 and 49 were not ever presented to the public in terms of the UGB. Most said that the Measures were introduced as a property rights issue. Furthermore, they said that the UGB was a fairly unknown concept to many Oregonians and introducing it in the campaigning process would only confuse voters further. Although this discrepancy did not ultimately change the nature of my research, it did change the way I discuss the ballot measures in my paper.

Measure 37 Campaign

After conducting the media audit and interviewing many representatives, I confidently uncovered the main message of the Measure 37 campaign. It was very clear from speaking with 1000 Friends of Oregon and John Charles of the Cascade Policy Institute that Measure 37 wanted to achieve “fairness” for property owners. This theme was displayed by the poster child for the campaign; Dorothy English. Ms. English was a little old lady who wanted to build a few houses on her land in Multnomah County in Portland for her family. She argued that since she had owned the land for 50-some years, before the land use system was established in 1973, she should have the right to do whatever she wanted with her land. This story was portrayed to voters as “the little old lady vs. big bad bureaucracy” and easily resonated with them. Many Oregonians

felt empathetic for Ms. English and her family and thought that she should have the right to build some houses on her property if she wanted to.

This story of the little old lady against the government aggravated many landowners and more importantly, non-landowning voters because it seemed to be a “taking” of civil liberties. So many liberal voters who normally support government land regulation were convinced that there was something wrong with the system. It wasn’t even a very deceptive campaign, but the message of fairness was so powerful, Dorothy’s image so memorable, and the fact that voters had little else information to base their decision on that when it came time to go to the polls, Oregonians passed it with a 60-40 margin. This was due to the combination of the YES on 37 messaging but also on the ineffectiveness of the NO on 37 campaign.

In 2004, the NO on 37 campaign was majorly backed by 1000 Friends of Oregon, who had a much larger budget than Oregonians in Action. However, according to my interviews, their message was more intellectual and did not resonate well with voters (Charles, Hibbitts). Therefore, the YES side was able to draw voters to their side who would usually not support a pro-property rights measure. “The (Measure 37) campaign had a lot going for it: a seductive ballot title, a built-in support base because a similar measure passed in 2000, a state government that hasn’t solved Oregonians’ problems.” This led to the passage of Measure 37 by 61% of the vote. This was quite a mandate when compared to the failure of previous pro-property rights measures which received support as low as 39%. However, the aftermath of the passage of Measure 37 led to many unintended consequences that voters could not have known about.

Although ballot measures may seem like a great form of participatory democracy, it is not always the best way to change a statute. Because voters are usually ill-informed of the measure at hand and do not have the time or expertise to fully understand the measure, they

usually end up making judgment based off of very few facts: TV commercials, ballot titles, and word of mouth. These are easy ways to form an opinion on an issue, and unfortunately can be misleading to voters. The failure of ballot measures can be clearly displayed in the results and problems which developed from the passage of Measure 37.

The main component of the measure which most voters understood was that “GOVERNMENTS MUST PAY OWNERS, OR FORGO ENFORCEMENT, WHEN CERTAIN LAND USE RESTRICTIONS REDUCE PROPERTY VALUE.” Ironically, this was the title of the ballot measure, showing that most voters don’t read past the title and dive into the 100 plus pages of the voter’s pamphlet. At first glance, this seems fair: the government should pay landowners if they infringe on land. However, what voters did not take into account was where the funds to pay for the compensation would come from. Beyond the ballot title, the text of the measure goes on to explain that the county the claim is filed in must pay the owner, and if the county cannot pay, then they must waive the land use restrictions set up in Oregon’s system. This is what voters missed from not reading the entirety of the measure and is what so many people got rattled up about after claims began rolling in to the county offices.

Since there was nowhere near enough money for counties to pay all the claimants, they would have to allow the landowners to build homes or develop their property some other way. Many claimants were owners of property next to farmland and this put the farm land and for many, their livelihood in jeopardy. Not to mention it threatened Oregon’s natural landscape. As the claims kept rolling, the vast majority of those coming from timber companies looking to develop acres and acres of land, neighbors became voicing their concern and 1000 Friends of Oregon was there to help... thus, enters Measure 49 in 2007.

Measure 49 Campaign

Since Measure 49 was a “fix” to the misconceptions of measure 7/37, it seems at first glance that it would easily pass at the polls. This is not entirely true because although there were many voters who realized the problems with Measure 37, many property owners, businesses and the drafters of measure 37 did not want to “amend” it with measure 49. This was true because they actually had a “stake” in the outcomes, unlike many voters who lived in the city did not because they didn’t own any property. Ross Day says “land use politics is highly politicized when money is involved, especially when it cuts into a person’s bottom line.” This became a theme in the Measure 49 campaign and proved to be a challenge for the proponents.

The proponents sold Measure 49 to the public as a ‘fix’ to the problems which arose from Measure 37. Don Stuart at American Farmland Trust states that “voters realized they had made a mistake, so this more moderate bill backs off a bit from granting rights to landowners.” This message was also displayed in the commercials which ran during this election period. The most common frames which were used were that of “smart growth for Oregon,” a “fix” to Measure 37, and often times, Oregon’s beautiful landscape was mentioned or pictured. The M49 ballot banked on the fact that voters did not want to destroy their iconic land management system, which was looking increasingly possible from the outcomes of the Measure 37 claims. Also, the drafters of M49 were the same interests which ran the NO on M37 campaign and they were very careful not to make the same mistakes they did in 2004. For example, Tim Raphael states that “the NO on 37 message was too intellectual to resonate with voters.” In 2004, the M37 campaign “pulled at the heartstrings of voters” and that was a very influential frame which contributed a lot to its success. Thus, M49 made an effort to “tug” at voter’s heartstrings and used the environment to do so.

However, it was not the messaging or the frames which helped M49 become victorious. It was the ballot title. Like M37, it had a very effective, and as opponents would say, deceiving, title: “MODIFIES MEASURE 37; CLARIFIES RIGHT TO BUILD HOMES; LIMITS LARGE DEVELOPMENTS; PROTECTS FARMS, FORESTS, GROUNDWATER.” Clearly, if voters are just looking at the ballot title before voting, the title sounds like something you would want to vote for. It “modified” Measure 37 which was publically criticized amongst uninformed and ambivalent voters, and “protects” forests, groundwater, etc. which are all elements of the environment which the average citizen believes are included in their right to live in a healthy environment.

Many of the representatives I talked to, on both sides of the measure, said that the title was THE most important factor in the passage of Measure 49, 37 and any ballot for that matter. In terms of measure 49, “they (drafters of M49) were able to write the title because of good relations with key staff members in the legislature and Ted Kulongoski” (Tim Raphael). And this fact was not denied because Tara Sulzen of 1000 Friends of Oregon states that “1000 Friends of Oregon had a good relationship with the state legislature and governor, and thus, were looked on as someone to trust and value their opinion about ‘fixing’ Measure 37.” Whether or not the process was legitimate is a question for another time, but it is interesting how both sides agreed on the importance of the language of a ballot title. Ultimately, this was the greatest finding during this summer research. Although frames were important in the campaign process, they only played a minor role in the grand scheme of things because ballot titles were “the extent of most people’s exposure to the measure” (Ross Day).

VI: Conclusions and Implications for the Future

After conducting a media audit, multiple interviews and reading through a plethora of scholarly articles, I have concluded that frames, though important in the campaign process are not nearly as influential as the ballot *titles*. Not only was this fact reiterated by most of my interviewees but through my media audit, I came to see that there were not very strong messages which came out of the advertisements or the newspaper articles surrounding the Oregon Property Rights debate. I also realized that many other factors contributed to the success or failure of a ballot measure like the time of year (as well as what kind of election year: presidential, primary, state etc.), campaign funds, and relationships between state legislators and the interest groups funding the measure. For example, Measure 37 went to vote in 2004 on the same ballot as the Presidential election. This means that Measure 37 had to compete with Presidential advertisement slots on TV, and usually there was not any competition because a small state measure did not have the funds to buy a time slot. Furthermore, citizens were more concerned with the Presidential election not only due to its media prevalence but because it was the vote they felt they had the most influence in. It is a common conception that voters don't have enough time in their day to day lives to be educated on all the measures and thus, pick and choose to be knowledgeable on the ones they feel they can have a significant influence on.

This fact is played off of in advertisements like Luntz and Lakoff suggest, but more uncommonly known, the writers of a ballot measure use this lack of citizen energy to become informed on a topic, as a way to influence voters through an appealing ballot title. Since most voters don't read (and in most cases hear) anything about the measure prior to going to the polls, they are at the mercy of the title of the measure. Unfortunately, for many Americans, voting is a hassle and it is an achievement if they even vote, let alone know what they are voting for. Therefore, it is important to question the legitimacy of ballot measures as a good venue for

policymaking. As is displayed in Oregon's back and forth public opinion over property rights, it is clear that citizens more often than not, do not fully understand the measures they are voting (or not) for. Many citizens go to the polls and base their vote on how appealing the title sounds. Therefore, the fight for an appealing ballot title becomes the contested element in the ballot creation process. This definitely does not sound like direct democracy, which is what citizen-sponsored initiatives are supposed to be about in the first place.

Policy should not be decided by language and by politicians wheeling and dealing within the system to tweak and twist words so it sounds like something citizens should want to vote for. Maybe our legal system should just do away with ballot measures and citizen-sponsored initiatives altogether, since they are not even started by citizens but by interest groups with a bottom line. Though the Oregon property rights case brings up these scary realities about the effectiveness and legitimacy of the ballot process, it would be important to look at other states which have different rules and regulations for the ballot process, particularly the naming of a ballot title. If some universal system was devised under which legislators could not form relationships with interest groups, which biased their opinions in the naming process, it is possible ballot titles could be more vague and less persuasive, so that citizens would be forced to read further into the citizens handbook and learn about the measure. This may be wishful thinking in a world ruled by connections and networking but if we wish to continue to practice democracy, the ballot process must be reformed.

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