

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Dan L. Cartin, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

December 2, 2011

TO: Rosalinda Lozano and Kevin Swanson

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #46, concerning the application of the term "person"

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 apply the right to life in the constitution equally to all innocent persons.
2. To prohibit the intentional killing of any innocent person.
3. To define human being as a member of the species homo sapiens at any stage of development.

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. 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.
2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In the constitution of the state of Colorado, add section 32 to article II as follows:".
3. Note that although the text of the proposed initiative should be in small capital letters, a large capital letter should be used to indicate capitalization where appropriate. The following should be large capitalized:
 - a. The first letter of the first word of each sentence; and
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon.

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. As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
4. In the purpose section of the proposed initiative, it states that "the right to life in this constitution applies equally to all innocent persons".
 - a. What is the extent of this right?
 - b. For example, what happens if the state executes an innocent person? Would that person's family be entitled to monetary damages from the state?
5. Subsection (2) of the proposed initiative states "The intentional killing of any innocent person is prohibited."
 - a. What is the effect of this provision? Is it intended to change the current statutes on murder and homicide? If so, would the proponents consider using the criminal code elemental terminology of "cause the death" rather than "killing"? Would the measure affect current laws that cover situations involving unintentional

deaths?

b. What is the penalty for intentionally killing an innocent person? Do the proponents intend that the penalties be the same as the current penalties for the various murder and homicide offenses in law?

c. What does the term "innocent" mean? Would the proponents consider defining it?

d. What does the phrase "intentional killing" mean? For example, would this provision permit a vigilante killing of a guilty person?

e. Paragraphs (a) and (b) of subsection (2) state "only birth control that kills a person shall be affected by this section" and "only in vitro fertilization and assisted reproduction that kills a person shall be affected by this section". What is intent of these two provision?

f. Paragraphs (c) and (d) of subsection (2) also state "medical treatment for life threatening physical conditions intended to preserve life" and "spontaneous miscarriages" are not affected by subsection (2). What effect of subsection (2) would not be applied to those situations?

6. The proposed initiative defines "spontaneous miscarriage" as "the unintentional termination of a pregnancy".

a. By using the phrase "termination of pregnancy", rather than "killing of any innocent person," is it the proponents' intent to create a distinction between a "termination of a pregnancy" and the "intentional killing of any innocent person"? Are there intentional terminations of pregnancy that would be permitted by the measure? If not, If not, why does the proposed initiative use different terminology?

7. It appears that the proposed language could affect a woman's constitutional right to have an abortion. The following question is based on the assumption that a court would interpret the language in that manner:

a. Do you expect that the proposed language would create an "undue burden"on or a "substantial obstacle" to a woman's right to an abortion?

8. What does the term "at any stage of development" mean? Would the proponents consider defining "at any stage of development"?