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MEMORANDUM

December 16, 2010

TO: Peter Coulter and Howard Sherman

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #11, concerning Colorado Supreme Court Term Limits

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 change the term of office for the justices of the Colorado Supreme Court from ten years to two years;
2. To prohibit a justice of the Colorado Supreme Court from serving as chief justice for more than one term; and
3. To prohibit a justice of the Colorado Supreme Court who is not retained as the result of a retention election, resigns from the Court, is removed from the Court, or fails to file a declaration

under section 25 of article VI of the Colorado constitution from being reappointed to the Court for a period of ten years.

Technical Comments:

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section, subsection, paragraph, or subparagraph, including amending clauses and section headings.
3. It is standard drafting practice for the first subsection to immediately follow the headnote on the same line instead of the first subsection appearing on a separate line from the headnote.
4. The provisions of the proposed initiative should appear in the following order: The enacting clause, followed by the amending clause indicating what change is being made to the Colorado constitution or Colorado Revised Statutes, followed by the text of the initiative. Any additional provisions before the enacting clause should not be included.
5. For clarity purposes, it is standard drafting practice to include a reference to the article of the Colorado constitution when referencing a different section. Thus, following the references to sections 20, 23, and 25, there should be "of article VI".
6. Standard drafting practice would hyphenate "two-year" and spell out the number "ten".
7. Subsection (2) of the proposed initiative uses the term "will"; the standard drafting practice uses "shall".
8. Subsection (4) of the proposed initiative has a series of conditions, but grammatically the series does not flow from the subject of the sentence. Also, standard drafting practice in a series of three or more includes a comma before the conjunction.
9. In subsection (5) of the proposed initiative, there is no need to use a paragraph (a) since there is only one definition. The definition of "justices" may stand alone as subsection (5) of the proposed initiative.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. The proposed initiative changes the term of office for justices of the Colorado Supreme Court but not any other judicial officers. What is the intent of changing the term of office only for justices of the Colorado Supreme Court?
4. Subsection (2) of the proposed initiative could be interpreted so a justice of the Colorado Supreme Court who is appointed under the conditions in subsection (2) may not seek retention pursuant to section 25 of article VI of the Colorado constitution since the provision states "The newly appointed justice **will only serve** until the second Tuesday in January following the two year anniversary date of said appointment." (emphasis added). What is the proponents' intent regarding that language?
5. Subsection (3) of the proposed initiative states that no person can serve as chief justice for more than one term.
 - a. What happens if all members of the Court have served as chief justice? Is the intent of the proposal to require replacement of at least one justice every 14 years based on seven justices serving two-year terms?
 - b. Section 5 (2) of article VI of the Colorado constitution states that the chief justice shall be elected by the members of the Court to serve at the pleasure of the majority of the Court. Would the proponents consider amending this provision to conform to the provisions of subsection (3) of the proposed initiative?
6. Subsection (4) of the proposed initiative uses the term "negative majority vote", which may be confusing. Would the proponents consider rephrasing the term to clarify their intent?
7. Subsection (5) defines "justices" to include "all magistrates and judges associated with the supreme court".
 - a. What does "associated with the supreme court" mean?
 - b. Which judicial positions in the state are covered by the definition of "justices"?
8. Section 25 of article VI of the Colorado constitution requires incumbent judges to file at least three months prior to the next general election a declaration of intent to run for another term before the expiration of the incumbent's term of office. Since the general elections occur in even-numbered

years (section 1-4-201, C.R.S.) and the initiative limits the Supreme Court justices to two-year terms of office, if a Supreme Court justice fills a vacancy, for example, four months prior to a general election, that justice will be up for a retention vote at that general election, having served for only four months. Is this the intent of the proponents?