

Taking on the People: Legislative Sponsors of "Counter-Majoritarian" Bills in Colorado

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Introduction

A century ago, proponents of direct democracy argued that the "citizen" initiative would not only serve as a means for "the people" to enact legislation, but that it would force state legislators to become more responsive to and reflective of voter preferences. Today, direct democracy scholars generally agree that legislators are "politically unlikely" to tamper with successful initiatives, else incur the wrath of the electorate. It comes as somewhat of a surprise, then, that Colorado legislators sponsored five separate bills during the 1999 legislative session that directly challenged the results of previous statewide ballot elections. Why did these maverick members introduce their counter-majoritarian bills -- bills designed to overturn the popular vote of previous statewide ballot initiatives?

Sponsors and Their Motives

Perhaps the most controversial counter-majoritarian bill introduced during the 62nd legislative session dealt with campaign financing restrictions. House Bill 1110 would have substantially modified Amendment 15, a statutory ballot measure approved by 66% of the voters in 1996. The initiative placed strict contribution and voluntary spending limits on candidates running for statewide and legislative offices. Freshman Representative Rob Fairbank, a Republican, and Senator Bill Thiebaut, a Democrat, co-sponsored the counter-majoritarian bill. Both the House and Senate passed amended versions of the bill, but it died after the two chambers were unable to reconcile their differences. Thiebaut, who won his Senate seat in 1998 by 29%, is an avid defender of the First Amendment. More notably, voters in his district nearly defeated Amendment 15 in 1996. Fairbank won his 1998 race by 19%, but he represents a district that overwhelmingly approved Amendment 15. When asked why he sponsored the controversial bill, Fairbank said he "felt comfortable taking the lead on this issue" in order to "fix some of the problems" with the campaign finance limits. Acting as trustees, Fairbank and Thiebaut sponsored their bill in order to rectify what they saw as an egregious mistake made by the voters.

Another counter-majoritarian bill, which died in committee, would have provided tuition reimbursement to families sending their preschoolers to private schools. Sponsored by Republican Senator John Andrews, Senate Bill 162 was not as far reaching as Amendment 17 -- a private school tax credit initiative that was soundly defeated by the voters in 1998. Although Andrews openly admitted that his bill was a direct response to the defeated ballot measure, 59% of the voters in his conservative district voted against the private school tax credits ballot measure. It should be noted, though, that Andrews was not elected by the constituency he serves; he was appointed to his seat following the 1998 election. A student of political theory, Andrews describes himself as a Burkian trustee, arguing that it is not good public policy for the legislature to stay away from issues just because they failed as initiatives.

Seven years after the passage of Amendment 2 -- the controversial 1992 anti-gay rights ballot measure -- Representative Gloria Leyba, a Denver Democrat, introduced a bill that would have extended "civil rights to persons discriminated against on the basis of sexual orientation." Although the bill was defeated 34-29 on the House floor on its second reading, sponsoring it hardly jeopardized Leyba's legislative seat. In 1998, Leyba was re-elected to the House with 87% of the vote. Furthermore, nearly 60% of the constituents in Leyba's district voted against the 1992 anti-gay rights measure. Unlike Andrews, Leyba was acting as a delegate, carrying out the wishes of her constituency.

A fourth bill, sponsored by Republican Senator Doug Lamborn, was nearly identical to Amendment 11, a failed 1998 initiative attempting to ban partial birth abortions. Lamborn's bill was defeated on the Senate floor, 20 to 13. Senate Bill 80 would have prohibited abortions to be performed once the fetus becomes viable and required a 30-day mandatory minimum jail sentence for any person violating the statute. Lamborn, like Andrews, introduced his bill primarily for ideological reasons. In 1996 and 1997 while serving in the House, Lamborn introduced similar anti-abortion bills, arguing that it is a matter of conscience to try to end all abortions. Although his 1998 bill was not a direct response to the defeat of Amendment 11, it did happen to reflect the public opinion of his own constituents. Nearly 60% of the voters in Lamborn's Senate district, which falls within conservative El Paso County, approved the defeated late-term abortion initiative in 1998.

Finally, with only two weeks left in the 1999 legislative session, Republican Representative Lola Spradley introduced House Bill 1384. Spradley's "late bill" was a direct response to the passage of Amendment 14 in 1998, which specifically regulated odors emitted from large hog farms. The House Agriculture committee voted to postpone the bill indefinitely. Spradley, who was appointed to her post in 1997, defeated her opponent in 1998 by 34%. The constituents in her rural district actually approved Amendment 14 with 55% of the vote. While Spradley, the Assistant Majority Leader of the House, received substantial PAC contribution from farming interests during the 1997-98 campaign cycle, she received none from corporate hog farmers, as few hogs are raised in her district. Why, then, did she support the last-minute counter-majoritarian legislation? Spradley argued that the water and air pollution standards for large hog farm threatened the economic vitality of corporate farms, and by reducing and delaying the odor-control regulations, the legislature could help "maintain an industry."

Conclusion

Why do legislators sponsor counter-majoritarian bills after a majority of "the people" have spoken on an issue? While it is difficult to precisely pinpoint the motivations of these lawmakers, their actions do indicate that the use of the citizen initiative might not compel legislators to become more responsive to statewide public opinion as proponents of the process often argue. Perhaps it is the member's moral compass that compels him or her to act as a trustee and sponsor a counter-majoritarian bill. Or perhaps it is because a member's own constituents voted contrary to the statewide majority, and he or she is merely serving as a delegate.

The concept of representation is much too complex to assume that legislators will simply abide by ballot box decisions made by a majority of the statewide electorate. Legislators are elected to

represent their *own* constituents; as such, they serve as mediators, not as proxies of public opinion polls. Furthermore, because legislators represent very diverse constituencies, their motivations for sponsoring bills may not necessarily be in sync with the statewide popular vote on ballot measures. As such, it should come as no surprise that individual legislators in states with the initiative do not always genuflect to a statewide majority vote on ballot measures.