

STATE OF COLORADO

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MEMORANDUM

September 29, 2003

TO: Douglas Campbell
Dennis Polhill

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #70, concerning petitions

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. 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.

Earlier versions of this initiative were the subject of memoranda dated October 18, 2002, November 20, 2002, December 31, 2002, and February 5, 2003. Proposed initiative measures 2003-2004 #3 and #4 were discussed at a public meeting on October 22, 2002, proposed initiative measures 2003-2004 #6 and #7 were discussed at a public meeting on November 22, 2002, proposed initiative measures 2003-2004 #8 and #9 were discussed at a public meeting on January 3, 2003, proposed initiative measures 2003-2004 #19, #20, #21, and #22 were discussed at a public meeting on February 7, 2003, and proposed initiative measures 2003-2004 #51, #52, #53, and #54 were discussed at a public meeting on June 13, 2003. The comments and questions in this memorandum do not duplicate the comments and questions that were addressed at the earlier meetings, except when necessary to address 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 incorporated by reference into this memorandum.

Purposes

The major purposes of the proposed amendment appear to be:

1. To amend section 2 of article VII of the state constitution.
2. To specify that:
 - a. The new section 2 creates fundamental rights to strengthen citizen control of government;
 - b. The new section 2 is self-executing and severable and supersedes conflicting constitutional, charter, and other state and local laws;
 - c. Time limits shall be delayed only to expire on a district business day;
 - d. The state shall enforce strictest compliance with the new section 2 by all districts;
 - e. All individual and class action suits shall be filed within one year of a violation;
 - f. A plaintiff may require a jury trial verdict on all matters of law, fact, and damages;
 - g. A district violation shall not void a petition;
 - h. A district violation shall not be balanced or harmonized, nor excused by substantial compliance, good faith, ignorance, or emergencies, but shall require strictest scrutiny and full enforcement; and
 - i. A successful plaintiff shall also recover from a defendant who is not a petition agent all costs and attorney fees, contingent or not, but a defendant who is not a petition agent may recover only if a jury finds that the suit is frivolous.
3. To define the terms "ballot titles", "districts", "petitions", and "shall".
4. To establish the following regarding petition rights:
 - a. Petition rights shall exist in all districts;
 - b. Required district registered elector petition entries shall not exceed 5% of all district votes for Secretary of State in the last full-term election for that office, and the General Assembly may lower that level for proposed statutes;
 - c. Any review and comment hearing shall be held within seven days of the submission of an initiative draft;

- d. To specify the following concerning initiative ballot titles:
- i. Initiative ballot titles shall not exceed 75 words, shall be set within seven days of a request, and may also be set by any state district court;

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 - ii. Ballot title setters shall ===== be disqualified for bias or other good cause;
 - iii. Future single-subject requirements for petitions shall exist by voter-approved petitions only;
 - iv. No summary or fiscal note shall be made at ballot title settings;
 - v. Ballot title disputes and all challenges to initiatives on single-subject grounds shall be appealed to the Colorado Supreme Court within five days of the setting, finally decided within 7 days of filing the appeal, and very broadly construed to aid initiatives;
 - vi. A petition is conclusively a single subject if the Colorado Supreme Court does not decide otherwise within 7 days of filings;
 - vii. A decision that an initiative contains multiple subjects must list in writing all words that are not part of a single subject; a revision that deletes those words and adds no others shall conclusively be a single subject; and a decision shall also specify a ballot title for the initiative or revision; and
 - viii. No other ballot title or single-subject rehearing, appeal, challenge, or decision shall be made.
- e. Within seven days of a request for a petition form, districts shall print and deliver them and may charge actual costs up to one dollar per 100-entry form;
- f. All districts shall adapt the 1988 state petition forms without summaries or county entry spaces;
- g. Errors in petition forms or ballot titles shall not affect petitions;
- h. Peaceful petitioning at exits of all buildings owned or leased by any district and then open to the public shall be protected;
- i. Except for petition form charges, no petition process fee, badge, bond, licensing, or training for petition agents shall be required; and
- j. Any adult in Colorado may circulate any petition, and the use of paid circulators shall create no extra legal duty.

5. To specify the following regarding referendum petitions:
 - a. No more than 12 legislative measures passed in each district in any year shall be excepted from possible referendum petitions;
 - b. An excepted measure, with a detailed description of the emergency justifying the exception, shall be passed by 3/4ths or more of all members of the local board or of each house of the General Assembly;
 - c. Any state measure not excepted shall take effect 91 days or more after the General Assembly session passing it finally adjourns, and such local measure 91 days or more after post-passage publication;
 - d. An initial filing of referendum petitions by the 90th day after such event shall delay the effective date until the election or final petition invalidation;
 - e. Measures rejected by voters are then void, and wholly or mostly similar measures shall be fully or partly reenacted only with voter approval;
 - f. Referendum petition ballot titles shall read "SHALL (DISPUTED SECTIONS OF) (types of measures and numbers only) BE APPROVED?" Such petitions shall have no title-setting, appeal, or single-subject challenge, nor include the measure's text in the petition form;
 - g. Referendum petitions may begin at any time;
 - h. Appropriations for district support shall be exempt from referendum petitions; and
 - i. The new section 2 shall not apply to referendum petitions reducing private property rights, such as zoning issues, which petitions may still lawfully exist.
6. To specify the following regarding petition filings:
 - a. Petitions with sufficient gross entries shall be initially filed within 12 months of petition form delivery, and petitions not initially filed 3 months or more before an election may be filed for the next election;
 - b. Signers of notarized or verified petitions shall be presumed district registered electors making valid petition entries until disproved by clear and convincing evidence;
 - c. Technical defects, minor variations, and minor omissions shall be very broadly construed to aid petitions;
 - d. Listing a mailing address shown on the signer's registration record shall be valid;
 - e. All protests shall be filed within 10 days of petition filings and not amended, and hearings shall be public, limited to reasons itemized in the protest, and decided within

- 10 days of protest filings using state judicial rules of evidence and procedure;
- f. Results of random sampling or machine reading of entries shall be excluded;
 - g. Each protested entry shall be examined separately at the hearing;
 - h. If districts do not review equally all petitions before an election, no district review shall be used to invalidate any such petition;
 - i. Petitioners shall have 10 days after all validation procedures and appeals to re-file with corrections and new petition entries made at any time, to which all procedures and appeals shall also apply; third filings are barred; and
 - j. When initially filed, a petition with sufficient gross entries shall receive a ballot number and a ballot placement, which remain until all procedures and appeals are decided.
7. To specify the following:
- a. All state and local petitions shall be Article X, section 20 (3) ballot issues at any November election;
 - b. Petition agents may file comments up to 1,000 words for ballot information booklets and election notices sent to addresses of all active registered electors, and the length of that filing shall be the maximum for a summary of comments filed by opponents;
 - c. Election notices and booklets for petitions shall be limited to written comments filed by 45 days before the election and other information required by article X, section 20 (3) (b) of the state constitution;
 - d. Article V, section 1 (7.5) (a) (II) of the state constitution and the last sentence of article X, section 20 (3) (b) (v) of the state constitution shall not apply to petitions;
 - e. Except for petition or election procedures and materials required by law, or in court cases, no district or district employee shall aid spending district resources, or using any district procedure, equipment, or employee time, to discuss any pending petition after its ballot title is set _____;
 - f. No district resources or employee time shall aid accused violators or repay expenses;
 - g. Each district and other violator shall pay, per event, the greater of \$3,000 or three times the value of such spending, use, aid, and/or repayment;
 - h. Unless _____ stated in the text or unless the text be unlawful, a future voter-approved initiative shall remain in effect until changed by voters;

- i. This new section may be amended, superseded, or repealed by voter-approved petitions only; and
- j. Except measures passed by March 1, 2005, future state or local petition laws, rules, and regulations shall be article X, section 20 (3) ballot issues at any November election.

Comments and Questions

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

- 1. In order to make the proposal easier to read and work with, would the proponents consider formatting any future versions in 12-point type with standard margins?
- 2. This version of the proposal allows plaintiffs to recover costs and attorney fees from "defendants who are not petition agents". Would the proponents clarify the reason for this change? Could a district ever be a "petition agent"? If so, would the district be protected from liability for costs and attorney fees?
- 3. Several changes were made to subsection (3) (d) of the proposal that raise the following questions:
 - a. What is the purpose of changing the prohibition of "comment[ing] on" to "discuss[ing]" pending petitions? Would such a change prohibit district employees from talking about a pending petition while at work with other co-workers, subjecting the employees to fines and attorney fees? If a petition would affect the operation of a district, would district officers and employees be prohibited from discussing the petition in order to prepare the district for implementing the measure if it passes?
 - b. What is the purpose of removing the prohibition against "defend[ing]" accused violators? Do the proponents consider this phrase to be contained in the later phrase prohibiting "aid" to accused violators?
 - c. Would the proponents clarify the difference between the term "reimburse fines" as prohibited in previous versions of the proposal and "repay expenses"?