

# STATE OF COLORADO

## Colorado General Assembly

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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 #157, concerning Court changes for Colorado

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 amendment appear to be:

1. To recall all local judges in Colorado.
2. To hold new elections for judges within 90 days. To require the elections to be non-partisan. To allow all present judges to serve until the elections, however all rulings may be appealed after the election and will be reviewed by the new judge.
3. To allow all citizens to ask for an automatic change of venue.

4. To create a citizen review board of 11 members per judicial district that may overturn small claims rulings. The 11 members will be non-lawyers, 5 of whom are appointed by the county commissioners and the remaining 6 will be elected by the public at-large. The members will be paid \$5,000 a year, plus \$100 a meeting. Permits the state legislature to give mileage for rural areas.
5. To allow the board to be same as the real estate review board.

### 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. It is unclear whether the proponents intend to amend Colorado's constitution or the Colorado Revised Statutes. It is also unclear where in the constitution or statutes the proponents intend to codify the initiative. Would the proponents consider specifying their intent through the use of an amending clause such as the following:

(to amend the Colorado Revised Statutes)

**"SECTION 1.** \_\_-\_\_-\_\_, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW (ARTICLE/PART/SECTION) to read:"

or

(to amend the Colorado Constitution)

**"SECTION 1.** Article \_\_\_, Section \_ of the Constitution of the State of Colorado is amended BY THE ADDITION OF A NEW (ARTICLE/SECTION) to read:"

- a. The subject matter of title 13, Colorado Revised Statutes, concerns courts. If the proponents intend to amend the Colorado statutes, would the proponents consider amending title 13?
  - b. Article VI of the Colorado constitution contains the judiciary provisions. If the proponents intend to amend the Colorado constitution, may we suggest that the initiative propose a new section 27, to article XVI?
3. It is unclear if the proponents intend for the language submitted to function only as an explanation of the initiative or whether a part of the language is intended to be codified either as a declaration of intent or as substantive law. Will the proponents specify the language that is intended to be codified and if any of the language submitted is intended to be declaratory or substantive through

the use of an amending clause with a head note such as "**Declaration of intent.**", if appropriate, or another head note to signify a substantive meaning."?

4. To conform to standard drafting practices regarding the form of proposed initiatives, would the proponents:
  - a. Show all of the substantive text of the proposed initiative (everything except the enacting clause, the amending clause, and the bold-faced type head notes) in "LARGE AND SMALL CAPITAL LETTERS" to indicate that the text is new language?
  - b. Begin the first word of each new subdivision with a capital letter?
  - c. Consider using the following standard numbering format throughout the proposed proposal? The various subdivision of law are generally organized to provide consistency in the law and to aid the reader. The constitution is organized by article and then section. The Colorado Revised Statutes are organized by title, article, part, and then section. For both the constitution and the statutes, sections are divided into numbered subsections, which can be subdivided into lowercase lettered paragraphs, which can be subdivided into subparagraphs that are numbered with capitalized Roman numerals, which can be further subdivided into uppercase lettered sub-subparagraphs (i.e., (8) (d) (I) (A)). Also, typically these subdivisions are not organized through the use of indent, but rather left tabs.
5. Assuming that the attached document is the actual text of the proposed language, would the proponents consider changing the phrase "with in" to "within" to conform with standard spelling?
6. Assuming that the attached document is the actual text of the proposed language, would the proponents consider changing the phrase "over turn" to "overturn" to conform with standard spelling?
7. Assuming that the attached document is the actual text of the proposed language, would the proponents consider changing the phrase "small claims courts rulings" to either "small claims court rulings" or "small claims courts' rulings" to conform with standard phraseology for this term?
8. Assuming that the attached document is the actual text of the proposed language, would the proponents consider changing the phrase "a change a venue" to "a change of venue" to conform with standard phraseology for this term?
9. Assuming that the attached document is the actual text of the proposed language, would the proponents consider changing the phrase "will reviewed" to "will be reviewed" to conform with standard grammar?

Substantive questions:

1. The proposal refers to "local judges", however the initiative does not define the terms "local judges" or "judges". Do the proponents intend the initiative to apply to county court judges, municipal judges, district court judges, court of appeals judges, or supreme court justices?
2. The proposal requires that elections be held 90 days after the initiative passes. Do the proponents intend the elections to be held 90 days from the date on which the ballot issue goes before the voters, or the date on which the election results are finalized and certified? Would the proponents consider adding language to clarify this point?
3. Title 31, Article 10, Colorado Revised Statutes, governs municipal elections. Do the proponents intend for public to elect the six members of the proposed review board in accordance with these statutory provisions for municipalities? Would the proponents consider adding language to clarify this point?
4. Title 31, Article 11, Colorado Revised Statutes, governs elections for counties and municipalities involving initiatives, referenda, and referred proposals (see also Section 30-11-103.5, Colorado Revised Statutes). Do the proponents intend for the six members of the proposed review board to be elected in accordance with these statutory provisions? Would the proponents consider adding language to clarify this point?
5. The Colorado Constitution, sections 20, 24, and 25 of article VI, contains provisions for how supreme court justices and court of appeals, district court, and county court judges are selected and retained. Do the proponents intend to repeal those provisions?
6. The proposal states the elected judges "may not serve over 10 years", do the proponents intend the judges to serve one ten-year term or will the judges serve shorter terms? Will the 10-year limit be calculated based on the cumulative amount of time a judge has served on the bench? Under the proposed 10-year limit, will a judge be able to serve 10 years, step down from the bench for a period of time, then be reappointed to the bench and eligible for another 10 years of service? If a judge serves in one court and then moves to another court, how will the 10-year limit be counted? For example, will the judge be limited to 10 years in each court, or does the 10-year limit apply regardless of the number of jurisdictions in which a judge serves? Would the proponents consider adding language to clarify this point?
7. Sections, 7, 10, 14, 15, 16 of article VI of the Colorado Constitution, contain provision related to the terms of judges in the state. Depending on the judges this proposal covers, do the intend to repeal the corresponding constitutional provisions for their terms?
8. Section 26 of article VI of the Colorado Constitution, states the number, manner of selection, qualifications, term of office, tenure, and removal of Denver county judges shall be as provided in the charter and ordinances of the City and County of Denver. If the proposal applies to county

court judges, do the proponents intend to repeal section 26 of article VI of the Colorado Constitution.

9. The proposal proposes an "issue" to recall local judges. Title 1, Article 12, Colorado Revised Statutes, governs the process for recall elections. Do the proponents intend that a ballot initiative be submitted to the voters according to this statutory process to recall local judges? Would the proponents consider adding language to clarify this point?
10. The proposal proposes that "all elections will be non-partisan." However, the proposal does not define the term "non-partisan". Section 1-1-104 (23.3), Colorado Revised Statutes, defines the term as follows: "'Nonpartisan election' means an election that is not a partisan election." Section 1-1-104 (23.6), Colorado Revised Statutes, defines the term partisan election to mean "an election in which the names of the candidates are printed on the ballot along with their affiliation. The existence of a partisan election for the state or for a political subdivision as a part of a coordinated election does not cause an otherwise nonpartisan election of another political subdivision to become a partisan election." Do the proponents intend that the meaning of non-partisan elections in the proposed proposal be the same as the statutory definition cited above? Would the proponents consider adding language to clarify this point?
11. The proposal states "all ruling may be appealed after the election", generally a ruling may not be appealed until the case reaches a final judgment, do the proponents intend to allow appeals prior to final judgment? If the proponents intend for the cases to be appealed prior to final judgment, do the proponents intend for the cases to continue during the appeal? Do the proponents intend to require that "all rulings" of a recalled judge be reviewed by the new judge, without regard to the amount of time that has lapsed since the former judge's ruling? Do the proponents intend to require a review of an appealed ruling or to merely provide an opportunity for judicial review, if the parties involved so desire? Would the proponents consider adding language to clarify these points?
12. The proposal states "all rulings . . . will be reviewed by the new judge". What do the proponents mean by "reviewed"? Would the proponents consider further defining the new judge's obligation to review all rulings of the previous judge?
13. The proposal requires a court to grant a change of venue request. Do the proponents intend the provisions to apply to all types of cases, civil, criminal traffic, small claims, or only certain types of cases? What do the proponents intend to occur if a matter contains two adverse change of venue requests? For example, what happens if the plaintiff move to change to Denver county and the defendant moves to change to Arapahoe county?
15. The proposal allows a citizen review board to be able to overturn a small claims court ruling. Do the proponents intend to prevent a small claims court litigant from appealing the decision to the district court? Do the proponents intend to allow a party who receives an adverse decision from the citizen review board to appeal to the Court of Appeals or Supreme Court? Would the proponents consider adding language to clarify these points?

16. The proposal states there will be a citizen review board "in a judicial area". Do the proponents intend that each judicial district will have one citizen review board?
17. The proposal also proposes that six members of the proposed review board be elected by "the public at large". Do the proponents intend the members of the proposed review board to reside within the judicial district? Do the proponents intend that members of the proposed review board meet other requirements such as age, voter registration, etc., before they are considered for appointment or election? If a judicial district comprises more than one county, how do the proponents intend the electors of the various counties to appoint five members to the proposed review board? Do the proponents intend each county in the judicial district to appoint and elect equal numbers of non-lawyers who reside in their respective counties to the proposed review board? Do the proponents intend that the county commissioners from each county reach a collective decision about the five non-lawyers who will be appointed to the proposed review board? Also, do the proponents intend that the counties or "judicial area" conduct a multi-county election to select the six non-lawyers for the proposed review board? Do the proponents intend that the number of non-lawyers appointed by the county commissioners and elected by the voters of each county be proportionate to the population of the county in relation to the judicial district? Would the proponents consider adding language to clarify these points?
18. The proposal states the members of the citizen review board are to be paid \$5,000 a year and \$100 a month. What entity do the proponents intend pay the members? If the proponents intend the state pay the salaries, from what funding source do the proponents intend to pay for the salaries?
19. The proposal states the citizen review board will contain five members appointed by county commissioners. If we assume the review board is supposed to cover a judicial district, and there are multiple counties in most judicial districts, how will the appointments work?
20. The proposal states "if the real estate law passes the board and the real estate review board may be the same". To what real estate law are the proponents referring? What do the proponents mean "the board and the real estate review board may be the same"?
21. The proposed proposal does not include a date upon which it will take effect. Do the proponents intend a certain effective date for the proposed proposal? Do the proponents further intend to specify which elections of judges or rulings of judges to which the proposed proposal applies?
22. Section 1-40-106.5 requires that an initiative contain a single subject. What do the proponents believe is the single subject of the proposal?