



Issue Backgrounder

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Amendment 49 and Government Payroll Reform

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Summary

Amendment 49 on the November 2008 Colorado ballot proposes to limit government payroll deductions to specified items. The amendment effectively prohibits the collection and transfer of funds to private non-charitable groups that lobby government officials and fund campaigns—including such groups as political parties, professional associations, and labor unions. Current Colorado law allows government payroll systems to administer and deliver money to these groups.

The primary argument for Amendment 49 is that it eliminates a major conflict of interest. Proponents say government should not be able to transfer money to politically active groups that use the same money to influence the officials who represent that government. Three other leading arguments for Amendment 49, as exemplified in the endorsements of Colorado's major newspapers, are as follows:

- It focuses government on core functions
- It levels the playing field among various lobbyists and interest groups
- It protects many public employees from unwanted deductions

The Proposed Amendment

Amendment 49 is a proposal to change the Colorado constitution subject to a statewide vote on the November 2008 ballot. If approved, the citizens' initiative would limit the state and local governments' payroll deduction to the following items:

- Deductions required by federal law
- Tax withholdings
- Judicial liens and garnishments
- Deductions for individual or group health benefits or other insurance
- Deductions for pension or retirement plans or systems, or other savings or investment programs
- Charitable deductions

Amendment 49 effectively prohibits payroll deductions to non-charitable groups that lobby government officials and fund campaigns. Groups such as political parties, professional associations, and labor unions would have to collect funds directly from government employees who are their members and supporters.

Governor Owens' Executive Order

A recent action in Colorado state government provides a key precedent for Amendment 49's payroll limitation policy. On May 25, 2001, then-Governor Bill Owens issued Executive Order D 007 01, which limited employee deductions through the state payroll system to items required or authorized by federal or state law, reimbursements, and the charitable Colorado Combined Campaign.

Various employee associations filed and lost federal and state lawsuits to terminate the order. As an alternative to government collections, the Colorado Association of Public Employees (CAPE) thereafter advertised a private online system for dues payment. In March 2007, Governor Bill Ritter rescinded Owens' order¹, allowing employee associations and other groups direct access to the state payroll system for the collection of dues and other contributions.

While there are a few narrow technical differences, Amendment 49 essentially re-adopts the Owens order and extends its application to county and municipal governments, school districts, and other special government districts. It has no application to federal government agencies and offices that may be situated in Colorado.

Colorado Local "Ethical Standards" Reforms

During 2007 and 2008, many local Colorado governments enacted a payroll policy very similar to the Amendment 49 proposal. Twelve counties—including three of the four largest (El Paso, Arapahoe, and Jefferson)—along with two judicial districts and two municipalities adopted the policy.²

The Case for Amendment 49

Proponents of Amendment 49 have adopted the name "Ethical Standards Initiative," based on the primary argument that the measure prevents an unethical conflict of interest.

Currently, many Colorado governments collect and bundle money for special interest groups. Money deducted through government payroll systems is used to fund candidate campaigns and to lobby government officials. Some of these officials then negotiate private contracts or bargaining agreements with the very same groups that benefit from free government collection services. Also, in the cases of some school districts and at least one city, local governments perform detailed bookkeeping for these groups.

The Independence Institute conducted a survey of the payroll practices of numerous local Colorado government agencies. In 2007, among 20 of Colorado's 30 most populous cities—including special districts—a total of at least \$4.2 million was identified as money bundled to special interest groups. During the same year, a sample of 20 larger Colorado school districts bundled more than \$15 million to special interest groups. Labor unions are the largest beneficiaries, but other professional groups also benefit from the scheme.

In endorsing Amendment 49, *The Denver Post* noted that the measure will “stop the blatant conflict of interest that now allows politicians to collect dues that are used to elect and re-elect those very same politicians.”³ Three other major arguments also are used in support of Amendment 49.

1. Taxpayer Resources Focused on Essential Services

Related to the ethical argument, Amendment 49 supporters indicate that the proposal keeps government focused on essential taxpayer services. The official Blue Book, written to inform voters of all statewide initiatives and the primary pro and con arguments for each, restates the point as follows: “Prohibiting governments from collecting money for [politically active] groups eliminates an unnecessary government function.”⁴ There is no defined fiscal impact of taxpayer savings from the initiative, mainly because it is extremely difficult to quantify the amount of employee time used to perform bookkeeping services for private organizations.

2. A Level Playing Field for Lobbyists and Interest Groups

The campaign has styled its theme as “Amendment 49 keeps lobbyists in line.” A corollary of this theme is that no lobby deserves special access to government payroll collection as an extra edge on the political playing field. Proponents have noted that most of the groups receiving the government payroll perk are working against the interests of taxpayers and businesses by supporting higher taxes, more regulations, and bureaucratic mandates.

In backing Amendment 49, the *Rocky Mountain News* noted: “The free deduction and collection of dues is a special benefit denied to most other worthy civic organizations.”⁵ Seeking fairness, many groups that do not receive government collection services have given their endorsement to the initiative.

3. Employee Protections from Unwanted Deductions

After the implementation of Governor Owens’ 2001 executive order, a number of state employees decided to terminate their CAPE dues payments. Many were not even aware the deductions were taking place. In many school districts, teachers and other employees can only opt out of association dues deductions during a brief period of time. In a handful of school districts and city governments, non-members are obligated to pay a share or full amount of union dues—though in some cases non-members can opt out on a yearly basis.⁶

The editors of *The Gazette* in Colorado Springs observed that Amendment 49, by removing government agencies as collection enforcers, “would restore the rights of government employees to control more of their own earnings.”⁷

Amendment 49 removes government as the middleman in an employee’s relationship with the union or other organization she chooses to support. It allows for a personal and direct payment between the member and the group, fostering greater accountability to the individuals being represented.

Opponent Arguments and Rebuttals

Opposing Amendment 47 and two other ballot initiatives is the issue committee Protect Colorado's Future. They have sought to advance four major arguments.

Limitation of Choices for Government Workers

The Blue Book recites a chief argument that Amendment 49 “precludes every employee from making decisions about organizations to support through a paycheck deduction.” One typical Protect Colorado's Future flyer similarly claims that Amendment 49 will dictate “how [firefighters and other public employees] can spend their paychecks.”

Nevertheless, there is no evidence to substantiate the claim. The clear and simple language of Amendment 49 is a restriction on government action, and does nothing to limit any individual government employee from choosing to support any organization as much as she desires. The option of payroll deduction is easily and conveniently replaced by private methods, such as online banking, automatic withdrawals, and credit card payments.

The Denver Post's editors even noted the ease with which state workers can already set up private dues payments to CAPE, and posited that the proposed policy poses no great inconvenience to other government workers, either.⁸

Effect on Resources for Government Workers to Perform Essential Duties

A *Rocky Mountain News* guest column jointly authored by a Littleton firefighter union president and a public school teacher echoed a common theme that Amendment 49 and two other initiatives “will make it difficult for us to advocate for the tools and resources we need to educate your children and save lives.”⁹ This argument is repeated in numerous flyers and television ads, but never substantiated.

It is entirely unclear how a restriction on government collecting funds for private organizations undermines the ability of teachers or firefighters to join together in support of common professional goals. The editors of the *Rocky Mountain News* called the opponents' claim “nonsense,” while the *Grand Junction Sentinel's* editors declared it “laughable.”¹⁰ The *Boulder Daily Camera* simply said: “We don't buy it.”¹¹

An Inconsistent Approach to Paycheck Deductions

It is alleged in the Blue Book opposition arguments that Amendment 49 “allows employees to contribute to some private groups while prohibiting contributions to others” through payroll deduction. As an example, opponents often point to the fact that deductions to health insurance providers is allowed under the amendment. Proponents note, however, that these deductions go directly to provide a service to an individual employee and not to perform lobbying.

This argument also could refer to the distinction between recognized 501c3 non-profit organizations and politically-active groups that hire lobbyists and fund candidate campaigns. However, the different natures of these types of organizations defines an important ethical distinction. Charitable 501c3 groups cannot support or oppose political candidates, and are far more limited in their ability to lobby government than organizations that have their collections prohibited by Amendment 49.

Needless Violation of Local Government Control

According to opponents' arguments in the Blue Book, "Amendment 49 interferes with the authority of local governments to decide which paycheck deductions are available to their employees."

This argument, however, does not address proponents' concerns that the status quo provides opportunities for significant conflict of interest. The people have the prerogative to establish ethical standards for their elected officials at all levels of government. While Amendment 49 overrides local government control, it does so in an area that may be legitimately necessary to maintain a consistent statewide ethical standard.

Government Payroll Limitations in Other States

In 1981 the state of **South Carolina** enacted a law stopping the collection of union dues through government payroll systems. A 1987 law allowed the state employees association to resume payroll dues collection. The South Carolina Education Association (SCEA) filed suit in federal court on grounds that it had been discriminated against unfairly, as it still was not allowed to collect teacher dues through government payroll. SCEA ultimately lost the case.¹² Unlike South Carolina law, Colorado's Amendment 49 does not unfairly target one group for limiting payroll deductions, but creates a single broad ethical standard.

Idaho (1997) and **Utah** (2001) both passed very similar versions of the Voluntary Contributions Act (VCA), which in part prohibited the use of state and local government payroll systems from collecting designated political action funds. Following federal lawsuits, the relevant parts of both state's laws have been struck down on grounds that they unfairly discriminate against protected political speech. In March 2008, the U.S. Supreme Court agreed to hear the Idaho case: *Ysursa v Pocatello Education Association*. While the VCA received federal legal scrutiny, Colorado's Amendment 49 avoids the problem by not singling out funds designated for political action.

There is one other essential difference: The laws in all three states were passed by legislative action, but Amendment 49 will be decided directly by the voting electorate.

Conclusion

Facing the question of Amendment 49, the people of Colorado will choose whether to enact limitations on government payroll collections. If approved over the well-funded opposition's weak case, the initiative very well could set an historic precedent for ethical government.

Notes

¹ State of Colorado, Office of Governor Bill Ritter, Executive Order D 006 07.

² Other counties that have adopted the Ethical Standards policy are Larimer, Douglas, Weld, Mesa, Montrose, Delta, Elbert, Teller, and Kit Carson. In addition, the 4th Judicial District (El Paso and Teller counties), 19th Judicial District (Weld County), City of Centennial, and Town of Winter Park adopted the policy.

³ *Denver Post*, "Vote 'yes' on Amendment 49," September 29, 2008,

http://www.denverpost.com/opinion/ci_10584367

⁴ http://www.state.co.us/gov_dir/leg_dir/lcsstaff/bluebook/2008EnglishVersionforInternet.pdf

⁵ "Yes on 49: Measure levels the playing field for employee deductions," *Rocky Mountain News*, September 18, 2008, <http://www.rockymountainnews.com/news/2008/sep/18/yes-on-49/>

⁶ The five school districts are Colorado Springs 11, Pueblo City, Pueblo County, Alamosa, and South Conejos. City governments include Pueblo and Commerce City.

⁷ “Opinion: Governor rejects peace proposal,” *Colorado Springs Gazette*, September 24, 2008, http://www.gazette.com/opinion/colorado_40944_article.html/ritter_government.html

⁸ “Vote ‘yes’ on Amendment 49,” *Denver Post*.

⁹ Joel Heinemann and Adele Bravo, “3 measures would hurt Coloradans,” *Rocky Mountain News*, September 30, 2008, <http://www.rockymountainnews.com/news/2008/sep/30/bravo-and-heinemann-3-measures-would-hurt/>

¹⁰ “Yes on 49: Measure levels the playing field for employee deductions,” *Rocky Mountain News*; “‘Yes’ on Amend. 49,” *Grand Junction Sentinel*, September 10, 2008,

http://www.gjsentinel.com/news/content/news/stories/2008/09/10/091108_6A_Amend_49_edit.html

¹¹ “Yes on Amendment 49,” *Boulder Daily Camera*, October 2, 2008,

<http://www.dailycamera.com/news/2008/oct/02/yes-on-amendment-49/>

¹² “Ban on Payroll Deduction for Teacher Union Upheld,” *Education Week*, September 13, 1989,

<http://www.edweek.org/ew/articles/1989/09/13/09040051.h09.html>; William Snider, “Court Rejects U.S. Rules Limiting Aid for Disabled,” *Education Week*, February 28, 1990,

<http://www.edweek.org/ew/articles/1990/02/28/09280044.h09.html>

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ADDITIONAL RESOURCES on this subject can be found at:

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