

# Statewide Issues on the November Ballot



October 2008

## The Fiscal Impact of Withdrawing Amendments 53, 55, 56 and 57

### Recommendation

The Colorado General Assembly should reevaluate the statute that sets the final date for proponents of statewide ballot initiatives to withdraw their measures. Under current law, initiative petitions may be withdrawn as late as 33 days before an election – well after the ballot has been certified, the “blue book” analysis booklet has been prepared and the ballot titles and text have been published in newspapers throughout the state. The withdrawal deadline also is less than two weeks before counties begin sending mail-in ballots to voters who requested them, and voting begins. Pulling proposed initiatives at or near this deadline can waste hundreds of thousands of dollars of public money. There is also some doubt as to whether state legislators actually intended to impose a withdrawal deadline of 33 days prior to an election when they enacted the statute a decade ago.

### Analysis

Public funds were expended unnecessarily this fall because the deadline to withdraw ballot proposals in Colorado occurs after the cutoff for state agencies to verify petition signatures, certify the ballot, publish the proposals in legal publications and prepare and distribute the ballot information booklet. The withdrawal of four proposed amendments in a last-minute deal between labor unions and business leaders cost the state government more than \$300,000 already spent to prepare the measures for the Nov. 4 ballot and educate voters about them.

About one-third of the money was spent by Legislative Council, the research arm of the state legislature, to publish the full text and ballot titles of Amendments 53, 55, 56 and 57 in newspapers in each of 62 Colorado counties.<sup>1</sup> The text and ballot titles also were published in Spanish in newspapers in eight counties where the

Spanish-speaking population is large enough to be covered by the federal Voting Rights Act.<sup>2</sup>

Printing Legislative Council’s state ballot information booklet, commonly known as the “blue book,” without the four ballot measures would have lowered its total cost by \$44,000. The savings in postage for a lighter weight blue book would have been about \$60,000. Translating the four ballot questions into Spanish cost \$2,255.<sup>3</sup>

The total figure does not include many hours put in by the staff of Legislative Council and the Office of Legislative Legal Services analyzing the measures, writing memos and holding comment and review hearings for proponents. An estimate of these costs was not available.

Additionally, the Colorado Secretary of State’s office spent an average of \$22,000<sup>4</sup> verifying a sample of petition signatures for each of 15 proposed initiatives (one

<sup>1</sup> Pitkin and Broomfield counties do not have legal publications as defined by C.R.S. 24-70-102.

<sup>2</sup> Covered jurisdictions are determined by the U.S. Census Bureau based upon a formula set out in the Voting Rights Act. More information is available at [http://www.usdoj.gov/crt/voting/sec\\_203/203\\_notice.pdf](http://www.usdoj.gov/crt/voting/sec_203/203_notice.pdf).

<sup>3</sup> Blue book and newspaper publishing estimates provided by Legislative Council research analyst Susan Liddle.

<sup>4</sup> The secretary of state’s office employed 85 temporary workers to verify petition signatures. An average cost is used because an estimate for each petition individually could not be determined.

did not make the ballot) and preparing the measures for title board hearings. These activities were funded by corporate and nonprofit fees collected by the secretary of state, rather than state taxes, but money spent on these initiatives could have been allocated elsewhere. The estimated \$88,000 spent by the secretary of state's office does not take into account the cost of including

office. The initiatives were pulled right before the deadline, which is set by statute at 33 days prior to an election.<sup>8</sup>

The legislature enacted that statute in 1998 to remedy a problem that arose the previous year, when a gas tax initiative had to remain on the fall 1997 ballot after proponents – business leaders and Gov. Roy Romer –

<b>Cost to Prepare Amendments 53, 55, 56 &amp; 57 for the Ballot and to Educate Voters</b>	
Publishing text and titles in newspapers throughout the state	\$107,000
Printing the “blue book” ballot information booklet	\$44,000
Postage for the “blue book”	\$60,000
Translating ballot text into Spanish	\$2,255
Verifying petition signatures and preparing for title board hearings	\$88,000*
<b>Total</b>	<b>\$301,255</b>

\* The average per initiative is based on a total of \$330,000 spent on 15 initiative petitions by the secretary of state's office.

the four measures on county ballots throughout the state or county clerk staff time used to notify voters that the four measures had been pulled.

### **Background**

The four union-backed amendments were withdrawn by proponents Oct. 2 after a coalition of business leaders pledged to raise \$3 million to help defeat three other ballot measures that would restrict unions. The most contentious is Amendment 47, a “right to work” initiative that would prohibit businesses from requiring the payment of union dues as a condition of employment.<sup>5</sup>

The 11<sup>th</sup>-hour deal to pull the four measures is unprecedented in Colorado. It is not uncommon for competing initiatives on the same subject matter to be proposed during an election cycle, but such ballot-proposal battles usually are resolved prior to petition deadlines. Negotiations that resulted in the withdrawal of the union-backed initiatives occurred over the three weeks leading up to the Oct. 2 initiative withdrawal deadline.<sup>6</sup>

Amendments 53, 55, 56 & 57 still will appear on the Nov. 4 ballot because they were withdrawn after the statewide ballot was certified<sup>7</sup> and after ballots in many counties had been printed, but any votes cast for the measures will not be counted or reported, said Troy Bratton, a legal specialist with the secretary of state's

withdrew their support of it. The late Sen. Ray Powers proposed the withdrawal deadline in a conference committee on an elections bill, House Bill 98-1359, but his description of the deadline during the conference committee is not the same as it appears in the statute.<sup>9</sup>

“Would the withdrawal occur before or after the secretary of state certifies sufficiency of signatures?” asked Rep. Doug Dean, the bill's sponsor.

“It's after,” Powers said. “It would be clear up to 33 days before it goes on the ballot – the printing of the ballot. They could withdraw it at any time up to 33 days

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before the ballot is printed.”

Ballots must be certified and in possession of county clerks at least 32 days before a general election.<sup>10</sup> Thirty-three days prior to that date would put the withdrawal deadline at the beginning of September or end of Au-

<sup>5</sup> Legislative Council information on all statewide ballot measures is available at [http://www.state.co.us/gov\\_dir/leg\\_dir/lcsstaff/balpage.htm](http://www.state.co.us/gov_dir/leg_dir/lcsstaff/balpage.htm).

<sup>6</sup> “Accord weeks in the making,” *denverpost.com*, Oct. 12, 2008.

<sup>7</sup> C.R.S. 1-5-203.

<sup>8</sup> C.R.S. 1-40-134.

<sup>9</sup> Colorado State Archives, audio recording of the conference committee on HB 98-1359, Mar. 26, 1998, House committee room 0111.

<sup>10</sup> C.R.S. 1-5-403(1)

gust, rather than in early October as the statute is written.

No memos or other records of the conference committee could be found that help to clarify the intended

<b>Amendment 47</b>
A proposed amendment to the Colorado Constitution that would prohibit requiring employees to pay union dues as a condition of employment.

deadline, and the memories of those involved are hazy.

### **Other Deadlines**

Other timetables associated with the blue book and the publishing of statewide ballot questions in newspapers are spelled out in the Colorado Constitution.

The newspaper publication of ballot text and titles is to occur at least 15 days before the final date to register voters (Oct. 6 this year).<sup>11</sup> That deadline fell on Sept. 21 this year, but the publication actually occurred the week prior to that Sunday. The prepared material was sent to the Colorado Press Association for distribution to newspapers during the first week of September, according to Legislative Council research analyst Susan Liddle.

The constitution sets the blue book's publication

deadline at no later than 30 days before a ballot issue election,<sup>12</sup> which put most copies in the mail on Oct. 3 this year. However, it can take many weeks to prepare the booklet and the final draft is not approved until after the secretary of state certifies the ballot. That occurred on Sept. 8 this year.

### **Biggest Blue Book Ever**

With 18 proposed measures on the statewide ballot, this year's blue book is the biggest ever – 184 pages in an 8½-by-11-inch version with Spanish translations that was mailed to households in two congressional districts that include the eight Voting Rights Act counties. A 5¼-by-8¼-inch version with 144 pages was mailed to households in the rest of the state.

A total of 1.75 million copies of the blue book went to all households in Colorado with registered voters. The blue book cost about \$862,000 to produce – \$392,000 for printing and an estimated \$470,000 for postage, Liddle said.

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**Sources:** Colorado Legislative Council, Colorado Secretary of State's Office, Office of Legislative Legal Services, Colorado State Archives, The Denver Post

<b>Withdrawn Ballot Initiatives</b>		
<b>Proposal</b>	<b>Description</b>	<b>Type</b>
Amendment 53	Hold a business executive criminally liable for the business's failure to perform a duty required by law if the executive knew the business had failed to perform it.	Statutory
Amendment 55	Require private-sector businesses to provide specific reasons for firing or suspending employees; allow employees to sue if fired without cause.	Constitutional
Amendment 56	Require private employers with 20 or more workers to provide health insurance for employees and dependents; limit the amount employees pay for coverage.	Constitutional
Amendment 57	Require private employers with 10 or more workers to provide a safe and healthy workplace; allow injured employees to seek damages beyond workers' compensation.	Statutory

Source: Colorado Legislative Council, "2008 State Ballot Information Booklet"

<sup>11</sup> Colorado Constitution, Article V, Section 1 (7.3); the voter registration deadline is set at no later than 29 days before the general election (C.R.S. 1-2-201 (3) and 1-2-209(2)).

<sup>12</sup> Colorado Constitution, Article X, Section 20 (3b).