
Bridging the Gap: Reforming State Democracies to Reflect the Public Will

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This past Election Day, Ohio became the seventh state in the nation where voters decided to protect abortion access after the landmark Dobbs ruling. Before the Ohio vote, statewide initiatives in California, Kansas, Kentucky, Michigan, Montana and Vermont had either affirmed abortion access or turned back attempts to undermine the right. Despite Ohio's Republican-dominated state offices, including the governorship, secretary of state, attorney general and control of both legislative chambers (Ballotpedia 2024), voters resoundingly supported a right to abortion enshrined in the state's constitution. This trend is mirrored in Montana, where a GOP trifecta governs, and in Kentucky and Kansas, where Republican-dominated legislatures coexist with Democratic governors (Ballotpedia 2024b, Ballotpedia 2024c, Ballotpedia 2024d). In most of these states, prior to the pro-life ballot measures that got struck down, their GOP state legislatures overwhelmingly introduced and voted in favor of pro-life policies. The stark contrast between constituents' abortion views and policies endorsed by elected officials raises concerns about the accurate representation of public sentiments. This discord, as evident in the rejected ballot measures, underscores the imperative for a more direct and inclusive form of democracy.

DEEP RED STATES AS A CASE STUDY

Examining deep-red states as a case study reveals their historical predisposition towards pro-life policies. In 2019, Ohio passed one of the most restrictive abortion laws in the country, known as the "heartbeat bill" (Ohio State Legislature 2019). This law prohibits abortions once a fetal heartbeat can be detected, usually around six weeks of pregnancy. The law originally went into effect in June 2022, however, legal challenges have mounted against the law, and its implementation has been temporarily blocked by lower state courts (ACLU of Ohio 2022). Ohio has also imposed restrictions on public funding for abortion services, including limitations on the use of state funds for abortion procedures, except in cases where the mother's life is in danger or in cases of rape or incest (Ohio Policy Evaluation

Network 2021). However, this past Election Day, Ohioans voted 56.6% to 43.4% in favor of establishing a state constitutional right to abortion (The New York Times 2023).

Similarly, in other red states like Kentucky, Montana, and Kansas, pro-life policies have prevailed in state legislatures. From 2010 to 2019, the Kentucky General Assembly passed 17 abortion-related bills, with ten becoming effective (Smith et al. 2023). And notably, seven state regulations targeted abortion providers, covering counseling settings, gestational limits, ultrasound mandates, telemedicine bans and misleading information requirements. Yet in 2022, Kentuckians voted 52.35% to 47.65% against adding an amendment to the state constitution which would have made it harder to challenge abortion restrictions in the state (Rickert 2022).

Last year, Kansas voters rejected a proposed state constitutional amendment 59% to 41% that would have established there was no legal right to an abortion in the state (Lysen, Ziegler, and Mesa 2022). Leading up to this, the Kansas State legislature had enacted a number of restrictions on abortion in the state, including a post-21-week restriction and a requirement of parental permission if under 18 (AbortionFinder 2024). These recent ballot measures in deep-red states reveal that representative democracy may not adequately capture the diverse perspectives within the electorate.

DIRECT DEMOCRACY: A POTENTIAL SOLUTION TO THE SHORTCOMINGS OF REPRESENTATIVE DEMOCRACY

Representative democracies, which are predominantly used in U.S. state legislatures, occasionally fail to be the facilitators of public will. Elected officials may not always accurately gauge the nuanced opinions of the people they represent. In the context of abortion policy, the disconnect between state legislatures and voters signals an inadequacy in accurately gauging and reflecting public sentiment.

Direct democracy offers a compelling alternative, empowering citizens to participate directly in decision-making processes. Referendums and citizens' initiatives provide a platform for constituents to voice their opinions and directly influence policy outcomes. Referendums provide the public with a direct vote, whether binding or advisory, on a particular political, constitutional or legislative matter instigated by governing bodies such as presidents, cabinets or legislatures (Bulmer 2014). Conversely, citizen initiatives empower the electorate to directly vote, with the option of the vote being either binding or advisory, on a specific political, constitutional or legislative issue instigated by the public. According to John G. Matsusaka of the University of Southern California, referendums can be classified into three types: 1) Mandatory, wherein a government proposal must undergo a referendum by law before implementation; 2) Petition referendum, involving a vote on a government proposal stemming from a citizen petition; and 3) Advisory, a referendum initiated at the government's request, with non-binding results (Schechter 2017). Similarly, citizens' initiatives utilize petitions, but in those cases, citizens cast votes on policies proposed by the public rather than the government.

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Some states within the U.S. have already recognized the imperative of direct democracy and implemented it in limited forms (Ballotpedia 2024a). Common forms of direct democracy at the state level are legislatively referred constitutional amendments, legislatively referred state statutes, initiated state statutes (direct or indirect), initiated constitutional amendments, veto referendums and statewide recalls. Eight states utilize these six forms of direct democracy: Arizona, California, Colorado, Michigan, Montana, Nevada, North Dakota and Oregon.

Examining these states' experiences provides valuable insights into the practicalities and benefits of incorporating direct democracy into governance structures. A 2010 study by Matsusaka found that in states that implemented direct democracy, congruence with majority opinion was 18-19% higher than in states without direct democracy (Matsusaka 2010). Additionally, direct democracy is believed to be better equipped to withstand the influence of special interests, as special interest groups may be able to easily influence legislators but have much more difficulty influencing large swaths of voters (Schechter 2017).

Internationally, countries like Switzerland have successfully implemented direct democracy on the federal level, showcasing the efficacy of allowing citizens to participate in decision-making. The country has constitutionally-mandated voter participation opportunities through referendums and initiatives (McKay 2001). Citizens can call for a referendum on new laws and against certain international treaties (Lucchi and World Economic Forum 2017). For such a referendum to be held, either eight cantons must request it or 50,000 signatures from eligible voters must be collected within 100 days. Additionally, popular initiatives for constitutional amendments are submitted to the vote at the request of 100,000 citizens and must gain the majority of the votes in the majority of the cantons (Fuchs 2023). All revisions of the constitution are subject to a mandatory referendum. Switzerland is ranked one of the world's most democratic countries according to the 2020 Democracy Index, which measures the state of democracy in 167 of the world's countries by tracking 60 indicators in five different categories: electoral process and pluralism, functioning of government, political participation, political culture, and civil liberties (Economist Intelligence Unit 2021). Exploring such global examples can offer valuable insights for U.S. states seeking to enhance citizen involvement in governance.

By further incorporating such direct democracy mechanisms into the democratic framework, states can bridge the gap between legislative decisions and the diverse opinions within their populations.

CONCLUSION

The recent ballot measure results on abortion in deep-red states serve as a wake-up call, signaling the need for a more inclusive and responsive democratic system. By expanding

opportunities for direct democracy, such as referendums and citizens' initiatives, states can bridge the gap between legislative decisions and the diverse opinions of their constituents. In doing so, they can create a more representative and accountable form of governance that truly reflects the will of the people. As many U.S. states continue to navigate complex societal issues, the expansion of direct democracy emerges as a viable solution to ensure a more democratic and inclusive decision-making process.

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