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MEMORANDUM

May 3, 2004

TO: Kevin Livingston and Roger Olds

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #154, concerning a U.S. Constitutional Convention

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments to you regarding your proposed amendment, a copy of which is attached.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in drafting the language of their proposal and to make the public aware of the contents of the proposal.

An earlier version of this initiative was the subject of a memorandum dated March 26, 2004. Proposal 2003-2004 #120 was discussed at a hearing on March 29, 2004. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions that were addressed at the earlier hearing unless it is necessary to fully address the issues in the revised measure. However, the comments and questions that have not been addressed by changes in the proposal continue to be relevant and are hereby incorporated by reference in this memorandum.

Our first objective is to be sure we understand your intent and objective in proposing the amendment. We hope that the statements and questions in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment appear to be:

1. Until the United States congress proposes an amendment to the United States constitution that only:
(a) Defines marriage as between a man and a woman; or (b) ensures to each state the right to decide the definition of marriage for all of its residents, to require the general assembly of the state of Colorado at each session, after commencing but prior to the passage of any new legislation by the general assembly, to vote on a resolution calling for the convening of a United States constitutional convention with the same authority and rules as the earlier founding convention.
2. To require the Colorado general assembly to take all such additional acts as necessary to attend and fully participate in the United States constitutional convention.
3. To require the appointed representatives, prior to the convention, to meet with appointed representatives from other states no later than May 14 of each year at a place designated by a plurality of states having appointed representatives, and to consult together regarding the participation yet needed by other states.
4. To specify that a vote shall not be required when: (i) A majority of the members of either chamber of the general assembly of the state of Colorado elects to postpone for the session such a vote; (ii) the resolution has been approved and remains valid; or (iii) in consequence of a convention, any constitutional amendment adopted either: (a) Defines marriage as between a man and a woman; or (b) ensures to each state the right to decide for itself the definition of marriage for all of its residents.
5. To identify the effective date of the measure as thirty days after its approval.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by initiative:

"Be it Enacted by the People of the State of Colorado:"

This clause is the first clause of every piece of legislation, prior to any amending clauses. Would the proponents consider relocating the enacting clause to precede the amending clause in the measure?

2. In Colorado, when a proposed measure adds new language to or repeals existing language of the state constitution, the proposed measure uses an amending clause indicating the specific section of the law where new language will be added or existing language will be deleted. The following is an example of an amending clause to add a new section to the Colorado constitution: "SECTION 1. Article V of the Colorado constitution is amended BY THE ADDITION OF A NEW SECTION to read:". The amending clause would be placed *following* the enacting clause referred to in question one of this memorandum. The new language of a proposed measure itself generally is shown in small capital letters [THIS IS AN EXAMPLE OF NEW LANGUAGE]. Finally, each section of the statutes begins with a section heading that includes the section number and a short description of the section contents. For example, section 1 of article V has a section heading of "**General assembly - initiative and referendum.**".
 - a. Would the proponents consider changing the amending clause to conform with standard drafting practice and to indicate that the measure proposes adding new language to the state constitution?
 - b. Would the proponents consider indicating new language with capital letters?
 - c. Would the proponents consider including a section heading for the new section 51 proposed in the measure?
 - d. Would the proponents consider adding a new section number for the effective date provision?
3. The first sentence of the measure is long and confusing, taking up eight lines of text with numerous ideas and very little punctuation. It states, in part, that ". . .the general assembly of the state of Colorado of each session of this state shall after commencing but prior to the passage of any new legislation by the general assembly of the state of Colorado vote on a resolution calling for the convening of a United States constitutional convention with the same authority and rules as the earlier founding convention." Do the proponents intend for each session of the general assembly of the state of Colorado to vote on a resolution calling for the convening of a United States constitutional convention until the congress of the United States proposes an amendment to the United States constitution that only fulfills the requirements of the text in (a) or (b) of the measure? If so, would the proponents consider rewording or relocating the language which states, "of each session of the state" to conform with the intended meaning? Do the proponents also intend for the United States constitutional convention called for to utilize the same authority and rules as at the founding constitutional convention? If so, to avoid confusion, would the proponents consider reworking the sentence in the proposal, creating separate sentences when possible, omitting any unnecessary clauses, and adding punctuation for clarity?
4. The first and last sentences of the proposed measure contain provisions that are structured with the letters and Roman numerals "(a)" and "(b)", or "(i)", "(ii)", and "(iii)". To conform to standard

drafting practices, would the proponents consider eliminating the reference to these letters and numerals and instead using words, commas, or semi-colons to separate clauses rather than letters and roman numerals? In the alternative, if the proponents wish to structure these sentences as currently written, would the proponents consider using either letters or Roman numerals consistently?

5. The language of the last sentence of the text of the new section of the measure uses the word "hereunder". To conform to standard drafting practice, would the proponents consider eliminating the use of this legalistic word and substituting a different phrase such as "pursuant to the provisions of this section" for "hereunder"?
6. The third sentence of the proposed measure refers to "any chamber" of the general assembly of the state of Colorado. The Colorado general assembly is composed of only two houses: The House of Representatives and the Senate. Would the proponents consider rephrasing this sentence to refer to "either" chamber of the general assembly?
7. The last sentence of the proposed measure does not specifically identify what is effective thirty days after approval. Would the proponents consider specifying that this act shall be effective thirty days after the approval of the measure?

Substantive questions:

1. The first sentence of the measure states, in part, that ". . .the general assembly of the state of Colorado of each session of this state shall after commencing but prior to the passage of any new legislation by the general assembly of the state of Colorado vote on a resolution calling for the convening of a United States constitutional convention with the same authority and rules as the earlier founding convention."
 - a. Traditionally, as the first order of business to commence the legislative session, the house and senate of the Colorado general assembly pass a joint resolution, which are pieces of legislation, to notify the governor that the appropriate session of the general assembly is organized and ready to transact business. Would the proponents consider modifying the language of the proposal that states "after commencing but prior to the passage of any new legislation by the general assembly of the state of Colorado" to reflect that in order to actually commence the legislative session itself, these resolutions, which are pieces of legislation themselves, must be passed?
 - b. What is the significance of requiring the general assembly to vote on a resolution for the convening of a United States constitutional convention "prior to the passage of any new legislation by the general assembly of the state of Colorado"?

- c. The language of the first sentence of the proposed measure appears to require the general assembly of the state of Colorado to vote on the resolution described in the proposal. Only members of the general assembly hold the privilege of requesting bills or resolutions to be introduced for consideration by the general assembly. Does the proposed measure require the general assembly to introduce the specific resolution contemplated by the measure? Which members of the general assembly, then, if any, are required to introduce this resolution? Would the proponents consider clarifying this in the proposal?
 - d. The language of the first sentence of the proposed measure appears to require the general assembly of the state of Colorado to introduce the resolution described in the proposal at each session of the state legislature until the congress of the United States proposes an amendment to the United States constitution that only (a) defines marriage as between a man and a woman or (b) ensures to each state the right to decide for itself the definition of marriage for all its residents. Why is it necessary for the general assembly of the state of Colorado to introduce the resolution described in the proposal at each legislative session, assuming that it passes? Or is it only necessary for the general assembly of the state of Colorado to introduce the resolution described in the proposal at each session until such resolution passes and is submitted to the congress of the United States? If so, would the proponents consider clarifying this language in the proposal? What is the intent of the proponents if Congress does propose such an amendment, but it does not pass? Do the proponents contemplate that the general assembly of the state of Colorado would be required to introduce another resolution? Would the proponents consider clarifying their intent in that regard?
 - e. The proposed measure appears to require an annual resolution calling for a constitutional convention if Congress does not propose an amendment to the United States Constitution that only defines marriage a certain way or ensures the states' ability to decide the definition of marriage. What is the intent of the proponents if Congress ultimately proposes such an amendment that does this and something else? What if such a constitutional amendment were to pass? What would be the purpose of resolutions at the state level calling for a constitutional convention at that point? What is the intent of the proponents in using the word "only" where it is placed?
 - f. Finally, the language of the first sentence requires the general assembly to call for the convening of a United States constitutional convention "with the same authority and rules as the earlier founding convention." What is "the earlier founding convention" and how is it different, if at all, from "the original founding convention"?
2. The second sentence of the proposal states that "The general assembly of the state of Colorado shall take all such additional acts as necessary to attend and fully participate in such a convention". If only members of the United States congress have authority to participate in a constitutional convention, then how do the proponents contemplate that the members of the general assembly would participate in the convention? What acts do the proponents contemplate the general

assembly of the state of Colorado would undertake? Would the proponents clarify this in the proposed measure?

3. The third sentence of the proposal states that "Appointed representatives shall then, prior to the convention, meet with appointed representatives from other states no later than May 14 of each year at a place designated by a plurality of states having appointed representatives, and shall consult together regarding the participation yet needed by other states."
 - a. Who are the "appointed representatives" mentioned in this sentence? Who appoints them? Do the proponents believe that a state has control, via submission of a resolution to call for a constitutional convention or some other manner, over which members are appointed and when they are appointed? Do the proponents believe that the United States Congress would appoint members prior to the request for the calling of a constitutional convention by two-thirds of the states? What procedure do the proponents believe would be used for appointing representatives to the constitutional convention?
 - b. What is "the participation yet needed by other states"? Does this clause refer to the application of the legislatures of two-thirds of the several states, to call for a convention for proposing amendments to the United States constitution, as referred to in Article V of the United States constitution? If so, then relating back to question (a) of this question (3), then who are these "appointed representatives", since if there has not been a calling for a constitutional convention by two-thirds of the states, then there would not have been representatives appointed for the constitutional convention. Or is it the proponents' understanding that representatives to the constitutional convention would be appointed prior to the states meeting the requirements of Article V of the United States constitution for a calling of a constitutional convention? Would the proponents consider clarifying this provision of the proposed measure?
4. The fourth sentence of the proposal states that "A vote shall not be required hereunder when (i) a majority of the members of any chamber of the general assembly of the state of Colorado elects to postpone for the session such a vote, (ii) the resolution has been approved and remains valid, or (iii) in consequence of a convention, any constitutional amendment adopted either (a) defines marriage as between a man and a woman or (b) ensures to each state the right to decide for itself the definition of marriage for all its residents."
 - a. Is it the proponents' understanding that the measure requires a member of the Colorado general assembly to introduce a resolution calling for a constitutional convention, but that a majority of the members of either house of the general assembly of the state of Colorado could elect not to vote on the resolution? Pursuant to section 2-3-505, Colorado Revised Statutes, if a member of the general assembly desires to introduce a resolution, he or she requests a resolution from the Office of Legislative Legal Services, and if the member decides not to move forward on the resolution, the member elects not to introduce it or, if introduced, asks that it not be taken up before the committee of the whole. Are the

proponents aware of any other requirement that the members or a member of the general assembly introduce a resolution but then vote to postpone a vote on it?

- b. Does the language "the resolution has been approved and remains valid" mean that a joint resolution requesting a constitutional convention has been previously introduced in the Colorado general assembly, and has been passed and submitted to congress?
5. The proposal requires a constitutional amendment to: "(a) Define marriage as between a man and a woman; or (b) ensure to each state the right to decide the definition of marriage for all of its residents". If the constitutional convention results in adoption of a constitutional amendment to: '(b) ensure to each state the right to decide the definition of marriage for all of its residents', is it possible that states may decide to define marriage as other than between a man and a woman? Is it the intent of the proponents to allow individual states to define marriage as other than between a man and a woman?