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MEMORANDUM

January 7, 2004

TO: Carol Hedges
Wade Buchanan

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #77, concerning replace TABOR - vote on taxes.

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.

Purposes

The major purpose of the proposed amendment appears to be to replace article X, section 20 of the Colorado constitution ("TABOR") with a new article X, section 20 that would require only that the state or any local government obtain prior voter approval before imposing any new tax or increasing any existing tax.

Comments and Questions

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

Technical questions:

1. To conform to standard drafting practices regarding the form of proposed amendments to the Colorado constitution, would the proponents consider:
 - a. Modifying the capitalization of words in the enacting clause so that it matches the enacting clause required by article V, section 1 (8) of the Colorado constitution, which reads: "Be it Enacted by the People of the State of Colorado"?
 - b. Either:
 - i. Replacing what appears to be the amending clause of the proposed initiative (the language that states "An amendment to the constitution of the state of Colorado, replacing Article X, Section 20, with the following:") with an amending clause that states that "Section 20 of article X of the constitution of the state of Colorado is REPEALED AND REENACTED, WITH AMENDMENTS, to read:" and then showing the text of the new article X, section 20 in LARGE AND SMALL CAPITAL LETTERS rather than in regular text as it is currently shown to indicate that it is new language?; or
 - ii. Replacing the amending clause with an amending clause that states that "Section 20 (7) of article X of the constitution of the state of Colorado is amended to read:" and then showing the full existing text of article X, section 20 (7) of the Colorado constitution in ~~strike type~~ to indicate its repeal followed by the text of the new article X, section 20 (7) shown in LARGE AND SMALL CAPITAL LETTERS rather than in regular text as it is currently shown to indicate that it is new language?
2. The phrase "**Replace TABOR with Right to Vote**" appears before the enacting clause in the proposed initiative and therefore is neither substantive constitutional text nor part of the amending clause that identifies the constitutional provisions to be amended, or in this case repealed, by the proposed amendment. What is the proponents' intent in including this phrase as part of the proposed initiative?

Substantive questions:

1. Article V, section 1 of the Colorado constitution requires all proposed initiatives to have a single subject. Also, the Colorado Supreme Court has held that: (1) An initiative violates the single subject requirement if "its text relates to more than one subject and if the measure has at least two distinct and separate purposes which are not dependent upon or connected with each other"¹; (2)

¹ *Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 30*, 959 P.2d 822, 825 (Colo. 1998) (quoting *In re Proposed Petition*, 907 P.2d 586, 590 (Colo. 1995)).

TABOR "contains multiple subjects"²; and (3) An initiative has multiple subjects if it proposes to repeal an entire constitutional provision that contains multiple subjects.³ Colorado case law thus suggests that the proposed initiative has multiple subjects because it proposes the repeal of TABOR. Do the proponents believe that the proposed initiative has a single subject, and, if so, what is the single subject of the proposed initiative?

2. Are "the people" who must approve a new tax or increase in any existing tax under the terms of the proposed initiative the people who reside within the jurisdiction of the government proposing the new tax or tax increase? The people of the state?
3. What is a "new tax" for purposes of the proposed initiative? A tax of a type that is not currently imposed? A tax on people or entities who are not currently taxed? Have the proponents considered defining "new tax"?
4. Does the term "tax increase" include tax rate increases only? Tax policy changes that result in additional tax revenues for the government imposing the tax? Extensions of expiring taxes? Mill levy increases? Expansions of the territory of governments that impose taxes?

² *Title, Ballot Title and Submission Clause for Proposed initiative 2001-02 # 43*, 46 P.3d 438, 442 (Colo. 2002) (additional citation omitted).

³ *Id.* (additional citation omitted).