

The Ballot Initiative Strategy Center How It Promotes Big Labor's Political Strategy

By James Dellinger & Karl Crow

Summary: In 2006, voters in 37 states faced a total of 203 state ballot initiatives and supporters and opponents of these measures raised and spent more than \$350 million. Many ballot initiatives were sponsored and supported by labor unions, and often they received help from the little-known Washington, D.C.-based Ballot Initiative Strategy Center, which quietly provides assistance in promoting ballot initiative campaigns in states where the initiative process exists. But the Center plays another increasingly important role for Big Labor and its allies. It devises tactics for blocking ballot initiatives by union opponents using aggressive methods.

When labor unions want states to increase the minimum wage, fund embryonic stem cell research and require more reliance on so-called renewable energy, they often seek help from the Ballot Initiative Strategy Center (BISC). This little-known group



The little-known Ballot Initiative Strategy Center works with a “who’s who” list of labor unions and union-funded nonprofit organizations to support ballot initiative campaigns for liberal causes.

provides technical assistance in helping unions put initiatives on state ballots. BISC also helps unions defeat ballot initiatives that protect property rights, and it works against ballot initiatives such as the Taxpayer Bill of Rights (TABOR) that are sponsored or supported by conservative and libertarian groups.

However, BISC is moving into a new area in 2008: It is using its expertise to thwart efforts by the groups it opposes from making use of the ballot initiative process altogether. BISC has become the “go-to” group that Big Labor relies on whenever it wants to organize a “blocker campaign,” a tactic unions use to restrict access to the ballot initiative process. The victims of these tactics argue that BISC’s abuse of the initiative process is a form of political thuggery that has no place in a democracy.

Conservatives Take the Initiative

The ballot initiative—an electoral strategy that allows citizens to create laws through “direct democracy”—is neither new nor uniquely American. In 1891 Switzerland revised its federal constitution to provide for a ballot initiative, enabling its citizens to propose and enact changes to the national constitution. The concept became very popular in the United States during the Progressive era from the 1890s until World War I. South Dakota was the first state to adopt a statewide ballot initiative in 1898. California, Maine, Michigan, Montana, Oklahoma, Oregon and Utah instituted similar processes by 1911, and by 1918 ballot initiatives were legal in 24 states, mostly in the West. Many states also adopted the referendum (to change existing legislation) and the recall (of state officials), creating a triple-barreled elec-

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toral mechanism that was intended to give citizens direct power over politics. Enthusiasm for the ballot initiative declined after World War I however and only Alaska, Florida, Mississippi, Wyoming and Washington, D.C. subsequently adopted it.

Although its reputation as an instrument of popular democracy is not entirely warranted, the ballot initiative has served as a citizens' check on representative government. According to the Initiative and Referendum Institute at the University of Southern California, states with ballot initiatives have adopted roughly 40 percent of the 2,051 initiatives offered since 1904, with nearly two-thirds of them in Arizona, California, Colorado, North Dakota, Oregon and Washington. Since the process gained renewed interest in the late 1970s and 1980s, 303 of 660 initiatives appearing on state ballots were passed by their electorates. But these numbers don't tell the whole story. Many proposed initiatives never get on the ballot and many of those on the ballot do not pass. According to the Institute, only 26 percent of all California initiatives appeared on the ballot—and only eight percent were approved. During the 2000 election, 76 initiatives appeared on state ballots, but they represented only 22 percent of all the initiatives offered during that year. Since 1996, the number of initiatives appearing on state ballots has averaged 70 per election year, with the 1996 elections the high water mark, when 39 of 96 state ballot initiatives were adopted by voters. But com-

pare this to the number of bills that are adopted by state legislatures. In 1996 the legislatures in the 24 states that provide for a ballot initiative passed more than 14,000 bills.

Still ballot initiatives and popular referenda remain popular devices for mobilizing voters. And it's not simply that the process creates voter enthusiasm. Two studies published in 2001 showed that the presence of initiatives on the ballot can increase voter turnout from three to four percent—a not statistically insignificant amount. Moreover, during the last 30 years the ballot initiative process has been discovered by citizen groups that have used it to their advantage.

As during the Progressive Era, local activists have found that "direct democracy" measures can move state policies when a state legislature will not act. California's ballot initiative process, in particular, has been dominated by conservative and libertarian activists seeking to check the excesses of the liberal-dominated California legislature. The state has seen the passage of ballot initiatives cutting property taxes (Proposition 13 in 1978), denying illegal aliens the use of public services (Proposition 187 in 1994) and repealing the use of racial and gender preferences in state universities (Proposition 209 in 1996). Proposition 13 is widely credited with jumpstarting the nationwide 1980s' taxpayer backlash that lowered taxes through ballot initiatives and legislation.

A Colorado constitutional amendment barring local authorities from expanding anti-discrimination law to include homosexuals was passed by popular referendum in 1992 before it was struck down by the U.S. Supreme Court in *Romer v. Evans* (1996). In 2004, state constitutional amendments banning gay marriage were on the ballot, and they passed in 11 states (Arkansas, Georgia, Kentucky, Michigan, Mississippi, Montana, North Dakota, Oklahoma, Ohio, Oregon and Utah). In 2006, Arizona, Florida, Georgia, Michigan, Nevada, New Hampshire, North Dakota, Oregon and South Carolina passed ballot initiatives limiting the use of eminent domain, although similar measures failed in California, Idaho and Washington.

Technically, some of these proposals were not ballot initiatives because they were legislative referrals from state legislatures to the voters. Nevertheless, they embody the concept of statewide voter decision-making consistent with a ballot initiative.

Ballot Initiative Strategy Center

Labor unions and liberal groups have watched as conservative and libertarian groups enjoy ballot initiative successes on the economic and social fronts, and that has spurred them to undertake a similar strategy. In 2006, so-called "progressives" used state ballot initiatives to propose renewable energy standards and increases to the minimum wage. The Ballot Initiative Strategy Center, with a mere \$780,000 in revenue in 2006, claimed success in 47 of 61 BISC-funded ballot initiatives.

In Missouri voters passed a state ballot initiative to fund embryonic stem cell research. Its presence on the ballot was widely credited as a major factor that helped Democrat Claire McCaskill defeat Republican incumbent Senator Jim Talent. Proponents of the stem cell measure outspent opponents 30-to-1, and they had the conspicuous support of Hollywood star Michael J. Fox who suffers from Parkinson's disease. Many voters believed Senator Talent was trying to "straddle the issue" because he touted his support for research on adult stem cells while opposing research on embryonic stem cells.

Founded in 1999, BISC believes progressives were caught flatfooted as conservatives used ballot initiatives to advance their legislative goals. It intends to turn the tables on the Right. But more is at stake than enacting bits of legislation. For BISC the process of putting initiatives on the ballot is a way to "frame election issues, increase progressive turnout, house coordinated field operations, draw contrasts between candidates, build voter lists and empower progressive organizations." This is a comprehensive mission to which BISC brings an extensive program of operations. BISC runs databases that track leftwing funding for ballot initiatives. It trains activists to run

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initiative and referenda campaigns. And it supports public relations efforts to promote voter knowledge about state initiatives and voter awareness about where candidates and office-holders stand on them.

In a 2006 interview with National Public Radio, BISC Executive Director Kristina Wilfore explained, "Minimum wage, I would say, is the first example where we're using a counterstrategy in the same way

BISC Financial Support

The Ballot Initiative Strategy Center is really two organizations. One is classified by the IRS as a 501(c)(4) "social welfare" organization, which allows it to lobby. The other is the 501(c)(3) Ballot Initiative Strategy Center Foundation, which can "educate" but not "lobby." Contributions to it are tax-deductible.

BISC does not publicly reveal its donors. But a search of foundation grants

that BISC is offering advice to ten state coalitions for the November elections. How much of the BISC budget comes from unions and liberal foundations is unclear. However, BISC comes highly recommended by the New Progressive Coalition, a donor pooling operation. NPC claims BISC is a "leading strategist for progressive ballot initiatives, such as living wage. Also defeats conservative ballot initiatives like eminent domain."

BISC does more than promote liberal and labor-backed initiatives. It also tracks the funding of ballot initiatives and tries to prevent conservatives from getting their initiatives on state ballots.

that the Right has, on issues like same-sex marriage and anti-abortion issues, and a range of things that they've pushed to take controversial hot button issues to voters, and to have some influence in elections at large." Wilfore's minimum wage strategy seems to have been demonstrably successful because these measures drove many voters to the polls. According to some state exit polls, voters who supported state ballot initiatives to increase the minimum wage also voted 2-to-1 for Democratic candidates.

The success of liberal and progressive ballot initiatives in 2006 showed the strength of BISC and its allies. BISC mobilized opposition to Taxpayer Bill of Rights (TABOR) initiatives that were proposed and defeated in Maine, Nebraska and Oregon. BISC also supported "living wage" ballot initiatives increasing state minimum wage laws in Arizona, Colorado, Missouri, Montana, Nevada and Ohio. While a BISC-supported renewable energy initiative was defeated in California, a similar measure passed in Washington.

In 2007, BISC continued its strategy, working against a school choice initiative in Utah and efforts to reduce taxes in Oregon and Washington, while supporting increased state spending on embryonic stem cell research in Texas and New Jersey.

turned up nine grants totaling \$205,250 from sources including the Rockefeller Family Fund and the Tides Foundation.

The BISC Foundation had revenues of about \$202,000 in 2006. In the prior two years, the Foundation received substantial grants from billionaire George Soros and his Open Society Institute, the National Abortion Rights Action League (NARAL) and the far-left Washington, D.C.-based Arca Foundation. At least 15 grants totaling \$510,073 went to the BISC Foundation since its creation in 1999.

BISC has strong union ties. Board members represent a who's who of national union muscle from the AFL-CIO (which donated \$25,000 in 2005), the International Association of Machinists, the American Federation of Teachers, the National Education Association (\$75,000 in 2005), the United Food and Commercial Workers, AFSCME, and the Service Employees International Unions (which donated \$25,000 in both 2005 and 2006). The unions provided cash grants and contracted with BISC to assist them at the state level. Officials from People for the American Way and the leftwing Center for Policy Alternatives also are members of the BISC board of trustees.

The New Progressive Coalition estimates that BISC will have a \$3 million budget for the 2008 election cycle and notes

Thwarting Ballot Access

BISC does more than promote liberal and labor-backed ballot initiatives. It also tracks the funding of ballot initiatives and tries to prevent conservatives from getting their initiatives on state ballots. Union-backed BISC does not see money generally as a threat to popular democracy, only money funding conservative or libertarian initiatives.

In a 2007 report, BISC highlighted its campaign to root out conservative funding of ballot initiatives, targeting Arno Consulting for its paid efforts to get initiatives on the ballot in Florida, Massachusetts, Nevada, Oregon and Washington. The report catalogs how BISC-allied activists tried keep the initiatives off the ballot by challenging the legality of signatures submitted on initiative petitions.

In its January 2008 newsletter, BISC identified National Voter Outreach, JSM Inc. and Arno Consulting as "fraudsters" who were architects of conservative ballot measures. BISC threatened to cut off support for any progressive activists who relied on these groups to develop ballot initiatives. BISC maintains a "rogues gallery" of prominent conservative and libertarian referenda activists, which includes California's Ward Connerly and TABOR advocate Howard Rich.

Frustrated by the advantages conservatives and libertarians enjoy in state-level organization and funding, BISC and other progressive groups are turning to the courts and the initiative process itself to neutralize that advantage. BISC has found that residency requirements and prohibitions on paid signature collection are very effective ways to frustrate conservative signature-gathering. In particular, BISC targets a group called National Voter Out-

reach, claiming that it is a principal funder of state TABOR initiatives.

In a 2007 letter to Oklahoma Democratic Attorney General Drew Edmondson, BISC offered to assist in the indictments of veteran term limits activist Paul Jacob, president of Citizens in Charge, National Voter Outreach official Susan Johnson, and Rick Carpenter, a leader of the group Oklahomans in Action. BISC accused them of violating Oklahoma's law against employing petition circulators who are not state residents and it urged Edmondson to prosecute anyone who made a financial contribution to their cause.

BISC wants to thwart paid signature collectors such as Arno Consulting and initiative proponent Howard Rich. It urges states to pass laws requiring signature collectors to be paid by the hour rather than per signature, requiring payments to be reported, and expanding government oversight of citizen electioneering. BISC supports current residency restrictions in Montana as well as bans on per-signature paid petitioning in Colorado, Maine, Nebraska and Oregon.

BISC encouraged the AFL-CIO to join Oregon's Democratic state governor in defending a 2002 ballot initiative banning compensation "based on the number of signatures obtained on an initiative or referendum petition." In *Prete v. Bradbury* (2006), two private citizens accused of paid initiative campaigning in the 2004 election challenged the Oregon law as an unconstitutional restriction on free speech. The AFL-CIO, which funded proponents of the initiative, intervened to support the law.

The union federation won its case in Oregon despite a U.S. Supreme Court ruling in *Meyer v. Grant* (1988) that struck down a Colorado ban on paid signature collection because it severely restricted protected speech. In keeping with *Meyer*, last month the Sixth Circuit court overturned an Ohio law against paid signature collectors in *Citizens for Tax Reform v. Deters* (2008). The court ruled that the Ohio statute was "a significant burden in exercising [the] right to core political speech" that would limit petitioners seeking to collect signatures "to volunteers and to paid hourly workers who cannot

be rewarded for being productive and arguably cannot be punished for being unproductive."

"[T]he State largely misses the point that free speech can be costly," the Court concluded, "By making speech more costly, the State is virtually guaranteeing that there will be less of it."

But the Sixth Circuit is now at odds with decisions in the Second, Eighth and Ninth Circuits. That means the U.S. Supreme Court may have to come back to the issue it thought it settled in *Meyer v. Grant*. The Ninth Circuit ruled that Oregon's interest in preventing fraud and forgery in the election process justified the restriction on speech, which the Court found to be "not severe." The Court relied in part on an Eighth Circuit case *Initiative & Referendum Institute v. Jaeger* (2001) that upheld a similar North Dakota law imposing a residency requirement on petition signature collectors. The Second Circuit upheld a similar restriction in *Person v. New York State Board of Elections* (2006), explicitly referring to the decisions in the *Prete* and *Jaeger* cases.

BISC's own position on petition-gathering appears contradictory. In 2005, BISC's Wilfore defended a signature collection company whose petitioning practices were so sloppy that the Washington, D.C., Board of Elections & Ethics fined the initiative committee more than \$750,000. The petition company, Progressive Campaigns, Inc., is listed on the BISC website as a preferred vendor. Then there are the petition fraud allegations that have been leveled at the radical group ACORN and Fieldworks, another BISC-preferred vendor. Neither Wilfore nor other BISC representatives have seen fit to offer comments on them.

According to Paul Jacob, president of the pro-referendum Citizens in Charge Foundation, BISC "pretends to be for the (ballot initiative) process, as they also undertake measures to fight general ballot access." Rather than engage in "leafleting," a common, legal and healthy way to fight initiatives you don't agree with, Jacob says BISC trains its operatives to frustrate initiatives campaigns using thuggish measures that amount to what he terms "blocking campaigns."

According to Jacob, "blockers" often use extra-legal methods such as:

- Yelling and causing a scene to intimidate potential signers;
- Purposely lying about petitioners to have them kicked out of a store parking lot;
- Claiming petitioners are committing "identity theft" with the data collected;
- Filing lawsuit after lawsuit to bankrupt a campaign with legal fees;
- Calling the police on petitioners;
- Keeping up a constant stream of innuendo and smears, falsely alleging that petition circulators are using illegal techniques to collect signatures.

In the 2006 Nebraska case *Groene v. Seng*, campaign finance filings revealed that a BISC operative flew into the state to train other operatives on petition blocking. The blocking campaign received support from city officials in Omaha, Lincoln and Grand Island who refused to allow petitioners to work on public property. A federal judge had to issue a temporary restraining order against the officials because they violated the First Amendment rights of the petitioners, and the city governments had to pay the plaintiffs' legal costs.

Outlook for 2008

With almost no fanfare the Ballot Initiative Strategy Center has become a critical tool in Big Labor's effort to shape voter turnout and public policy at the state level and to block conservative ballot measures.

The BISC 2008 "watch list" is extensive. It is gearing up to fight ballot initiatives opposed to racial and gender preferences in Arizona, Colorado, Missouri, Nebraska and Oklahoma; against illegal immigration in Arizona and Oregon; and anti-abortion referendums in California, Colorado, Georgia, Missouri, Montana, Oregon and South Dakota.

BISC takes particular notice of ballot initiatives aimed at reducing the taxpayer burden in Arizona, California, Florida, Massachusetts, Montana, Nevada, North Dakota, Oregon and Washington. BISC also opposes referenda on workplace issues in California, Colorado, Missouri, Oregon and South Dakota. And BISC "will

be targeting signature fraud in more concerted ways than ever in 2008," according to its December 2007 newsletter.

Should BISC fail to convince voters to back its liberal policy agenda, it can always plead the underdog, as Wilfore did when she blamed Big Tobacco for Oregon voters' decision against increasing tobacco taxes to fund an expansion of that state's CHIP program. Wilfore told *Congressional Quarterly* in November 2007: "When you have the best marketers in the world invested in a ballot measure campaign, they can be quite successful." If that spin doesn't work, there are always the courts where BISC's well-funded allies are eager to fight.

BISC-allied groups are prepared to "go to court" should the November presidential election require additional legal action over access to the ballot. BISC funders, including AFSCME, the AFL-CIO, the American Federation of Teachers and SEIU, challenged ballot access in Florida, Illinois, Michigan, Oregon and Washington courts in 2006 and 2007. Altogether, there were 12 federal and 14 state cases concerning ballot initiatives in 2006 and 2007 that were decided in 17 different courts.

Fighting on a legal battlefield was part of Wilfore's BISC strategy in 2006-2007, and it is likely to be repeated this year. In a Fall 2002 article in the progressive Western States Center newsletter, Wilfore championed the use of legal and regulatory processes to "prevent harmful initiatives from getting on the ballot." She stressed the need to "stop initiatives in the signature-gathering phase in order to avoid having to mount far more expensive 'NO' campaigns during the election season." Notably, she touted the legal successes of groups like the Oregon chapter of the American Federation of Teachers, no doubt emboldening future litigators in Montana and Washington, which also have initiative processes in place.

The number of legal challenges in 2006-2007 is impressive because there was no

presidential election. Historically, total voter turnout during presidential elections is close to 50 percent while averaging under 40 percent in non-presidential years. But the enormous turnout of the 2008 primary season portends more turmoil over voter rights and ballot access. We may see some titanic legal battles as November approaches.

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Teacher Unions Bombard Ballot Boxes

By Phil Brand

The teacher unions are not ignoring the ballot initiative process, especially in California where the California Teachers Association (CTA) is particularly busy. Teacher union analyst Mike Antonucci of the Education Intelligence Agency recalls that the CTA spent \$2.1 million in union member dues to collect signatures that would place a commercial property tax hike on the June 2006 California ballot. But that was before CTA President Barbara Kerr met with the California Business Properties Association and the California Manufacturers and Technology Association. Both organizations opposed the tax increase. After the meeting, Kerr said she had received promises that these organizations would lobby for more school funding, and in exchange CTA would drop the tax hike petition before it even reached the ballot.

In April 2004, CTA pulled a similar trick, dropping the same tax hike initiative *after spending \$3.4 million to qualify it* for the ballot. One thing voters can count on in the future is the CTA spending millions in ballot initiative efforts, only to use them as blackmail to further their union ends.

Another CTA battle was over Proposition 74 in 2005. Prop 74 would

have increased the waiting period from two to five years before a teacher received tenure. The CTA in Los Angeles alone, according to California state initiative filings, ran nearly \$200,000 in radio ads to oppose the measure. Voters defeated the measure 55 percent to 45 percent despite Governor Arnold Schwarzenegger's support.

The teacher unions use their muscle on many ballot initiatives, but never so much as when the initiatives support school vouchers. The NEA pulled out the big guns against Utah Referendum 1 (School Vouchers) last fall funnelling more than \$3 million into the state to defeat the referendum. State teacher unions across the country sent even more money to the Beehive State. As in California, Colorado and other states, voucher proponents learned how well the teacher unions use power.

The NEA funds the Ballot Initiative Strategy Center. The 2004-05 financial disclosure report (LM-2) filed by the NEA revealed that the \$25 million that the NEA spent on "Political Activities and Lobbying" included a \$75,000 contribution to BISC.

Phil Brand is Capital Research Center's Director of Education Watch.

Please remember Capital Research Center in your will.

Labor Notes

Unions, Political Left Pledge \$400 Million to Democrats

Leftist groups and labor unions announced last month that they would spend more than \$400 million on behalf of Democratic candidates for the White House and Congress. Nearly three-quarters of the funds will come from the AFL-CIO and large national unions; MoveOn.org will spend at least \$30 million.

Unions, Leftist Activists Worried About Democratic Convention

Union and leftist activists gathered at the Omni Shoreham Hotel in Washington, D.C., last month were worried about the lack of a definite Democratic candidate and the potential for a divisive Democratic convention. “There’s always that possibility,” warned AFL-CIO political director Karen Ackerman to the Associated Press. She and other representatives of leftist organizations at the Take Back America conference were anxious to mobilize voters for the Democratic nominee.

SEIU Finds Success in Healthcare Organizing

The number of union elections in the United States declined in 2007, according to the National Labor Relations Board—but the Service Employees International Union (SEIU) and others were notably successful in organizing healthcare workers. Unions won 72 percent of all elections in the healthcare industry, but 62 percent in other fields. The SEIU accounted for nearly half of all healthcare organizing petitions.

Rhode Island Governor Crosses Unions With Push for Private Contracts

Unions are upset with Rhode Island Gov. Don Carcieri, who last month asked the state’s Supreme Court to overturn a law that requires the governor to prove that the cost savings of hiring a private contractor are “substantial.” Carcieri’s budget calls for replacing 250 unionized state employees with private contractors to save nearly \$3.1 million, but he says the new law prevents him from closing the state’s projected deficit of \$384 million. “We didn’t even get a heads up that that was in the works or being contemplated,” complained AFL-CIO secretary-treasurer George Nee.

Unions Bet on Gambling, Conflict With Environmentalists

Unions and environmentalists were at odds last month over Massachusetts Gov. Deval Patrick’s proposal to legalize casino gambling in the state. The “green” activists complain that casinos will bring added vehicles and pollution to crowded urban areas. Union members have been picketing and packing public hearings to support the creation of new jobs. “I want to know which legislator is going to deny you a job, who’s going to pay your mortgage when you can’t pay, who’s going to leave 20,000 workers in an unemployment line,” Massachusetts AFL-CIO president Robert Haynes told his members in a profanity-laden speech, according to the *Boston Globe*.

Oil Executives Criticized by Union Leaders

Union leaders renewed their attacks on executives of oil companies for large compensation packages after Occidental announced that its CEO Ray Irani earned \$77.6 million in 2007. “With all oil companies, the CEOs are price takers and not price makers” on oil, said AFL-CIO investment guru Daniel Pedrotty to the *Los Angeles Times*. “Given the extraordinary amount of shareholder money that has been paid to Irani and other oil CEOs, there’s a serious question as to whether this is pay for performance.” Irani’s done something right: Occidental’s stock climbed 58 percent in 2007.