



# Issue Backgrounder

13952 Denver West Parkway • Suite 400 • Golden, Colorado 80401  
www.IndependenceInstitute.org • 303-279-6536

## HB 1072: Empowering Union Leaders, Not Workers

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*By Benjamin DeGrow, Education Policy Analyst,  
Independence Institute*

### *Summary*

*House Bill 07-1072 threatens to unsettle the balance of power between employers and unions established by the 1943 Colorado Labor Peace Act. The Act requires a majority vote of secret ballots cast to approve union representation. But the bill would eliminate a second election in which employees decide whether to force dissenting co-workers to pay union dues or agency fees. Under HB 1072, workers could only reject a coercive all-union agreement by also rejecting the entire*

*negotiated union contract. Because it limits choices both for union members and for non-union member workers, the bill is at odds with basic fairness.*

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### **Colorado Labor Peace Act**

The Colorado Labor Peace Act,<sup>1</sup> enacted in 1943 during the administration of Republican Governor John Vivian, provides a balanced approach to labor relations unique among the 50 states. The law applies to private businesses and industries with eight or more employees, excluding independent contractors, domestic servants, and farm and ranch laborers.<sup>2</sup>

The Labor Peace Act dictates how private employees can choose union representation in a workplace.

Affected workers need a majority of yes votes on their secret ballots to choose a union to represent them in employer negotiations. Workers who abstain from voting are not counted when determining the majority. All employees in a workplace who have the same union representation belong to a “collective bargaining unit.”

Under the Act, an “all-union agreement” is a separate contract between an employer and a collective bargaining unit “compelling an employee’s financial support or allegiance to a labor organization.”<sup>3</sup> A second secret ballot election must be held to set up an all-union agreement. Support is required from “at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted,” whichever is greater.<sup>4</sup>

An all-union agreement may create a “union shop” (in which all workers must join the union) or an “agency shop” (in which non-member employees must pay agency fees to the union). However, the Labor Peace Act sets a careful balance so union shops or agency shops can only be created through extra deliberation and clear majority support.

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## Worker Rights and Basic Fairness

Because the Labor Peace Act permits coercive all-union agreements to be established, Colorado cannot be considered a “right-to-work” state.<sup>5</sup> Even so, the Act expresses the intent to uphold the rights of individual employees:

...[E]mployees have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own free choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Each employee also has the right to refrain from any of such activities. The rights of each employee are essential rights, and nothing contained in this article shall be so construed as to infringe upon or have any operation against or in conflict with such rights.<sup>6</sup>

As introduced before the Colorado General Assembly in January 2007, House Bill 07-1072 (HB 1072) would eliminate the second election before an all-union agreement could be established. Having two separate elections offers a basic protection of individual rights. The second election sets a reasonably high threshold before dissenting workers must pay dues or agency fees to the union. On the other

hand, HB 1072 could enable a minority of workers to coerce union financial support from everyone else in the collective bargaining unit.<sup>7</sup>

The second election also separates the decision to approve union representation from the decision to force the entire shop or department to pay union dues or

agency fees. Under HB 1072, workers could only turn down an all-union agreement negotiated by the employer and union leaders by turning down the entire contract. A pipefitter might be forced to choose between compelling his partner to finance an organization to which he objects, and rejecting union representation altogether.

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Basic fairness dictates that employees should not lose an important choice that may affect workplace morale. The pro-union grocery stock clerk deserves a separate chance to decide whether his co-workers should have their own freedom to associate. He should be free to accept a bargaining contract and to reject a proposal for an all-union agreement. The second election also gives extra protection to any store employee who may not wish to support the union.

## Under Federal Law

Sometimes workers’ money is used for political purposes with which they disagree. A series of United States Supreme Court decisions consistently prohibits unions from withholding agency fees for purposes other than collective bargaining. Under federal law, unions also must provide members and agency fee-payers documentation of how their money is being spent.<sup>8</sup>

Yet enforcement of these standards is typically weak. Union compliance requires workers to be aware of their rights and often to overcome outside pressures. Dissenters may encounter resistance from union officials who set up administrative obstacles, including not revealing how agency fee money is spent.

Achieving a legal remedy may require great patience and persistence from the employee, as well. For example, a warehouse worker in Aurora waited more than seven years from his initial complaint before the National Labor Relations Board ordered the local Teamsters to reimburse him fully for non-bargaining expenses paid by his agency fees. The warehouse operated under an all-union agreement.<sup>9</sup> Such coercive shop arrangements should not be entered lightly.

## Conclusion

HB 1072 not only would upset the balance between management and labor but also would limit free association and free political speech. Private sector employees benefit from the Colorado Labor Peace Act’s requirement

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of a second election to set up a coercive all-union agreement. The power to choose protects workers and their individual rights.

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JON CALDARA is President of the Independence Institute.

DAVID KOPEL is Research Director of the Independence Institute.

PAMELA BENIGNO is the Director of the Education Policy Center.

BENJAMIN DEGROW is a Policy Analyst for the Education Policy Center. He is the author of the Issue Papers *The Wrong Kind of Self-Employment: Keeping District Employees off Colorado School Boards, Take Public Funds off the Negotiating Table: Let Teachers' Unions Finance Their Own Business, and The Ignacio Market Driven Compensation Plan and Why It Fell Short*, and of the Issue Backgrounders "*No Work, No Pay*": *The Lesson of the 1994 Denver Teachers' Strike, Adams 12 School District Increases Subsidy, Nullifying the Probationary Period: Extra Job Protection for Many New Jeffco Teachers Takes Priority over Kids, and Counting the Cash for K-12: The Facts about Per-Pupil Spending in Colorado*.

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## Endnotes

<sup>1</sup> Colorado Revised Statutes § 8-3-101 et seq.

<sup>2</sup> C.R.S. § 8-3-104(11),(12).

<sup>3</sup> C.R.S. § 8-3-104(1).

<sup>4</sup> C.R.S. § 8-3-108(1)(c).

<sup>5</sup> Formal Opinion of Duane Woodard, Attorney General of Colorado, No. 88-10, 16 December 1988.

<sup>6</sup> C.R.S. § 8-3-106.

<sup>7</sup> "All union' bill a blow to liberty," *Rocky Mountain News*, 20 January 2007. "It's a question of elementary fairness: A minority of workers should not be able to dictate that everyone pay union dues as a condition of employment, and yet that's what this bill would allow."

<sup>8</sup> See especially *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977); *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986); *Communication Workers of America v. Beck*, 487 U.S. 735 (1988).

<sup>9</sup> National Labor Relations Board Decision and Order (January 26, 1999), *Local Union No. 435 of the International Brotherhood of Teamsters, AFL-CIO (Mercury Warehouse and Delivery Service, a division of Beverage Distribution Corporation) and Richard P. Fletcher*, Case 27-CB-3004, [http://www.nlr.gov/nlrb/shared\\_files/decisions/327/327-87.htm](http://www.nlr.gov/nlrb/shared_files/decisions/327/327-87.htm)