

# 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

April 3, 2012

**TO:** Brad Clark, Erin Yourtz, and Mark Grueskin

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measures 2011-2012 #92 and #93, concerning religious belief and practices

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.

Because your proposed initiatives #92 and #93 were submitted together and address the same issues and language, this letter will serve as our comments to both proposed initiatives.

### Purposes

The major purposes of the proposed initiatives appears to be to amend the Colorado constitution as follows:

1. Proposed initiative #92: To amend the language of a separate proposed ballot initiative (currently proposed initiative #78) to add definitions to a new constitutional section in article II of the Colorado constitution for "right to act" and "refusal to act"

in the context of religious practice.

2. Proposed initiative #93: To amend Section 4 of article II of the Colorado Constitution to clarify language describing a person's or religious organization's "right to act" or "refusal to act" in a manner motivated by a sincerely held religious belief.
3. It appears that proposed initiative #92 is intended to only take effect if the proposed ballot initiative #78 is passed by the voters.

### Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. 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 initiatives as suggested below.

1. To conform with standard drafting practices, the amending clauses should read as follows:
  - a. Proposed initiative #92: "In the constitution of the state of Colorado, **add** section 32 (4) to article II, as such section is proposed in the 2012 ballot initiative concerning limiting the government's ability to burden freedom of religion, as follows:".
  - b. Proposed initiative #93: "In the constitution of the state of Colorado, **amend** section 4 to article II as follows:".

### Substantive Comments and Questions

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

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of each of the proposed initiatives?
2. In proposed initiative #92, the definition of "refusal to act" includes the phrase "one or more religious practices", whereas the definition for "right to act" refers only to religious practices. Would the proponents consider adding the phrase "one or more" to the definition of "right to act" for consistency?
- 3a. It is our understanding that proposed initiative #92 is meant to amend proposed initiative #78, concerning limiting the government's ability to burden freedom of religion. Do the proponents only intend for proposed initiative #92 to become law if proposed initiative #78 passes? If so, would the proponents consider adding an effective date clause to their initiative as follows:

**Section 1.** In the constitution of the state of Colorado, **add** section 32 (4) to article II, as such section is proposed in the 2012 ballot initiative concerning limiting the government's ability to burden freedom of religion, as follows:

[Insert text of your proposed initiative #92.]

**Section 2. Effective date.** Section 1 of this initiative shall only take effect if the 2012 ballot initiative concerning limiting the government's ability to burden freedom of religion is passed by the voters in the 2012 general election.

- 3b. What do the proponents want to happen if proposed initiative #78 is *not* passed by the voters and their proposed initiative #92 *does* pass? Do the proponents intend for the language submitted in proposed initiative #92 to stand alone in the constitution? If so, what would be the purpose of having the definitions appear in the constitution? And, if so, would the proponents consider adding an effective date clause and changing their initiative as follows:

**Section 1.** In the constitution of the state of Colorado, **add** section 32 (4) to article II, as such section is proposed in the 2012 ballot initiative concerning limiting the government's ability to burden freedom of religion, as follows:

[Insert text of your proposed initiative #92.]

**Section 2.** In the constitution of the state of Colorado, **add** section 32 to article II as follows:

AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "RIGHT TO ACT" MEANS...

(2) "REFUSAL TO ACT" MEANS...

**Section 3. Effective date.** (1) Section 1 of this initiative shall only take effect if the 2012 ballot initiative concerning limiting the government's ability to burden freedom of religion is passed by the voters in the 2012 general election.

(2) Section 2 of this initiative shall only take effect if the 2012 ballot initiative concerning limiting the government's ability to burden freedom of religion is not passed by the voters in the 2012 general election.

- 3c. What is the proponents' intent if all three proposed initiatives (#78, #92, and #93) pass? Is it the proponents' intent that #93 be enacted along with the same language that is proposed by #92 (as it amends #78)? Or is it their intent that if #78 and #92 pass, then #93 shall not take effect because it would add duplicate language to the constitution? Would the proponents consider clarifying their intent concerning the different possible combination of passage/loss through effective date clauses similar to those set forth above?
4. The new language in proposed initiative #93 reflects the phrases "right to act" and "refusal to act" used in proposed initiatives #78 and #92. However, those phrases do not appear in the existing language of section 4 of article II of the Colorado constitution. Would the proponents consider better clarifying to what the phrases refer?