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MEMORANDUM

May 3, 2004

TO: J.B. Smith and Willie Wool

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #159, concerning the government of the western slope

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 the appended proposed initiative.

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

Purposes

The major purposes of the proposed initiative appear to be:

1. To create a separate, unicameral legislature of the western slope consisting of ninety-nine senators, and specifying that:
 - a. The Colorado general assembly shall appropriate \$3 billion from the general fund for the western slope legislature.
 - b. The districts shall be of three to a district, and no political party may elect more than two

members from one district.

- c. The western slope legislature shall have all powers granted in the Colorado constitution.
 - d. The western slope legislature may revoke every year five current laws of [sic] other laws of the regular Colorado general assembly.
 - e. The Colorado general assembly may overturn the western slope legislature by sixty percent of one house and a majority of the other house and vote of the governor.
 - f. Certain people are limited or prohibited from serving in the western slope legislature.
2. To specify that roads, schools, divorce and child custody, and general public welfare laws for the western slope will be provided by the new legislature;
 3. To specify the structure of the western slope government, including what offices and departments shall exist, and to specify the terms of office for elected officials;
 4. To create a department of fishing, hunting, and recreation to be governed by the western slope, and to specify who will run the department and how the department will charge fees;
 5. To specify the number of county commissioners for each county, how they are elected, their duties, and terms of office;
 6. To establish provisions regarding pay for all western slope possessions and civil employees;
 7. To establish provisions concerning motor vehicles on the western slope, including driving regulations, fines, and insurance;
 8. To restrict the use of cell phones;
 9. To prohibit a law school from being built on the western slope;
 10. To prohibit laws against gun ownership from being proposed, written, or passed on the western slope;
 11. To establish provisions concerning judges for small claims courts;
 12. To set a license fee for cars and private and commercial vehicles;
 13. To prohibit gasoline from being altered unless certain requirements are met;
 14. To create a real estate review board and specify the powers and duties of the board;

15. To establish provisions regarding marriages;
16. To change the age limits concerning statutory rape;
17. To specify that prohibition for persons aged eighteen, nineteen, and twenty shall not apply on the western slope; and
18. To establish the legal drinking age for wine, 3.2 beer, and all alcoholic products at ages fourteen, sixteen, and eighteen, respectively.

Comments and Questions

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

Technical questions:

1. Section 1 (8) of article V of the Colorado constitution requires all initiatives to begin as follows: "Be it Enacted by the People of the State of Colorado". Would the proponents consider adding this language to the beginning of the proposed initiative?
2. To conform to standard drafting practice, would the proponents consider adding an amending clause to the proposed initiative? For example, if the proponents intend to add a new article to the constitution, the amending clause should read: "The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW ARTICLE to read:".
3. Standard drafting practice is to include a headnote before the start of a new section. Would the proponents consider adding a headnote in bold type before the start of the first paragraph of the proposed initiative? For example: "**Western slope provisions.** The Western Slope shall have . . .".
4. To conform to standard drafting practice, would the proponents consider dividing the proposed initiative into subsections and paragraphs by using numbers and letters at the beginning of each division? For example:
 - "(1) The Western Slope shall have a separate legislature. . . "
 - "(2) The Western slope legislature shall have all powers. . . "
5. Standard drafting practice is to show all new language in "SMALL CAP" type and deleted language in "~~strike type~~". Since the proposed initiative is all new language, would the proponents consider placing the text of the proposed initiative, excluding the headnote, in "SMALL CAP" type?
6. To conform to standard drafting practice, would the proponents consider changing references to the "regular Colorado State legislature" and the "regular Colorado legislature" to the "Colorado

general assembly"?

7. Would the proponents consider changing "department of fishing, hunting, and recreational" to "department of fishing, hunting, and recreation"?

8. Would the proponents consider writing out the word "department" instead of abbreviating it as "dept"?
9. In the proposed initiative, some numbers are spelled out while others are expressed numerically. Would the proponents consider spelling out all numbers? For example, write "sixty percent" instead of "60%".
10. Would the proponents consider changing the spelling of "commissionaires" to "commissioners"?
11. Would the proponents consider changing the spelling of "well faire" to "welfare"?
12. It is standard drafting practice to only capitalize the first word of a sentence or heading and proper names, such as the name of a city, river, etc. Would the proponents consider changing the proposed initiative so that only the first word of a sentence and proper names are capitalized?
13. Would the proponents consider spelling words with the prefix "non" as one word, with no hyphen? For example, use "nonpartisan" or "nonlawyer".
14. In the first sentence of the fourth paragraph of the proposed initiative, would the proponents consider moving the word "and" so that it follows "State," in the series of elected positions?
15. In the fifth paragraph of the proposed initiative:
 - a. In the second sentence, would the proponents consider adding a comma after "legislature"?
 - b. Would the proponents consider adding the word "by" to the third sentence, as follows: "Out of state fees will be also set by the legislature."
 - c. In the fourth sentence, would the proponents consider using gender-neutral language by adding "or her" after the word "his"?
 - d. Would the proponents consider adding a verb such as "shall" or "will" to the last sentence, as follows: "This shall vary from Governor to Governor so that the elections for Department heads will be 90 days after the general election."
16. In the sixth paragraph of the proposed initiative, would the proponents consider replacing the term "highest vote getter" with "candidate receiving the most votes" or other similar language?
17. In the seventh paragraph of the proposed initiative:
 - a. In the third sentence, would the proponents consider placing the word "the" in front of "same protection"?
 - b. In the fourth sentence, would the proponents consider replacing the word "employs" with

"employees"?

18. In the eighth paragraph of the proposed initiative:
 - a. Would the proponents consider ending the first sentence with a colon instead of a period?
 - b. In the second sentence, would the proponents consider adding "per hour" after "mile"?
 - c. The second to last sentence ("Upon entering the Western Slope.") does not appear to be a complete sentence. Should this phrase be part of the preceding or following sentence?

19. In the tenth paragraph of the proposed initiative, in the second sentence:
 - a. Would the proponents consider changing "to" to "those who"?
 - b. Would the proponents consider correcting the spelling of "too" so that it reads "to"?
 - c. Would the proponents consider spelling "with out" as one word ("without")?

20. In the eleventh paragraph of the proposed initiative:
 - a. In the second sentence, would the proponents consider changing "No" to "Not"?
 - b. In the third sentence, would the proponents consider changing "as" to "at"?

21. In the twelfth paragraph of the proposed initiative, the first sentence appears to be two sentences joined together. Would the proponents consider placing a period after "\$250" so that the second sentence reads: "All commercial vehicles except for semis will be licensed at no more than \$75 a vehicle."?

22. In the thirteenth paragraph of the proposed initiative:
 - a. In the third sentence, would the proponents consider adding a comma after "members" and after "pick five"?
 - b. In the third sentence, would the proponents consider adding the word "members" after "five" and "5"?
 - c. In the last sentence, would the proponents consider changing "loose" to "lose"?

23. In the 15th paragraph, would the proponents consider changing "statuary rape" to "statutory rape"?

Substantive questions:

1. What are the proponents' intentions in submitting the proposed initiative?
2. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. Taking into account the numerous requirements of and other matters addressed by the proposed initiative, what is the single subject of the proposed initiative?
3. For purposes of the proposed initiative, what exactly constitutes the "western slope"? The area in the state that is west of the continental divide? Would the proponents consider clarifying this in the proposed initiative?
4. The proposed initiative states that the western slope shall have a unicameral legislature consisting of 99 senators. Would this be an additional level of government or is it the intent of the proponents to remove portions of the state from governance by the Colorado general assembly? Would the proponents clarify how this proposal would work with article V of the Colorado constitution establishing the responsibilities and make-up of the legislative branch of government?
5. Are all provisions in the proposed initiative, unless otherwise noted, intended to apply to the western slope only? If so, would the proponents consider clarifying this in the proposed initiative?
6. Do the proponents' intend that state senators and representatives from the western slope will continue to serve in the Colorado general assembly after the creation of a western slope legislature?
7. Would the proponents clarify the meaning of the following phrases contained in the proposed initiative:
 - a. In the first paragraph: "Districts shall be of three to a district."?
 - b. In the second paragraph: "Common criminals"?
 - c. In the fourth paragraph: "Including towns and cities."?
 - d. In the seventh paragraph: "Pay for all western slope possessions shall be the same as the regular Colorado State legislature."?
 - e. In the eleventh paragraph: "A regular judge (lawyer)"?

- f. The last sentence of the proposed initiative: "All concerns not covered in this document and the Colorado Constitution and the Western Colorado State Legislature can address laws."?
8. Is the \$3 billion appropriation from the state general fund to the western slope legislature a one-time appropriation, or do the proponents intend that this appropriation shall occur annually? When would the appropriation be made? Would the western slope legislature have any other source of revenues or authority to levy taxes, fees, or other charges?
9. The proposed initiative states that "no political party may elect more than 2 members from one district." In Colorado, voters, not political parties, elect members of the general assembly. Does this proposal change this practice, or would the proponents clarify what is meant by this phrase?
10. Would the proponents explain what is meant by the phrase "the Western legislature may revoke every year 5 current laws of other laws"? Would the western legislature have veto power over existing laws as it applies to the western slope only or to laws that apply statewide? How would such laws be chosen? Does the next phrase stating that the Colorado general assembly may "over turn the Western legislature" apply to decisions regarding the revocation of current laws or to other decisions made by the western slope legislature?
11. The proposed initiative states "no more than 10 lawyers may serve in the western Legislature." What would happen if more than ten were elected?
12. Is it the proponents' intention that the western slope governor, attorney general, treasurer, secretary of state, and secretary of education operate independently of the Colorado governor, attorney general, treasurer, secretary of state, and secretary of education? Do the provisions governing the election and terms of elected officials apply to the western slope only?
13. The proposed initiative states that if an elected position receives less than 55 percent of the popular vote then the individual would only serve for two years. However, it also states that in such a case an election would occur within one year. If an election occurs in the year after an elected official receives less than 55 percent of the vote, when would the winner take office? After the two-year term has expired, one year after the election, or after the election and before the two-year term expires?
14. It appears that the term limits imposed by the proposed initiative for members of the "Western legislature" are different from those imposed by article V, section 3, of the Colorado constitution imposing term limits for members of the Colorado general assembly. Would the proponents consider making the term limits consistent?
15. What happens if more than three county commissioners are elected from the same political party? How will the "highest vote getter" be determined? Is it among the five commissioners or within each race? Will the commissioners be elected by district or will they be elected at-large?

16. What persons are considered "tourists" in the proposed initiative? Would any non-resident visitor to the Western Slope be considered a "tourist", including persons driving through western slope counties or immediate family visiting western slope residents?
17. What state entity would collect a \$50 fee from each tourist and how would the collection process occur? How would the money be used? How would claims be made against the fund?
18. Would a person sentenced to "live in Aspen or Boulder for ten years" be provided public or private housing at the expense of the state, or would such a person be incarcerated?
19. Would the prohibition on proposing "laws against gun ownership" violate a person's First Amendment rights?
20. What limitations does the proposed initiative place on sheriffs' deputies and police officers in the sentence "No Sheriffs departments or officers will be involved in civil disputes"? Does this prevent sheriffs deputies from serving process and executing writs in civil cases? A number of laws enforced by law enforcement officers are considered civil rather than criminal. (A civil infraction is only punishable by a fine, as opposed to a criminal offense which is also punishable by jail or prison time. Many municipal traffic regulations, for example, are only civil infractions.) Would law enforcement officers be prohibited from enforcing these laws?
21. The proposed initiative assesses different license fees for foreign, private, and commercial vehicles.
 - a. What is a "foreign" vehicle? Would a vehicle be assessed the higher license fee if it is assembled in the United States from parts manufactured in another country? Would a vehicle be assessed the higher fee if it comprised of parts manufactured in the United States but assembled in Mexico or Canada? Would the proponents consider defining the term "foreign"?
 - b. What is a "private vehicle"? Is a "private" vehicle any vehicle not owned by a government agency? Would the proponents consider defining the term "private vehicle"?
 - c. What is a "commercial vehicle"? Are some cars commercial vehicles? If so, what is the license fee for commercial cars? What if a commercial vehicle is "foreign"? Would the license for such vehicles be \$75?
 - d. What is a "semi"? Is a semi a type of heavy truck such as a tractor trailer? Would the proponents consider defining "semi" by vehicle weight or other more specific criteria?
 - e. What is the license fee for a "semi"? Is the fee different for foreign "semis"?

22. The proposed initiative states that "no gasoline will be altered for reasons not defined and will require a %60 vote of the Western Colorado Senate and signature of the Western Colorado Governor."
- a. What is "altered gasoline"? How is altered gasoline distributed? Is altered gasoline taxed differently than non-altered gasoline? Would the proponents consider defining "altered gasoline"?
 - b. What is a "defined reason"? Would the proponents consider further defining these terms? What is a %60 percent vote? Is this a vote of sixty percent of 99 Senators (or 59.4 Senators)? If so, must all 59.4 vote affirmatively to alter gasoline? What is .4 of a Senator? Is such a measure approved if more than 59.4 Senators vote in the affirmative?
23. The proposed initiative states that a marriage license will have "a legal document for divorce in the case the marriage fails." What would be the effect of including this document? If executed and presumably filed, would it merely have the effect of initiating a dissolution of marriage proceeding? Would it have the effect of dissolving the marriage? If so, how would disputes regarding issues such as property division, child custody, child support, and maintenance be resolved?
24. The proposed initiative states that "[a]ll people living together for over 6 months will be considered common law marriages." What constitutes living together? Simply living in the same dwelling unit? Would the people have to demonstrate some intention to be married, or could they be considered married even if they specifically did not want to be married? Would this only apply to unrelated, unmarried, consenting adults who are otherwise legally capable of being married? For example, if two people happen to be tenants living in the same house, would they be considered married? If a younger person were living with an older person to provide living assistance, would they be considered married? What if three or more people live together? Which couple(s) would be considered married? Can the proponents explain how this provision would work?
25. The proposed initiative states that the western slope legislature "shall have all powers granted in the Colorado constitution." The proposed initiative also states that "[r]oads, schools, divorce laws, child custody, and general well faire [*sic*] of the public of the western slope shall be provided by the Western legislature." With regard to these statements:
- a. Do the proponents intend that the western slope will continue to be governed by the Colorado constitution and the Colorado Revised Statutes?
 - b. Do the proponents intend that laws passed by the proposed western slope legislature would be harmonized or incorporated into the Colorado Revised Statutes? If so, how?

26. Do the proponents intend that the proposed western slope legislature will publish laws separate from the Colorado Revised Statutes and the Colorado constitution? If so, how do the proponents intend this to be accomplished?
27. Is it the proponents' intention that the laws passed by the western slope legislature will apply only to residents of the western slope?