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MEMORANDUM

June 22, 2011

TO: Mark Olmstead and Emily Rhodes

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-12 #37, concerning marriage

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 permit legal marriage between persons of the same sex in Colorado
2. To ensure that the same marriage requirements that apply to different sex couples apply to same sex couples.
3. To ensure that the legal effect of marriage will be the same for married couples of the same sex or of different sexes.

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, would the proponents consider adding this phrase to the beginning of the proposed initiative?
2. If your proposal is to amend the existing provision in the constitution relating to "**Marriages - valid or recognized**," that section is numbered as "Section 31" rather than "Section XXXI". Would the proponents consider changing the section number in the proposed initiative to read "Section 31"?
3. It is standard drafting practice to use small-capitals font to show the language being proposed to be added to the Colorado constitution. For example, the first sentence would begin "MARRIAGE WILL HAVE THE SAME REQUIREMENTS" Would the proponents consider using a small-capitals font to show the language that is proposed to be added to the constitution?
4. With respect to the amending clause, the standard drafting format for an amending clause is: "Section __ of article __ of the constitution of the state of Colorado is amended to read:" If the proponents are amending the existing language of article II, section 31 of the constitution, it is correct to show the existing text in strike type followed by the new language in small-capitals font as described in #3 above.

For example:

Be it Enacted by the People of the State of Colorado:

Section 31 of article II of the constitution of the state of Colorado is amended to read:

Section 31. Marriages - valid or recognized. ~~Only a union of one man and one woman shall be valid or recognized as a marriage in this state.~~ MARRIAGE WILL HAVE THE SAME REQUIREMENTS

However, if the proponents do not wish to show the existing constitutional language in strike type, the amending clause may be changed to read:

Be it Enacted by the People of the State of Colorado:

Section 31 of article II of the constitution of the state of Colorado is REPEALED AND REENACTED as follows:

Section 31. MARRIAGE WILL HAVE THE SAME REQUIREMENTS

You may also choose to add a different headnote in boldface type after the section number. (A different headnote would not be shown in small-capitals font.) Would the proponents consider

modifying the amending clause at the beginning of the proposed initiative based upon these two suggestions?

Substantive Comments and Questions

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

1. The proposed measure refers to the "requirements" of marriage. How would the proponents define the requirements of marriage?
2. The proposed measure refers to the "effects" of marriage.
 - a. How would the proponents define the effects of marriage?
 - b. How do the requirements of marriage differ from the effects of marriage?
3. Common-law marriage is recognized in Colorado courts. Is it your intent that the proposed language would allow for common-law marriage between parties of the same sex in Colorado?
4. Several states have enacted legislation that authorizes the formal establishment and legal recognition of unions between persons of the same sex, such as domestic partnerships, civil unions, and reciprocal beneficiaries. In 2009, Colorado enacted the "Colorado Designated Beneficiary Agreement Act", article 22 of title 15, Colorado Revised Statutes.
 - a. What impact, if any, would the proposed measure have on persons in a designated beneficiary relationship in Colorado?
 - b. Is it the intent of the proponents that the language of the proposed measure have any impact on persons in a registered or otherwise valid domestic partnership, civil union, reciprocal beneficiary relationship, or other similarly sanctioned same-sex relationship from another jurisdiction, state, or country that is not recognized as a "marriage" in that jurisdiction, state, or country?
 - c. If so, would the proponents describe what impact they believe the proposed measure would have on those relationships?
5. State law includes limitations to marriage other than the sex of the parties involved. For example, section 14-2-110, Colorado Revised Statutes, prohibits bigamy and marriage between certain persons of the same family. Is it the proponents' intent that all of these other statutory restrictions would apply to a marriage between persons of the same sex?
6. Additionally, there are several provisions in state law concerning marriage that refer to the sex of the person. For example, article 2 of title 14, Colorado Revised Statutes, includes the Uniform Marriage Act in part 1 and Rights of Married Women in part 2. Several sections include provisions relating to a "wife" or a "woman".
 - a. What impact do the proponents believe the proposed measure would have on these statutory provisions as well as any others that might relate to the sex of a married person?

b. If the voters approve the proposed measure, do the proponents intend that the General Assembly would amend conflicting provisions in state law to implement the constitutional provision?

7. 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 the proposed initiative?

8. What will be the effective date of the proposed initiative?